

STATE OF ALABAMA)
COUNTY OF SHELBY)


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Shelby Cnty Judge of Probate, AL
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CHELSEA PARK COMMERCE CENTER

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHELSEA PARK COMMERCE CENTER (the "Declaration") is made as of this 14 day of September, 2011, by Chelsea Park Investments, Ltd., an Alabama limited partnership, (the "Developer"), which declares that the real property hereinafter described is and shall be subdivided, developed, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

WHEREAS, Developer is the owner of a tract of unimproved property, which is more particularly described on Exhibit A hereto (the "Property"), and is located in the City of Chelsea, Shelby County, Alabama, at the intersection of U.S. Highway 280 and the entrance to the residential subdivision known as "Chelsea Park" (the "Development");

WHEREAS, the residential subdivision within the Development is subject to certain protective and restrictive covenants in the Declaration of Easements and Master Protective Covenants for Chelsea Park, a Residential Subdivision, as recorded in Instrument # 20041014000566950 in the Probate Office of Shelby County, Alabama, together with the supplements and amendments thereto (the "Residential Covenants") providing for the maintenance and repair of common areas and the regulation and use of the property subject to the Residential Covenants;

WHEREAS, Developer's plan for the development of the Property contemplates a commercial center as part of the Development (the "Commerce Center"), including, without limitation, entertainment venues, restaurants, residential use, office and retail establishments, and this Declaration is intended to establish a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration and maintenance of the Commerce Center for the Development;

WHEREAS, the Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and community improvements within the Commerce Center and is assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Commerce Center and of levying assessments against the owners of property within the Commerce Center to enable the Association to perform such obligations;

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Shelby County, Alabama, which is more particularly described on Exhibit A attached hereto, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the above described real property, and any of the Additional Property, as described in Section 1.1 below (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I DEFINITIONS

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 Additional Property. The term "Additional Property" shall mean and refer to any real property and any Improvements situated (but which does not presently comprise any part of the Commerce Center) which Developer may, from time to time, submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas and Limited Common Areas.

1.2 Apartment Unit. The term "Apartment Unit" shall mean and refer to each separate dwelling unit within a residential parcel developed for rental apartments.

1.3 ARC. The term or letters "ARC" shall mean the architectural review committee appointed pursuant to Section 5.2 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.4 Architectural Standards. The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 5.5 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Parcel.

1.5 Assessment. The term "Assessment" shall mean the Assessments to be assessed against the Owners of Parcels pursuant to the authority vested in the Association under Article VIII and Article IX hereof, and such term shall include, Common Area Assessments, Limited Common Area Assessments, Extraordinary Assessments and Individual Assessments where no distinction is required.

1.6 Association. The term "Association" shall mean Chelsea Park Commerce Association, Inc., an Alabama nonprofit corporation, that has been organized by filing the Certificate of Formation with the Judge of Probate of Jefferson County, Alabama.

1.7 Board. The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Certificate of Formation and Bylaws.

1.8 Bylaws. The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.9 Certificate of Formation. The term "Certificate of Formation" shall mean and refer to the Certificate of Formation of Chelsea Park Commerce Association, Inc., as recorded as Instrument #20110901000858970 and recorded in Book LR201106, page 27607 in the Probate Office of Jefferson County, Alabama, and all amendments thereto.

1.10 Commerce Center. The term "Commerce Center" shall mean and refer to the Property and any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

1.11 Commerce Center Points. The term "Commerce Center Points" shall mean and refer to the schedule attached hereto as Exhibit "C" for the purpose of allocating votes and assessments among the Owners. The number of Commerce Center Points for each Parcel is determined in accordance with the

table set forth on Exhibit "C" based upon the size of the Parcel and the land use classifications within the Parcel, including all uses within the Parcel, as determined by actual uses.

1.12 Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned or otherwise acquired by lease, easement or otherwise, by the Developer or the Association for the Commerce Center or in close proximity to the Commerce Center and designated as "Common Area" in a document signed by the Developer (as to property owned by the Developer) or the Association (as to property owned by the Association) and recorded in Shelby County, Alabama. The Common Areas shall include (a) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, improvements, landscaping and landscaped or other areas, including all medians within any public or private roadways (other than any such areas located solely within the boundary lines of any Parcel) within the Commerce Center, (b) all storm drains and sewers, drainage and/or watershed protection or retention ponds, basins, spillways, dams or other areas and facilities located within the Commerce Center (excluding such areas as are located solely within the boundaries of any Parcel), (c) all maintenance areas and parking areas (excluding such areas located solely within the boundary lines of any Parcel) within the Commerce Center, (d) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas (other than those owned by the utilities provider and others located solely within the boundary of any Parcel, and (e) all parks, lakes, nature trails, recreational facilities and areas, and any other areas or Improvements which are designated as Common Areas by Developer or the Association from time to time in accordance with this Declaration. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof, and the use and management of such Common Areas shall be exclusively governed by the terms and conditions of this Declaration. The term "Common Areas" shall include Limited Common Areas where no distinction is required.

1.13 Common Area Assessment. The Common Area Assessment shall mean and refer to any and all assessments imposed by the Association to pay Common Area Expenses in accordance with the provisions of Article IX of this Declaration.

1.14 Common Area Expenses. The term "Common Area Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association in connection with the maintenance, repair, improvement, alteration, operation and management of the Common Areas and the Association, including, without limitation, those expenses described in Section 9.1(b) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.15 Community-Wide Standard. The term "Community-Wide Standard" shall mean and refer to the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing within the Commerce Center, or (b) the minimum standards described in this Declaration, the Architectural Guidelines, use restrictions, and Board resolutions. The Community-Wide Standard may contain both objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the ARC. The Community-Wide Standard may or may not be set out in writing. The Developer initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Commerce Center matures.

1.16 Declaration. The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Chelsea Park Commerce Center, and all amendments thereto.

1.17 Developer. The term "Developer" shall mean Chelsea Park Investments, Ltd., an Alabama limited partnership, its successors and assigns.

1.18 Entrance Area. The term "Development Entrance Area" shall mean the property described under that certain Easement Agreement among Chelsea Park Properties, Ltd., Chelsea Park Investments, Ltd., and Chelsea Park, Inc. recorded as Instrument #20040816000457750 in the Probate Office of Shelby County, Alabama.

1.19 Extraordinary Assessments. The term "Extraordinary Assessments" shall mean and refer to those assessments levied by the Board to cover Common Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget.

1.20 Governmental Authority. The term "Governmental Authority" shall mean 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 the Commerce Center, including without limitation, improvement districts that are organized pursuant to the Alabama Improvement District Act.

1.21 Improvement. The term "Improvement," with an initial capital letter, shall mean and refer to any building, structure or device constructed, erected or placed upon any Parcel, Common Area or Limited Common Area which in any way affects the exterior appearance of any Parcel, Common Area or Limited Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Parcel. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.22 Improvement District. The term "Improvement District" shall mean and refer to any one of the Improvement Districts organized or to be organized by the City of Chelsea and/or any other governmental entity in Alabama as a public corporation under the Alabama Improvement District Act [Chapter 99A of Title 11 of the Code of Alabama 1975, as amended] or as a cooperative district under the Capital Improvements District Act [Chapter 99B of Title 11 of the Code of Alabama 1975, as amended] to provide for the financing, construction, maintenance and operation of certain improvements within the Commerce Center, including without limitation streets and gutters; utilities lines and equipment; parks, lakes, and other recreational facilities; schools and other public facilities.

1.23 Individual Assessments. The term "Individual Assessments" shall mean and refer to those assessments levied by the Board to cover any expenses of the Association occasioned by the conduct of less than all of the Owner.

1.24 Institutional Mortgagee. The term "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Parcel which has been duly and properly recorded in the Probate Office of Shelby County, Alabama.

1.25 Limited Common Areas. The term "Limited Common Areas" shall mean and refer to all Common Areas that are intended to benefit one or more Parcels but less than all of the Parcels in the Commerce Center.

1.26 Limited Common Area Assessments. The term "Limited Common Area Assessments" shall mean and refer to any and all assessments to pay Limited Common Area Expenses in accordance with Article IX of this Declaration.

1.27 Limited Common Area Expenses. The term "Limited Common Area Expenses" shall mean and refer to all expenditures made or incurred on behalf of the Association in connection with the maintenance, repair, improvement, alteration, operation and management of Limited Common Areas, including without limitation, those expenses described in Section 9.1(b) hereof, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.28 Mortgage. The term "Mortgage," with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Parcel or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

1.29 Mortgagee. The term "Mortgagee," with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

1.30 Occupant. The term "Occupant" shall mean and include any Owner or Tenant (including any member of their respective Immediate Families) and guests, agents, servants, employees or invitees of any Owner or Tenant and any other person who occupies or uses any building within the Commerce Center. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of a Parcel.

1.31 Owner. The term "Owner," with an initial capital letter, shall mean and refer to the record owner, including Developer, of fee simple title to any Parcel, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Parcel at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any Tenant, purchaser, contract purchaser or vendor who has an interest in any Parcel solely by virtue of a lease, contract, installment contract or other agreement. One or more Parcels within the Commerce Center may include condominium units for which a separate condominium or other owners association must be formed to administer additional covenants applicable to that particular use. Any such condominium or other owners association formed for a Parcel shall be Owner for all purposes under this Declaration and shall be a member of the Association and subject to the terms of this Declaration. The owners of individual units subject to the jurisdiction of the condominium or other owners association shall not be Owners under this Declaration and are not members of the Association.

1.32 Parcel. The term "Parcel" shall mean and refer to any improved or unimproved portion of the Commerce Center, which may be independently owned and conveyed and is intended for development, use and occupancy, but excluding the Common Area or property dedicated to the public. Upon the recordation of any subdivision plat for any portion of the Commerce Center, each parcel indicated thereon shall be deemed a Parcel for purposes of this Declaration. The term Parcel shall refer to the land or air space that is part of the Parcel as well as any Improvements thereon. In the event any Parcel is resubdivided by Developer pursuant to the provisions of Section 2.6 hereof, the resubdivided Parcels shall constitute the number of Parcels which remain after such division or combination of Parcels.

1.33 Property. The term "Property" shall mean and refer to the real property described on Exhibit A hereto.

1.34 Residential Development. The term "Residential Development" shall mean and refer to the real property that is subject to the Residential Covenants.

1.35 Residential Covenants. The term "Residential Covenants" shall mean and refer to the Declaration of Easements and Master Protective Covenants for Chelsea Park, a Residential Subdivision, as recorded in Instrument #20041014000566950 in the Probate Office of Shelby County, Alabama, including all subsequently filed supplements and amendments recorded in said Probate Office.

1.36 Residential Developer. The term "Residential Developer shall mean and refer to Chelsea Park Holding, LLC, as successor in interest to the Developer named in the Residential Covenants or to such other person who may succeed to the rights of Chelsea Park Holding, LLC under Section 4.2 of the Residential Covenants.

1.37 Rules. The term "Rules" shall mean and refer to the rules of the Association adopted pursuant to Article VI, which regulate the use of property, activities and conduce within the Commerce Center.

1.38 Supplement. The term "Supplement" shall mean and refer to any recorded Supplement to this Declaration, which may submit a portion of the Additional Property to this Declaration, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, create exceptions to this Declaration, or any of the following.

1.39 Tenant. The term "Tenant" shall mean and refer to any person who is occupying a building under a lease with the Owner of the Parcel pursuant to which the Owner has agreed to provide such person the exclusive right to use the building for a period of not less than six months.

ARTICLE II PROPERTY SUBJECT TO THE DECLARATION

2.1 General Declaration. Developer hereby declares that the Commerce Center is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Commerce Center, any part thereof and each Parcel and all Common Areas and Limited Common Areas shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Commerce Center and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Commerce Center and any Parcel, Common Area and Limited Common Area thereof. **This Declaration shall not apply to any other property owned by Developer unless the same is subjected to this Declaration specifically by written instrument in accordance with Section 2.2 below.**

2.2 Additional Property. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Commerce Center. The Developer may record a Supplement without the consent of any Person except the owner of such property, if not the Developer. The Developer's right to expand the Commerce Center under this section expires thirty (30) years after this Declaration is recorded, whichever is earlier. Until then, the Developer may transfer or assign this right to any affiliate of Developer or any Person who is the developer of at least a portion of the Commerce Center or Additional Property. Any such transfer shall be described in a recorded instrument executed by the Developer.

In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Commerce Center. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional

Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.2 of this Declaration.

2.3 Right of Developer to Modify Restrictions with Respect to Parcels. With respect to any Parcel owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Parcel; provided, however, that this Declaration may not be modified or amended to exempt any Parcel from the payment of the Assessments.

2.4 Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Parcel, Common Area and Limited Common Area within the Commerce Center and are intended to create mutual, equitable servitudes upon and in favor of each Parcel, Common Area or Limited Common Area, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Parcel, Common Area or Limited Common Area within the Commerce Center and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.5 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Parcel in the Commerce Center, to make improvements and changes to all Common Areas and Limited Common Areas and to all Parcels owned by Developer, directly or indirectly through an Improvement District or other Governmental Authority, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Parcels owned by Developer or of the Common Areas or Limited Common Areas, (iii) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas or Limited Common Areas or easements therefor, and (iv) installation of security and trash and refuse facilities.

2.6 Subdivision Plat. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat for the Property and any Additional Property included within the Commerce Center setting forth such information as Developer may deem necessary with regard to the Commerce Center, including, without limitation, the locations and dimensions of all Parcels, Common Areas, Limited Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Commerce Center indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Parcels owned by Developer.

2.7 Improvement District. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration:

(a) to include in an Improvement District any portion of the Commerce Center or Additional Property that is then owned by the Developer, including without limitation, Parcels, Common Areas and Limited Common Areas; and

(b) to include property that is owned by or included in an Improvement District as part of Additional Property that is added to the Commerce Center and submitted to this Declaration in accordance with Section 2.2 hereof.

Any portion of the Common Area or Limited Common Area that is subjected by the Developer to an Improvement District, and any Additional Property that is included in an Improvement District and

designated as part of the Common Area or Limited Common Area, shall be burdened and benefited by the easements and limitations set forth in Article III of this Declaration, and shall otherwise be subject to the covenants and restrictions of this Declaration unless and until dedicated to the Improvement District of Governmental Authority. Notwithstanding anything herein to the contrary, any Parcels within any part of the Commerce Center or Additional Property that are included in an Improvement District shall be subject to this Declaration.

2.8 Promotion of Commerce Center. The Association may establish and implement programs and activities designed to promote the Commerce Center, including activities designed to project a positive image, and increase awareness and support of uses and services available within the Commerce Center. The Association's promotional activities may include, but are not limited to, market research, public relations, and advertising services, and it may engage in joint enterprises with other persons or groups to accomplish its promotional goals. It also may provide various services which the Board deems appropriate, such as programs designed to create employment opportunities within the Commerce Center. The Association may promote single entities or components within Commerce Center, so long as it deems the use of single entities to be reasonably related to the promotion of Commerce Center as a whole. The Association's activities may be on-site, off-site, within, and outside of the State of Alabama and may be conducted in cooperation with Persons who are not affiliated with the Commerce Center. The Association's costs incurred in the promotion of the Commerce Center under this chapter shall be a Common Area Expense assessed against all Parcels as a part of the Common Area Assessment.

The Board may appoint an advisory committee to assist the Association in developing and implementing promotional activities and programs for the Commerce Center. If appointed, an advisory committee shall consist of not less than three nor more than seven persons, who may, but need not, be Owners or representatives of Owners. Such committee may include marketing, advertising, or similar professionals, whose compensation, if any, shall be established by the Board. An Advisory committee shall conduct itself in accordance with the Board's resolution establishing the committee.

ARTICLE III EASEMENTS

3.1 Grant of Nonexclusive Easements to Owners. Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other Owners and Occupants. Subject to the provisions of Section 3.3 below, the easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Parcel as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Parcel. The easements and rights granted pursuant to this Section 3.1(a) are expressly subject to the rights reserved by Developer to restrict the use of Limited Common Areas and roads within the Common Areas as provided in Sections 3.3 and 3.4 below and to take any action necessary or desired in order to cause any of the private roadways within the Commerce Center to be dedicated to and accepted as a public roadway by any Governmental Authority, as provided in Section 3.3 below.

3.2 Grant of Easement to the Improvement District and Governmental Authorities. Developer does hereby grant to the Improvement District and to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon the Common Areas and Limited Common Areas within the Commerce Center 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 functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.3 Reservation of Right to Dedicate Common Area and Limited Common Area. Notwithstanding anything provided to the contrary in this Declaration, Developer (i) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate the Common Areas and Limited Common Areas or any portion thereof to the Improvement District or any Governmental Authority designated by Developer without requirement that the approval or consent of any Owner, Occupant or Mortgagee be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which the Common Areas and Limited Common Areas or any portion thereof within the Commerce Center are conveyed to the Improvement District or submitted for dedication to the public. Each Owner, by acceptance of any deed to a Parcel, and each Mortgagee, by the acceptance of any Mortgage on any Parcel, shall be deemed to, and each does hereby, irrevocably appoint the Developer as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the conveyance or dedication of the Common Areas and Limited Common Areas or any portion thereof, to the Improvement District or any Governmental Authority for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and anyone having any interest in any Parcel, Common Areas, Limited Common Areas, or in any of the easement rights created or granted in this Declaration. The rights reserved by Developer pursuant to this Section 3.3 may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein to Developer.

3.4 Reservation of Rights with Respect to Limited Common Areas. Developer reserves the right to limit and restrict the use of any Limited Common Areas to the Owners and Occupants of Parcels benefited by such Limited Common Area under the terms and conditions of this Declaration or any Supplement as may be recorded hereafter.

3.5 Reservation of General Access Easement. Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Parcel for the purpose of providing ingress to and egress from each Parcel for (a) inspecting each Parcel and any Improvements thereon in order to determine compliance with the provisions of this Declaration and/or Supplement, and (b) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration and/or the Supplement; provided, however, that upon completion and occupancy of any Improvement then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Parcel directly affected thereby.

3.6 Reservation of Easements With Respect to Common Areas and Limited Common Areas.

(a) Developer does hereby establish and reserve, for itself, the ARC, the 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 of the Common Areas and Limited Common Areas for the purpose of (i) constructing Improvements in and to any Parcels (ii) installing, maintaining, repairing and replacing any other Improvements to the Commerce Center or to

the Common Areas or Limited Common Areas and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Parcel within the Commerce Center, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and Limited Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer shall not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas and Limited Common Areas.

(b) Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas and Limited Common Areas, and any Parcels owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association, the Improvement District or a Governmental Authority at any time and from time to time any portion of the Commerce Center or any Improvements thereto to be utilized as Common Areas and Limited Common Areas, in accordance with Section 2.7 hereof.

3.7 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself, the Association and the Improvement District and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and Limited Common Areas, and all Parcels which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Commerce Center, including, without limitation, publicly or privately owned and operated electrical, natural gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, basins, dams, spillways 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 the Commerce Center. The easements established and reserved herein 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. The rights herein reserved by the Developer, the Association and the Improvement District shall include, without limitation, the right to grant easements to the providers of utilities for the purposes herein established, and each of the Owners hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney in fact, for the purpose of executing such documents as may be necessary and appropriate in connection with the granting of such easements. Notwithstanding anything provided in this Section 3.7 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.7 shall not unreasonably interfere with the use or occupancy of any Parcel, and (ii) Developer and the Improvement District shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.7 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

3.8 Reservation of Easements for Signs, Walks, Trails, Walls and Fences.

(a) Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land as reflected on a subdivision plat and as required under Section 5.7(b) hereof,

lying parallel to and running along the common exterior boundary between each Parcel and any public or private roadway which is directly adjacent to and abuts such Parcel for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, outdoor lights, traffic directional signs and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements. Each Owner may, however, be required by the Association or the ARC under any Supplement to construct a sidewalk within the easement in accordance with specifications of the Association or the ARC and at the location designated by the Association or the ARC.

(b) Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Parcel which constitutes the perimeter boundary of the Commerce Center for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Commerce Center; provided, however, that neither Developer nor the Association shall have any obligation to construct any such perimeter wall, fence mound or berm.

3.9 Development Entrance Area. The Development Entrance Area is subject to a non-exclusive easement for the benefit of the Commerce Center and the Residential Development, and shall be deemed to be a Common Area for use by the Owners and Occupants in accordance with the terms of the Easement Agreement recorded as Instrument #20080816000457750 in the Probate Office of Shelby County, Alabama. To the extent that the Developer is obligated to maintain or otherwise pay any portion of the costs of maintaining the Development Entrance Area in its capacity as Owner of the Property, the Association shall assume all of the Developer's obligations relating thereto and such costs shall be included in the Common Area Expenses pursuant to Section 9.1(b) hereof.

3.10 Reservation of Maintenance Easement. Developer does hereby establish and reserve for the Association, the Improvement District, and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Parcel 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 the Commerce Center; provided, however, that such easement shall not impose any duty or obligation upon Developer, the Association or the Improvement District to perform any of the foregoing actions. The Association shall also have the right, but not the obligation, to enter upon any Parcel for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Declaration to abate a violation of the Declaration and/or to remove any structure, thing or condition which violates the Declaration. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

3.11 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the ARC, the Association, the Improvement District, and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Parcels for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, the right to establish wildlife and wildflower sanctuaries, and the right to take any other action which may be required in order to satisfy the requirements of any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by

Developer or the Association of the rights reserved in this Section 3.11 shall not unreasonably interfere with the use or occupancy of any building situated on any Parcel.

3.12 Flowage Easement. Drainage flow shall not be obstructed or diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to this Declaration. Developer, the Association or the Improvement District may cut drainways for surface water wherever and whenever such action may appear to Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance. 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 installation and to maintain reasonable standards of health and appearance. Except as provided herein, existing drainage shall not be altered in such a manner as to divert the flow of water onto any Parcel or Common Area or Limited Common Area. The provisions hereof shall not be construed to impose any obligation upon Developer, the Association or the Improvement District to cut any such drainway. No permanent structure may be constructed or placed in such flowage easement area. Each Owner also agrees, by acceptance of a deed to a Parcel to assume, as against Developer, the Association or the Improvement District, all the risks and hazards of ownership or occupancy attendant to such Parcels, including but not limited to its proximity to waterways.

3.13 Easements of Encroachment. The Developer grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area or Limited Common Area and between adjacent Parcels. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement

3.14 Easements to Serve the Residential Development. The Developer grants to the Residential Developer and its duly authorized agents, successors, assigns, and Mortgagees, the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas, and such Limited Common Areas as may be determined by the Developer from time to time, in common with Developer, its successors and assigns, and all other Owners and Occupants. The easements and rights granted pursuant to this Section 3.14 are expressly subject to the rights reserved by Developer to restrict the use of Limited Common Areas Section 3.4 below and to take any action necessary or desired in order to cause any of the private roadways within the Commerce Center to be dedicated to and accepted as a public roadway by any Governmental Authority, as provided in Section 3.3 below. Notwithstanding anything provided in this Section 3.14 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.14 shall not unreasonably interfere with the use or occupancy of any Parcel, and (ii) Residential Developer shall take reasonable action to repair any damage caused to the Commerce Center during the exercise of any rights established herein.

3.15 Facilities and Services Open to the Public. Certain facilities and areas within the Commerce Center may be open for public use and enjoyment. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, areas conducive to gathering and interaction, roads, sidewalks, and medians. The Developer may designate such facilities and areas open to the public at the time the Developer makes them part of the Commerce Center, or the Board may so designate at any time thereafter.

ARTICLE IV ASSOCIATION

4.1 Membership. The Association shall have one class of membership, which is comprised of all Owners and the Developer. Every Owner is automatically a member of the Association. However, there shall be only one membership per Parcel. If more than one person is the Owner, all co-Owners shall share the same privileges of such membership. Occupants of Units shall not be members unless they are also an Owner. The exercise of membership privileges is subject to reasonable Board regulations and the restrictions on voting set forth below and in the Bylaws. If an Owner is a corporation, a partnership, a limited liability company, or other legal entity, its membership rights may be exercised by any officer, director, partner, manager or trustee or by an individual the Owner designates from time to time in writing to the Association's secretary. Notwithstanding the above, all co-Owners of a Parcel are jointly and severally obligated to perform the responsibilities of the membership.

4.2 Board.

(a) The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Subject to the provisions of Section 4.2(b) below, Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as there is no Parcel without an Improvement constructed thereon within the Commerce Center, or the Developer elects to terminate its exclusive voting rights, whichever shall first occur. Each Owner, by acceptance of a deed to or other conveyance of a Parcel, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2(a). Upon termination of Developer's appointment rights hereunder, a special meeting of the Association shall be called within a reasonable time at which time the Owners shall elect a new Board (subject to the provisions of Section 4.2(b) hereof) and the Developer shall deliver to the new Board all books, accounts and records of the Association which Developer has in its possession.

(b) Notwithstanding the provisions of Section 4.2(a) above, so long as the Residential Developer has the right to appoint the Board under the Residential Covenants, the Residential Developer shall have the right to appoint at least one person to the Board, and if the Board has more than six (6) directors, the Residential Developer shall have the right to appoint up to one-third of the directors on the Board. Each Owner, by acceptance of a deed to or other conveyance of a Parcel, vests in the Residential Developer the authority to appoint and remove members of the Board as provided in this Section 4.2(b).

4.3 Voting Rights. Subject to any limitations on voting set forth in this Declaration, the Certificate of Formation, or Bylaws, each Parcel shall be allocated the number of votes assigned to the Parcel in accordance with the formula set forth in Exhibit "C" ("Commerce Center Points"). Further, until such time as the Developer no longer has the right to appoint members of the Board as set forth in Section 4.2(a), no vote shall be exercised for Parcels that the Developer owns; rather, the Developer's consent shall be required for actions of the Board, the membership, and committees as specifically provided in the Declaration, the Certificate of Formation, or Bylaws. Upon termination of Developer's appointment right provided in Section 4.2(a), the Developer shall be an Owner entitled to the number of votes corresponding to the number of Commerce Center Points assigned to each Parcel it owns.

4.4 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration, any Supplement, or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or

reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama 1975, this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama 1975, this Declaration, the Certificate of Formation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Parcels and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (ii) subject to the provisions of this Section 4.4, the right to borrow money for the purpose of acquiring additional Common Areas and/or Limited Common Areas, for constructing, repairing, maintaining or improving the Common Areas and/or Limited Common Areas, or any portion thereof, or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.4, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas and/or Limited Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the ARC, the Association and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas and/or Limited Common Areas to any Governmental Authority; (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer and/or security services for the Common Areas and/or Limited Common Areas and/or the Parcels; and (vii) the right to collect assessments for and on behalf of the Improvement District in accordance with Section 5.3 hereof. For so long as Developer shall own any Parcel, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas and/or the Limited Common Areas. Except as otherwise specifically provided to the contrary herein, in the Certificate of Formation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Members.

4.5 Agreements. Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners and Occupants, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Commerce Center. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Commerce Center, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Commerce Center or any of the Common Areas shall be a Common Area Expense. 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, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Certificate of Formation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Area Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Commerce Center, or the enforcement of this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations of the Association and cost of such services shall be a Common Area Expense.

4.6 Management by Developer or its Affiliates. Developer or any affiliate thereof may be employed as the manager of the Association and the Commerce Center in accordance with Section 4.5 hereof for so long as Developer owns any Parcel, 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 Commerce Center in the southeastern United States of the size, quality and nature of the Commerce Center, and the cost of such services shall be a Common Area Expense. Each Owner, by acceptance of a deed to or other conveyance of a Parcel, shall be deemed to ratify the provisions of this Section 4.6 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

4.7 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Parcels, Common Areas and Limited Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas and Limited Common Areas (including, specifically, the use of any of the roads, parking, pedestrian and recreational facilities, if any, situated within the Common Areas or Limited Common Areas), the establishment of bird sanctuaries, wildlife and wildflower areas, the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Commerce Center. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, cancelled or modified unless such action is also approved by Developer for so long as Developer owns a Parcel.

4.8 Indemnification. The Association shall and does hereby indemnify, defend and agree to hold harmless each and every officer, agent, representative and member of the Board of each of the Association and the Improvement District, each member of the ARC, and the Developer, and its partners, agents, and representatives, from and against any and all expenses, including court costs and reasonable attorney's fees, suffered, paid or incurred by any such person in connection with any action, suit or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the Board of the Association or Improvement District or a member of the ARC or by reason or actions taken or not taken in connection with the rights and obligations imposed upon any of such persons under this Declaration and/or the Supplement. The officers, agents, representatives and members of the Board of each of the Association and Improvement District, the members of the ARC and the Developer, and its partners, agents, and representatives, shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the Board of each of the Association and Improvement District, the members of the ARC and the Developer, and its partners, agents, and representatives, shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such person harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the Board of each of the Association and Improvement District or any member of the ARC or the Developer, or any of its partners, agents and representatives, may be entitled, including anything provided to the contrary contained in the Certificate of Formation or the Bylaws of the Association or a Supplement. The Association may maintain general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.8 and the costs of such insurance shall constitute a Common Area Expense.

ARTICLE V
ARCHITECTURAL REVIEW COMMITTEE
AND ARCHITECTURAL STANDARDS

5.1 Committee Composition. The ARC shall consist of three (3) persons, each of whom shall be appointed or elected as provided in Section 5.2 below. Subject to the provisions of Section 5.2(a) below, the regular term of office for each member of the ARC shall be three (3) years, coinciding with the fiscal year of the Association, except in the case of the first ARC elected by the Owners whose members' terms shall be staggered as provided in Section 5.3 below. Each Owner, by acceptance of a deed to or other conveyance to a Parcel, shall be deemed to ratify the provisions of Section 5.2 below.

5.2 Appointment and Removal of ARC Members.

(a) Notwithstanding any of the provisions hereof, for so long as there are any Parcels within the Commerce Center upon which an Improvement has not been constructed thereon, Residential Developer shall have the right to appoint and remove at least one member of the ARC and Developer shall have the right to appoint and remove all of the other members of the ARC.

(b) At such time as there is no Parcel without an Improvement constructed thereon within the Commerce Center, or upon sooner written notice to the Owners from Developer and Residential Developer that they no longer desire to exercise the right to appoint and remove members of the ARC as provided in Section 5.2(a) above, then the members of the ARC shall be elected or removed by the Owners of the Parcels within the Commerce Center in accordance with the procedure set forth in subparagraph 5.3 below.

(c) In the event of death, resignation or removal of a member of the ARC, then the vacancy shall be filled in accordance with subparagraph (a) or (b) above, whichever is applicable.

5.3 Procedure for Election and Removal. Subject to the provisions of Section 5.2(a) above, the procedure for the election and removal of the ARC by the Owners shall be as follows:

(a) Within 30 days after the provisions of Section 5.2(b) are in effect, 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. 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, which meeting shall be held 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 of the ARC, 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 5.2(c) above. Notwithstanding the aforesaid, the Owners shall not have the right to remove a member of the ARC that was appointed in accordance with Section 5.2(a) hereof.

5.4 Procedure and Meetings.

(a) 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 all 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.

(b) The ARC shall have the right and power to appoint one or more committees of the ARC and to delegate to such committees various responsibilities of the ARC. The members of the committees of the ARC must be Owners but they need not be members of the ARC. Each committee established by the ARC and each member thereon shall serve at the pleasure of the ARC and the authority of each committee may be limited, expanded or revoked by action of the ARC. Each committee shall have the right from time to time to adopt and establish rules and regulations as may be necessary concerning the procedure and conduct of the business of the committee. All decisions of a committee of the ARC shall be subject to the approval of the ARC. Any Owner may appeal any decision of a committee of the ARC, and the decision of the ARC shall be final with respect to such appeals. The ARC shall have the right from time to time to establish rules and procedures for appeals from the committees; provided that in the absence of such rules and procedures, the procedures set forth in Section 5.6 shall be followed with respect to an appeal from a committee of the ARC.

5.5 Architectural Standards. The ARC and the Association are each 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 Improvements on any Parcel, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Improvement on a Parcel 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 Improvement on any Parcel. 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. In the event of any conflict in the Architectural Standards adopted by the ARC and the Architectural Standards adopted by the Association, the Architectural Standards of the Association shall govern.

5.6 Approval of Plans and Specifications.

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Commerce Center, to establish and preserve a harmonious design for the Commerce Center

and to protect and promote the value of the Commerce Center, the Parcels 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 Parcel by any Owner, other than Developer, which affect the exterior appearance of any Improvement unless plans and specifications therefor have been submitted to and approved by the ARC in accordance with the terms and provisions of this Section 5.6. Without limiting the foregoing, the construction and installation of any Improvements, sidewalks, driveways, parking lots, awnings, walls, fences, exterior lights, 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 Improvement, 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 this Section 5.6.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Improvements on any Parcel within the Commerce Center. Prior to the commencement of any Improvement on any Parcel, 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 Improvement to be constructed on said Parcel, the location of all Improvements and the relationship of the same to any set-back requirements applicable to the Parcel.

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

(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 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 the Improvement and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Improvement.

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

(v) Four (4) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.7 below.

(vi) Three (3) copies of an erosion control plan prepared and submitted in accordance with Section 5.8 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 5.6(c) below (currently \$250.00).

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

(c) Subject to the provisions of subparagraph (d) below, 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 any Improvement within a Parcel 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) 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 Commerce Center, objection to the location of any proposed Improvements on any such Parcel, objection to the erosion control plan and/or landscaping plan for such Parcel, 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 Commerce Center. The ARC shall have the right to approve any submitted Plans and Specifications with conditions or stipulations by which the Owner of such Parcel shall be obligated to comply and must be incorporated into the Plans and Specifications for such Improvements. Approval of Plans and Specifications by the ARC for Improvements to one particular Parcel 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 Parcel within the Commerce Center.

(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. In such event, the Owner may then submit the Plans and Specifications to the Association for its consideration. The approval, conditional approval or disapproval of such Plans and Specifications by the Association shall be final and binding on the Owner and the ARC. The Association shall note its approval, conditional approval or disapproval on all copies of the Plans and Specifications and shall return two copies to the ARC for distribution and retention in accordance with subparagraph (c) above.

(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 construction of the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval of the Plans and Specifications for such Improvement, then no construction may be commenced (or continued) on such Parcel and the Owner of such Parcel shall be required to resubmit all Plans and Specifications for any Improvement to the ARC for approval in the same manner specified above.

(h) If (A) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Parcel without approval by the ARC or the Association of the Plans and Specifications for the same or (B) the ARC and/or the Association shall determine that any approved Plans and Specifications for any Improvements or the approved Erosion Control Plan (see Section 5.8) and/or landscaping plans (see Section 5.7) for any Parcel are not being complied with, then, in either event, the Owner of such

Parcel shall be deemed to have violated this Declaration and the ARC and/or the Association shall have the right to exercise any of the rights and remedies set forth in Section 5.14 below.

(i) 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 Parcel 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 and the Association.

(j) No Owner shall occupy any Improvement unless and until the Association shall have issued to the Owner a Certificate of Compliance in accordance with the provisions of this Section 5.6(j) and Section 5.15 below. Upon completion of the construction of any Improvement, the Owner shall submit a written request to the Association for a Certificate of Compliance. Upon receipt of such request, the Association shall, within ten (10) business days, inspect the Improvement to determine if the construction is in compliance with the Plans and Specifications approved by the ARC and the Association, and promptly upon making such determination, the Association shall either (i) issue to the Owner a Certificate of Compliance in accordance with Section 5.15 below if the Association 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 Improvement.

5.7 Landscaping Approval.

(a) In order to enhance the aesthetic appearance of the Commerce Center, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Parcel unless and until landscaping plans therefor have been submitted to and approved by the ARC and the Association. The provisions of Section 5.6 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans. For purposes of this Section 5.6, approval by the ARC shall not be required for the planting of flowers and small shrubs unless such planting is in violation of the Architectural Standards or the provisions of this Declaration.

(b) Each landscape plan shall provide for the construction of a sidewalk along the lot line bounded by the street in accordance with the requirements of the ARC and the Association, and the Owner shall be responsible for the repair of any damage to the sidewalk occurring during construction of the Improvement on the Parcel. The landscape plan shall also reflect the location of all curb cuts in the sidewalk allowing access to the Parcel. The Owner of the Parcel must post security for the cost of construction reasonably satisfactory to Developer.

5.8 Erosion Control Plan. Owner or the Owner's builder or contractor shall prepare an Erosion Control Plan to be implemented with respect to any Parcel. Any such Erosion Control Plan, to be approved by the ARC, must provide that gravel be placed in the driveway of the Parcels 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 Commerce Center.

5.9 Builder Regulation and Approval. In order to minimize disruption in the Commerce Center and to maintain orderliness during construction of Improvements within the Commerce Center:

(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 within the Commerce Center.

(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 Commerce Center, 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 thereunder; 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.

5.10 Subsurface Conditions.

(a) The Commerce Center 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 or the Association for any Improvement on a Parcel 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 Parcel 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 Parcel for the construction of any contemplated Improvements thereon.

(b) Neither the ARC and its individual members, nor the Association and its members, nor the Developer and its shareholders, officers, directors, agents and employees shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on account of injuries to any Parcel of the Commerce Center, to any buildings, Improvements or other structures now or hereafter located upon any Parcel of the Commerce Center, or on account of any past or future injuries to any Owner, Occupant, or any other person in or upon any Parcel of the Commerce Center, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, sinkholes, radon gas, limestone formations, or other geological formations or conditions) under or on the Commerce Center.

5.11 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 V, (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 V, (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, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Improvement 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 Parcel) 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 Parcel or any Improvements situated thereon.

5.12 Commencement and Completion of Construction. Upon commencement of construction of any Improvement, 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, except that Improvements having more than 4,000 square feet shall have a period of 20 months for completion. Such completion shall be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities and a Certificate of Compliance issued by the Association.

5.13 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, contractors, 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 Parcels or the development of Parcels, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices and signs, 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 5.13 shall be subject to Developer's approval.

5.14 Enforcement and Remedies. In the event any of the provisions of this Article V 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 Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, 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 Parcel until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC and the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Parcel until any work in place which does not comply with the Plans and Specifications approved by the ARC and the Association for such Improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Parcel and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article V, 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 V shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien and foreclosure procedures 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.

5.15 Certificate of Compliance. The Certificate of Compliance issued by the Association shall be in form suitable for recordation, identifying the subject Improvement and the Parcel on which such Improvement is placed, and stating that the Plans and Specifications, the location of such Improvement and the use or uses to be conducted thereon have been approved, that such Improvement as constructed complies with the requirements of the ARC and the Association under this Article V, and that there are no outstanding unpaid Assessments against the Owner. 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 Improvements on the Parcel, and the use or uses described therein comply with all the requirements of this Article V, that all assessments which may constitute a lien on such Parcel have been paid, and that the Parcel is in compliance with all other requirements of this Declaration as to which the ARC and the Association exercise any discretionary or interpretive powers.

ARTICLE VI USE AND CONDUCT

6.1 Use, Occupancy, and Transfer of Interests in Parcels

(a) *Leasing.* For purposes of this Declaration, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Parcel or any portion of a Parcel by any person other than the Owner, for which the Owner receives any consideration or benefit. All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Parcel are bound by, and obligated to comply with, the Declaration and the rules and regulations of the Association; however, these shall apply regardless of whether such a provision is specifically set forth in the lease. The Owner is responsible for providing the tenant copies of the Declaration and the Rules. In addition, the Association or the Board may adopt Rules governing leasing and subleasing.

(b) *Transfer of Title.* Any Owner desiring to sell or otherwise transfer title to its Parcel shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require within 10 days of such transfer. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

(c) *Subdivision and Combination of Parcels.* No person other than the Developer shall subdivide or change the boundary lines of any Parcel without the Developer's prior written approval. Any such action that the Developer approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Parcel(s).

(d) *Uses Requiring Developer Approval.* The use of all or a portion of any Parcel for the operation of timesharing, fractional ownership, or any similar program whereby the right to exclusive use of all or a portion of any Parcel rotates among owners or participants on a fixed or floating schedule is permitted only with the consent of, and subject to such conditions as may be imposed by, the Developer.

(e) *Prohibited Uses.* In addition to uses that are restricted by zoning, the following uses are prohibited within the Commerce Center:

(i) trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;

(ii) junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicle dismantling operations, car washes, sanitary landfills, and heavy machinery sales and storage facilities;

(iii) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(iv) consignment shops, pawn shops, thrift stores, flea markets or discount stores whose merchandise consists primarily of used goods or merchandise; provided, periodic Association sponsored or sanctioned events or activities on the Common Area (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

(v) truck terminals and truck stop-type facilities, including truck parking lots;

(vi) tanning parlors, massage parlors, or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

(vii) "adult entertainment uses," which shall include, for the purposes of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for in-room viewing within a hotel); or (B) sexually explicit games, toys, devices, or similar merchandise;

(viii) tattoo parlors, body piercing shops, and so-called "head shops" (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs);

(ix) motor and freight terminals, and warehouse/distribution centers;

(x) any facility for the dying and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(xi) dry cleaning plants; provided, facilities for drop-off or pick-up of items dry cleaned outside of the Commerce Center are permitted;

(xii) engine and motor repair facilities (except in connection with any permitted automobile dealership or automobile service station); and

(xiii) any use which would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association or Owners above the rates that would apply in the absence of such use.

In addition to the above, so long as Developer owns a Parcel, the Developer may prohibit any use which it determines would be inconsistent with this Declaration or otherwise incompatible with the Commerce Center.

(f) *Limited Uses; Quality Standards.* The following uses shall be permitted within the Commerce Center, subject to the Community-Wide Standard and any specific conditions set out below:

(i) entertainment venues shall offer recreational, amusement, and cultural, attractions, services, and facilities which are consistent with those offered at other comparable communities in the United States;

(ii) retail space shall be operated primarily by retailers, restaurant companies, and other food service providers (which may include "fast food" providers) offering the quality of merchandise, food service, and facilities, which meet or exceed those offered in comparable communities in the United States. Retail space shall not be used for the sale of goods and merchandize at wholesale, discount, or liquidation prices, or other goods or services not consistent with a high quality retail facility;

(iii) residential uses; and

(iv) office uses.

Until the Developer no longer owns a Parcel, the Developer shall determine, in its reasonable discretion, whether proposed uses or users are consistent with the standards and conditions set forth above. Thereafter, the Board, in the exercise of its reasonable judgment, shall make such determinations; provided, the Board shall be bound by all previous determinations.

6.2 Rulemaking Authority and Procedures

The Declaration establishes a framework of covenants and conditions that govern the Commerce Center. The initial Rules attached as Exhibit "B" are a part of that framework. The Board and the Owners are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 6.3.

(a) *Board Authority.* Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or rescind existing rules by majority vote of the directors at any Board meeting.

(b) *Membership Authority.* Subject to the notice requirements in subsection (c), the Owners representing a majority of the votes in the Association may also adopt new rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original rule was adopted. However, so long as the Developer owns any Parcel, any such action shall also be subject to the Developer's approval.

(c) *Notice.* The Board shall send notice to all Owners concerning any proposed Rule change at least ten (10) business days prior to the meeting of the Board or the Owners at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas and regulation of traffic and parking, notwithstanding that such policies may be published as part of the rules.

(d) *Effective Date.* A rules change adopted under this section shall take effect thirty (30) days after the date on which written notice of the rules change is given to the Owners.

(e) *Conflicts.* No action taken under this section shall have the effect of modifying or repealing the Architectural Standards or any provision of this Declaration other than the Rules. In the event of a conflict between the Architectural Standards and the Rules, the Architectural Standards shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the rules), the Declaration shall control.

6.3 Protection of Owners and Others

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "B," all rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Parcels shall be treated similarly; however, the rules may vary by location, use, or other distinct characteristics of areas within the Commerce Center.

(b) *Activities Within Parcels.* No rule shall interfere with any permitted use of a Parcel, except that the Association may prohibit activities which are inconsistent with the Declaration, that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that create unsightly conditions visible from outside of a structure, or that are an unreasonable source of annoyance. In addition, Sections 6.1(d), (e), and (f) and 6.2 prohibit or restrict certain uses within a Parcel.

(c) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Parcels or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable Rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Declaration. This provision does not affect the right to increase the amount of assessments as provided in Article IX.

(d) *Leasing and Transfer of Parcels.* No rule shall prohibit leasing or transfer of any Parcel or require approval prior to leasing or transferring a Parcel.

(e) *Abridging Existing Rights.* No rule shall unreasonably interfere with the permitted use or operation of a Parcel in full compliance with this Declaration and the rules in effect immediately prior to the enactment of such rule or rules in effect at the time of purchase provided construction of improvements for the intended use commences within one year from the date of acquisition.. In addition, no rule shall require that an Owner dispose of personal property kept in or on a Parcel in compliance with the rules in effect at the time such personal property was brought onto the Parcel.

(f) *Interference with Easements.* No rule may unreasonably interfere with the exercise of any easement.

6.4 Parcel Owner's Acknowledgment and Notice to Purchasers. By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of its Parcel is limited and affected by the Declaration and the Rules, which may change from time to time. All Parcel purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

6.5 Construction Activities on Parcels. The development and construction of Improvements within any Parcel shall not unreasonably interfere with the use, operation, or enjoyment of other portions of the Commerce Center. In addition, construction staging areas on the Parcels shall be adequately screened at all times. The Developer may impose more specific regulations governing developments and construction activities, including the screening of construction staging areas.

ARTICLE VII MAINTENANCE, REPAIR AND REPLACEMENT

7.1 Maintenance Responsibilities of Owners.

(a) The maintenance and repair of all Parcels and the Improvements situated hereon or therein and all lawns, landscaping and grounds on or within a Parcel shall be the responsibility of the Owner of such Parcel. Each Owner shall be responsible for maintaining his or its Parcel, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finished on all 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 Parcel (including, without limitation, painting or finishing) without first obtaining the prior written approval of the same from the ARC and the Association.

(b) Each Parcel, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ARC and the Association pursuant to Section 5.7 above. All areas of any Parcels which are not improved by the construction of an Improvement hereon shall at all times be maintained by the Owner in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.1(b) shall apply to all portions of a Parcel up to the edge of the pavement of any roadway or buffer area on or abutting such Parcel and shall be binding on the Owner of each Parcel at all times, either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Parcel shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weed, rubbish, debris, garbage and waste material shall be promptly removed from any Parcel and properly disposed of outside of the Commerce Center.

(c) Owner shall be responsible for the management of storm water on the Parcel and for the construction and maintenance of all culverts, pipes, ditches, drains and other facilities that are or may be constructed on the Parcel for the purpose of managing storm water run-off and drainage. Owner shall not alter the direction of, or increase the volume of, the flow of storm water from the Parcel except to the extent necessary and reasonable to direct the storm water from the Parcel to the storm water drainage system for the Commerce Center.

(d) No Owner shall (i) decorate, change or otherwise alter the appearance of any portion of the exterior of any Improvement (including, without limitation, painting or finishing) or the landscaping, grounds or other improvements within a Parcel unless such decoration, change or alteration is first approved, in writing, by the ARC and the Association as provided in Sections 5.6 and 5.7 above or (ii) do any work which, in the reasonable opinion of the ARC or the Association, would jeopardize the soundness and safety of the Commerce Center, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the ARC and the Association.

7.2 Maintenance by the Association. Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas and Limited Common Areas, respectively, which responsibility shall include the maintenance, repair and replacement of (i) all roads and walks, trails, paths, walkways, street lights, bicycle and jogging paths and lanes, parking structures and lots, landscaped areas, wildlife and wildflower sanctuaries, recreational areas and other improvements made by Developer or Association within any of the Common Areas and Limited Common Areas or within any of the easements encumbering the Parcels as provided in Article III above, (ii) such utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and Limited Common Areas and which are not maintained by the Improvement District, Governmental Authority, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Areas and Limited Common Areas, and (iv) all lakes, dams, spillways, retention ponds and other water areas and facilities included within the Common Areas or Limited Common Areas (either within or outside of the Commerce Center so long as the same are included within the Common Areas or Limited Common Areas), including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner, Occupant or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Commerce Center caused by rain or other surface water which may leak or flow from any portion of the Common Area and/or Limited Common Areas onto a Parcel, or (3) resulting from theft, burglary or other illegal entry into the Commerce Center, any Parcel thereof. No diminution or abatement of Common Area Assessments or Limited Common Area Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

The Association, upon the Board's determination that the level and quality of maintenance then being provided on a Parcel is not consistent with the Community-Wide Standard, and after notice and an opportunity to cure as provided in Section 12.2, the Association may perform maintenance on a Parcel or a part of the Parcel and assess the costs of providing such maintenance against the Owner. The Association need not treat all similarly situated Parcels the same.

7.3 Maintenance and Repair of Party Walls and Similar Structures. Except as may otherwise be provided by law, a written agreement between Owners of adjacent Parcels or a Supplement:

(a) Each wall, fence, parking area, or similar Improvement built to serve and/or separate any two adjoining Parcels shall be considered a party structure. The Owners who benefit from the part structure jointly and severally shall share the responsibility for repair and maintenance of a party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, the Owner of any Parcel which is served by the structure may restore it at its expense.

(c) To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure.

The terms of any written agreement between Owners of adjacent Parcels, or the terms of any Supplement applicable to such Parcels, shall control over this section in the event of a conflict.

7.4 Traffic Regulations. All vehicular traffic on the roads within the Common Areas, Limited Common Areas shall be subject to the applicable provision of the laws of the State of Alabama and any other municipality or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board of the Association is hereby authorized, without any obligation to undertake, to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the roads within any portion of the Common Areas, Limited Common Areas. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic rules and regulations promulgated by the Association, the laws of the State of Alabama shall govern. Only drivers licensed to operate motor vehicles by the State of Alabama or by any other state in the United States may operate any type of motor vehicle within the Commerce Center. All vehicles of any kind and nature which are operated on the streets in the Commerce Center shall be operated in a careful, prudent, safe and quiet manner, with due consideration for the rights of all occupants of the Commerce Center.

7.5 Maintenance of Alleys. Access to certain Parcels within the Commerce Center may be provided by shared alleys located adjacent to the boundaries of the Parcels so served. The Association shall maintain the alleys in a manner consistent with the Declaration and any rules and regulations of the Association. All costs associated with the routine maintenance, repair and replacement of alleys shall be allocated among the Parcels served by such Alley and assessed against such Parcels as an Individual Assessment. An alley serves a Parcel if the alley is located on or provides access to the Parcel.

7.6 Improvement District. The Association may, but shall not be required to, maintain, repair and replace portions of the Common Areas and Limited Common Areas that are owned or leased by an Improvement District or that are subject to the jurisdiction of an Improvement District and for which the Improvement District has assumed the responsibility for maintenance repair and replacement. The Association shall cooperate with the Improvement District to ensure that the Common Areas and Limited Common Areas are maintained and operated in a manner and at standards that are in the interest of the Owners. The Association may, but shall not be required to, collect from Owners for and on behalf of the Improvement District those assessments that have been and may in the future be made on the Commerce Center by the Improvement District.

ARTICLE VIII ASSESSMENTS

8.1 Assessments and Creation of Lien. Each Owner of a Parcel, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) Common Area Assessments, Limited Common Area Assessments, and Extraordinary Assessments, as established and to be collected as provided in Article IX below, (b) Individual Assessments against any particular Parcel which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Parcel in accordance with the provisions of this Declaration, including without limitation, Section 12.1 hereof. All Assessments, together with late charges and interest as provided in Section 8.4(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Parcel for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.4(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Parcel and his grantee shall take title to such Parcel subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid

by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.4(a) below, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Parcel at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Parcel, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association or by this Declaration. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Parcel, Common Area, Limited Common Area, or any other portion of the Commerce Center or any other cause or reason of any nature. No offset or credit shall be allowed against any Assessments for assessments or other charges imposed by an Improvement District.

8.2 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Parcel(s). The Individual Assessments provided for in this Section 8.2 shall be levied by the Board and the amount and due date of such Assessments shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.2 shall apply, without limitation, to any Individual Assessments levied pursuant to the provisions of this Declaration.

8.3 Date of Commencement of Assessments. The Assessments provided for herein shall commence as to each Parcel on the day on which such Parcel is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Common Area Assessments, Limited Common Area Assessments and any outstanding Extraordinary Assessments shall be adjusted for each Parcel according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Parcel is conveyed. Common Area Assessments, Limited Common Area Assessments and Extraordinary Assessments for any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Parcel on the date on which such Parcel is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of Common Area Assessments, Limited Common Area Assessments or Extraordinary Assessments on any Parcel which it or its affiliates own in the Commerce Center. Furthermore, for so long as Developer is the Owner of any Parcel within the Commerce Center, Developer shall have the option to either pay annual Common Area Assessments and/or Limited Common Area Assessments on Parcels owned by Developer or fund any deficits which may exist between the total amount of annual Common Area Assessments and/or Limited Common Area Assessments assessed to Owners and the actual costs incurred by the Association for Common Area Expenses and Limited Common Area Expenses for the Commerce Center. At such time as Developer no longer has any interest in any Parcel within the Commerce Center, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Area Expenses, the Limited Common Area Expenses, the Common Areas or the Limited Common Areas.

8.4 Effect of Non-Payment; Remedies of the Association.

(a) Subject to the provisions of Section 8.3 hereof with respect to the Developer, each Owner is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be

subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorney's fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Parcel for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments or other amounts due to the Association are not paid by Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 6.4(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Parcel, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Parcel, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.4(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Parcel of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Shelby County, Alabama:

(i) The name of the delinquent Owner;

(ii) The legal description and street address of the Parcel upon which the lien claim is made;

(iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Parcel in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default) and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Parcel. Each Owner, by acceptance of a deed to any Parcel, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.5 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Parcel in the Commerce Center is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.4(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Parcel, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.4(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Parcel from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Parcel has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Parcel.

8.6 Certificates. The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

8.7 Exempt Property. Notwithstanding anything herein to the contrary, the following property shall be exempt from payment of Common Area Assessments and Extraordinary Assessments.

- (a) All Common Area and other portions of the Development which are not Parcels;
 - (b) Any property dedicated to and accepted by any governmental authority or public utility;
- and

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such persons own property subject to this Declaration for purposes listed in Section 501(c).

**ARTICLE IX
PURPOSE AND AMOUNT OF ASSESSMENTS**

9.1. Purpose of Assessments.

(a) The Common Area Assessments and Limited Common Area Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Commerce Center and otherwise for the general upkeep and maintenance of the Commerce Center, including, specifically, the Common Areas and Limited Common Areas and any Improvements thereto, and for the operation and management of the Association, all as may be more specifically authorized from time to time by the Board of the Association.

(b) The Common Area Expenses to be funded by the Common Area Assessments and the Limited Common Area Expenses to be funded by Limited Common Area Assessments may include, but shall not be limited to, the following:

(c) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors, when performing duties for the benefit of the Owners;

(d) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association for the benefit of Owners;

(e) Utility charges for any utilities serving any of the Common Areas and/or Limited Common Areas and charges for other common services, including, without limitation, trash collection and security services;

(f) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration;

(g) The expenses of maintaining, operating, repairing and replacing any portions of the Common Areas and Limited Common Areas for which the Association is, or has elected to be responsible, which maintenance and repair obligation shall include mowing, landscaping, seeding, cleaning, trash pick-up and removal, paving, patching within the Common Areas and Limited Common Areas;

(h) The expenses of maintaining a security system, including, without limitation, the cost of security personnel, cost of acquiring, operating and maintaining security vehicles, the cost of operating and maintaining a guard station, the cost of acquiring, maintaining and operating an alarm system and such other costs as may reasonably be incurred in connection with the maintenance and operation of a security system;

(i) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Commerce Center which the Board determines from time to time would be in the best interest of the Owners to so maintain, operate and/or repair;

(j) The expenses of the ARC which are not defrayed by plan review charges;

(k) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas and/or Limited Common Areas;

(l) The costs and expenses for conducting recreational, culture or other related programs for the benefit of Owners and Occupants;

(m) All other fees, costs and expenses incurred by the Association for the benefit of Owners in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Parcels; and

(n) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas and Limited Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Common Area Assessments and Limited Common Area Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

9.2. Uniform Rate of Common Area Assessments.

(a) Upon determining the total amount of income to be generated through annual Common Area Assessments as described in Sections 9.3 below, the Association shall allocate such amount among all Parcels subject to Assessments based upon the ratio that the number of Commerce Center Points allocated to a Parcel bears to the total number of Commerce Center Points. The number of Commerce Center Points shall be determined by reference to Exhibit "C" to this Declaration on the date the Common Assessment is levied. The amount allocated to each Parcel shall be levied as a Common Area Assessment.

(b) In the event any Additional Property is added to the Commerce Center, then Parcels within the Additional Property shall be subject to the same annual Common Area Assessments or Extraordinary Assessments then being paid by the Owners of all other Parcels in the Commerce Center, subject to proration as provided in Section 8.3 above.

9.3. Annual Common Area Assessments.

(a) The Board shall establish the annual Common Area Assessment for the Parcels, if any, for each calendar year in the period commencing on date of filing this Declaration and continuing until and including December 31, 2012, based upon the Board's estimate of the amount required to fund the Common Area Expenses expected to be incurred by the Association during such periods. In such estimates of Common Area Expenses, the Board shall consider and give effect to assessments and other charges that are expected to be made by the Improvement District to fund the operation, maintenance and repair of Common Areas. The Board shall not be required to base the Common Area Assessments on an actual budget of projected Common Area Expenses during such period but instead may base the Common Area Assessments on assessments made in comparable developments and such other factors as the Board deems reasonable. The foregoing shall not limit or restrict any Limited Common Area Assessments levied pursuant to Section 9.4 below, any Extraordinary Assessments levied pursuant to Section 9.5 below (with the approval of the Owners as herein provided), or any Individual Assessments levied in accordance with the provisions of Article VIII above.

(b) Commencing with the calendar year which begins on January 1, 2013, (i.e., from January 1, 2013 through December 31, 2013, which period is hereinafter referred to as the "Base Year") and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Area Expenses for the Commerce Center for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the

Association with respect to the Common Areas. The amount set forth in such budget shall constitute the aggregate amount of annual Common Area Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 9.2 above. A copy of the budget setting forth the amount of annual Common Area Assessments to be levied against the Parcels for the following year shall be delivered to each Owner. The provisions of Section 9.3(a) above shall not apply to the Base Year or any subsequent year thereafter.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Common Area Assessments which exceed (without regard to proration or adjustment as provided in Article VIII above) the greater of either (i) fifteen percent (15%) of the annual Common Area Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in the United States Consumer Price Index, All Urban Consumers, United States City Average, All Items, (1982-1984=100) or any successor index thereto (the "Index") for January of the current year over the index for January of the Base Year (i.e., January 2013), then the budget and the amount of the annual Common Assessments shall be presented for approval by the vote of Owners of a majority of the Parcels who are voting in person or by proxy at such meetings. The percentage increase, if any, in the Index shall be determined by subtracting the Index for January in the Base Year from the Index for January in the current year and by dividing the difference by the Index for January in the Base Year. In the event the amount of the annual Common Area Assessments does not exceed the limitations set forth above or until such time as the Owners of a majority of the Parcels have approved such increase in the amount of the annual Common Area Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Common Area Assessments.

Notwithstanding anything herein to the contrary, the Common Area Assessments for the Base Year shall be determined in accordance with Section 9.3(b) and shall not be subject to the limitations on increases in the amount of annual Common Area Assessments provided in this Section 9.3(c).

(d) If any budget or the amount of annual Common Area Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association for Common Area Expenses, then the Board may call a meeting of the Owners for the purpose of approving Extraordinary Assessments as provided in Section 9.5 hereof. If the actual amount of annual Common Area Assessments collected in any one year exceeds the actual costs incurred for Common Area Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Area Expenses.

9.4 Limited Common Area Assessments.

(a) Limited Common Area Assessments may be assessed by the Association to pay Limited Common Area Expenses. The Board may impose Limited Common Area Assessments against each Parcel that benefits from a Limited Common Area as determined from time to time by the Board.

(b) The Owner of a Parcel shall pay its pro rata share of Limited Common Area Assessments allocated to its Parcel as determined by a fraction in which the number of Commerce Center Points allocated to the Parcel is the numerator and the total number of Commerce Center Points allocated to all Parcels subject to the Limited Common Area Assessment is the denominator. The number of Commerce Center Points shall be determined by reference to Exhibit "C" to this Declaration on the date the Limited Common Area Assessment is levied.

9.5 Extraordinary Assessments. In addition to the annual Common Area Assessments and the additional Assessments authorized in Sections 10.1 and 10.3 below, the Board of the Association may

levy in any year Extraordinary Assessments for Common Area Expenses, Limited Common Area Expenses, or any extraordinary costs incurred by the Association; provided, however, that any such Extraordinary Assessments shall be approved by a majority of the votes of the Owners whose Parcels will be subject to the Extraordinary Assessment. The Board may make such Extraordinary Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Extraordinary Assessments are levied and assessed. Extraordinary Assessments to pay Common Expenses shall be levied against and payable by each Owner in accordance with the provisions of Section 9.2 above, and Extraordinary Assessments to pay Limited Common Expenses shall be levied against and payable by the Owners in accordance with the provisions of Section 9.4 above.

9.6 Notice of Meeting and Quorum. Written notice of any meeting of the Owners called for the purpose of taking any action authorized in this Article IX shall be sent not less than ten (10) days nor more than fifty (50) days in advance of such meetings to all Owners entitled to vote at the meeting. Only Owners subject to a proposed Extraordinary Assessment shall be entitled to vote on such Extraordinary Assessments. The presence in person or by proxy of Owners of a majority of the Parcels entitled to vote at the meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but there shall be no specific requirement establishing a quorum at such subsequent meeting and the vote of the Owners holding a majority of the Parcels who are voting in person or by proxy at any such special meeting shall be binding on all of the Owners. At such time as a quorum is obtained, the vote of the Owners holding a majority of the Parcels who are voting in person or by proxy at such meeting shall be required to approve any matter in which Owners are entitled to vote hereunder.

ARTICLE X CASUALTY, CONDEMNATION AND INSURANCE

10.1 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas and/or Limited Common Areas by fire, flood or other casualty, then, subject to the terms and provisions of this Article X and to the extent of available insurance proceeds or surplus assessments, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas and/or Limited Common Areas to the condition to which they existed immediately prior to such fire, flood, or other casualty.

(b) Notwithstanding anything provided in Section 10.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas and/or Limited Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association (i) may, but shall not be required to, levy an Extraordinary Assessment in the case of damage to Common Areas against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Section 9.5 above, which such Extraordinary Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty, and/or (ii) may elect to partially repair, replace and restore, or to remove and clean-up, the damaged portions of the Common Areas and/or Limited Common Area. If an Extraordinary Assessment is determined to be made by the Association, then such Extraordinary Assessments shall be levied against each Owner as provided in Section 9.2 above. Further Extraordinary Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas and/or Limited

Common Areas or any sums paid to the Association under or by virtue of such Extraordinary Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Parcel be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas and/or Limited Common Areas.

10.2 Damage or Destruction to Parcels. In the event of any fire or other casualty which damages or destroys any portion of any Parcel, then the Owner of such damaged Parcel shall promptly repair and otherwise restore such Parcel to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty. In the event of damage to or destruction of an Improvement on a Parcel, the Parcel shall continue to be assigned the number of Commerce Center Points for assessment and voting purposes as were assigned to the Parcel immediately prior to such damage or destruction.

10.3 Condemnation of Common Areas and Limited Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas and/or Limited Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas and/or Limited Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable and to the extent of available condemnation proceeds or other unallocated funds of the Association, the Board of the Association is hereby empowered and authorized to take such action, including the purchase of any remaining lands within the Commerce Center or the utilization of any other Common Areas and/or Limited Common Areas within the Commerce Center, to restore, rebuild or replace, as the case may be, those portions of the Common Areas and/or Limited Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement of Common Areas and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may, but shall not be required to, levy an Extraordinary Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Section 9.5 above, which such Extraordinary Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. If an Extraordinary Assessment is determined to be made by the Association, then such Extraordinary Assessments shall be levied against each Owner as provided in Section 9.2 above. Further Extraordinary Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

(ii) To the extent the Common Areas and/or Limited Common Areas subject to such taking cannot be restored or replaced or additional lands within the Commerce Center cannot be purchased by the Association in order to repair, replace or restore the Common Areas and/or Limited Common Areas so taken or if the Board of the Association shall determine that the portions of the Common Areas and/or Limited Common Areas so taken should not be replaced or

restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas and/or Limited Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 10.3(c) below, no Owner or Mortgagee of Parcel shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas and/or Limited Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Parcel and also includes any part of the Common Areas and/or Limited Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Parcel which is subject to any such taking and the Board of the Association may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

10.4 Condemnation of Parcels or Improvements. In the event that all or any portion of a Parcel is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Parcel responsible for the maintenance and repair of such Parcel shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Parcel as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Parcel is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Parcel and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

10.5 Insurance.

(a) *Required Association Coverages.* The Association, acting through its Board or its duly authorized agent, shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as is reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and/or Limited Common Area and within other portions of the Common Area and/or Limited Common Area to the extent that the Association has responsibility for repair or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(ii) Commercial general liability insurance on the Common Area and/or Limited Common Area, insuring the Association and the Owners for damage or injury caused by the negligence of the Association or any of the Owners, employees, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$10,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at a reasonable cost that

a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits.

(iii) With respect to any contractors working on the Commerce Center or any third parties holding events on the Commerce Center, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$1,000,000.00 general aggregate limit. The commercial general liability policy shall also be endorsed to include Developer, its subsidiaries and affiliates and their respective directors, officers, employees, and agents as additional insureds with respect to any claims, losses, expenses or other costs arising out of any work performed for Developer.

(iv) Workers' compensation insurance and employer's liability insurance, if and to the extent required by law.

(v) Earthquake, wind and flood damage coverage, if and to the extent required by law.

(vi) Automobile liability insurance for all Association owned, non-owned and hired vehicles with a minimum limit of \$500,000.00 combined single limit per accident.

(vii) Directors and officers liability coverage (which shall also cover members of the ARC).

(viii) Commercial crime insurance, including fidelity insurance, covering all persons, including persons serving without compensation, responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Common Area Assessments on all Parcels plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation.

All of the coverage required herein shall be maintained with insurers rated B+ or better in the most current edition of Best's Insurance Reports. Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance. The Board, in the exercise of its business judgment, may obtain such additional insurance coverage. Certificates of insurance evidencing the minimum coverage required hereby by any parties described above (other than the Association) shall be filed with the Association at the time of execution of any agreement for services or events conducted on the premises and shall be maintained in a current status throughout the term of any such agreement. Such certificates of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the Association in the event of any cancellation, non-renewal or material (greater than twenty-five percent (25%) reduction) change in the policy limits, terms or conditions. Such third parties shall maintain all of their insurance and at the requested levels described above for not less than five (5) years following the expiration or termination of any Agreement with the Association.

Premiums for insurance on the Common Area shall be Common Area Expenses, except that premiums for insurance on Limited Common Areas may be assessed against the Owner utilizing or benefiting from the Limited Common Area as an Individual Assessment, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) *Policy Requirements.* The Association shall arrange for an annual review prior to the adoption of the budget of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Birmingham

area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner insured. Developer reserves the right to provide insurance under Developer's policy, provided that the cost to replace the insurance when such coverage terminates shall be disclosed to the Association as a footnote to the budget.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 10.5(a). In the event of an insured loss, the deductible shall be treated as a Common Area Expense and/or Limited Common Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Parcels as an Individual Assessment.

To the extent available at reasonable cost and terms, all Association insurance shall:

- (i) be written with a company authorized and licensed to do business in Alabama;
- (ii) be written in the name of the Association as trustee for the benefited parties. All policies on the Common Areas shall be for the benefit of the Association and the Owners;
- (iii) not be brought into contribution with insurance purchased by Owners, their Mortgagees, or any occupants of a Parcel
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member in the Association;
- (vii) provide a waiver of subrogation against all claims against the Developer, the ARC, the manager for the Commerce Center, the Association, the Improvement District and the Owners and the family members, servants, agents, tenants and guests of the Owners; and
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(iv) a cross liability provision;

(v) a provision vesting in the Board exclusive authority to adjust losses; however, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss; and

(vi) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause.

(c) *Restoring Damaged Improvements.* In the event of damage to or destruction of Common Area, Limited Common Area, or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Owners representing at least 75% of the total votes in the Association and the Developer decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least 75% of the Owners to which such Limited Common Area is assigned vote not to repair or reconstruct and the Developer consents. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area or Limited Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition.

(d) *Insurance Proceeds.* If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy an Extraordinary Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums. The Board of the Association shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate for the benefit of the Association insuring all insurable Improvements in and to the Common Areas and Limited Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine..

(e) *Parcel Insurance.* Each Owner, at its own cost and expense, shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) Blanket property insurance for the full replacement costs of all insurable Improvements on its Parcel, less a reasonable deductible, unless the Association carries such insurance (which it may but is not obligated to do). If the Association assumes responsibility for insuring a Parcel, the premiums for such insurance shall be levied as an Individual Assessments against the benefited Parcel and the Owner;

(ii) Commercial general liability, including contractual liability coverage with a combined single limit of at least \$10,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage that may arise from or be occasioned by the condition, use or occupancy of such Owner's Parcel or the use of any portion of the Commerce Center by such Owner or the tenants of such Owner's Parcel and their respective employees, agents and contractors. Such coverage may be provided through a combination of primary and umbrella policies. Such policy shall name the Association and its members as additional insureds and, so long as Developer owns a Parcel, also shall name the Developer as an additional insured;

(iii) Workers' compensation insurance, employer's liability insurance and disability insurance benefits insurance covering all persons employed by the Owner and any contractors, subcontractors or other persons performing work on the Parcel, if and to the extent required by law;

(iv) During the construction or reconstruction of Improvements on a Parcel, builder's risk insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of construction, written on a completed value basis;

(v) Business interruption insurance, to the extent reasonably available, in an amount sufficient to pay or provide for the payment of assessments and insurance required under this Declaration, and the payment of taxes and amounts due under any mortgage on the Parcel for a period of at least one year following the event or occurrence giving rise to a claim for payment under such policy; and

(vi) Such other insurance as may be provided by law.

Required Parcel insurance policies shall be subject to the same requirements as apply to Association insurance policies under Section 10.5(b), as applicable. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Parcel, does hereby waive and release Developer, the ARC, the manager of the Commerce Center, the Association and the Improvement District, and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties. Each Owner shall indemnify and hold Developer, the Association, and every other Owner harmless from and against any damages, liabilities, penalties, actions, claims and expenses (including reasonable attorney's fees and court costs) arising out of (i) the generation, use, presence, handling, storage, disposal, release or discharge of materials or substances which are considered hazardous, toxic or otherwise regulated under any federal, state or local law or ordinance on such Owner's Parcel or on other portions of the Commerce Center by the Owner, its agents or employees; or (ii) any violation of the Declaration, any rules or regulations of the Association or any applicable law by the Owner or its agents or employees.

10.7 Improvement District. Notwithstanding anything herein to the contrary, the provisions of this Article X shall not impose any obligation on the Improvement District to restore, repair or replace any portion of the Common Areas or Limited Common Areas.

ARTICLE XI TERM AND AMENDMENTS

11.1 Term. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Commerce Center, shall inure to the benefit of all Owners and

Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after seventy-five (75) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Parcels within the Commerce Center agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Shelby County, Alabama, provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein. Notwithstanding the foregoing, so long as the Developer is the owner of the entire Commerce Center, the Developer and Residential Developer may terminate this Declaration pursuant to a termination agreement executed by both the Developer and Residential Developer and recorded in the Probate Office of Shelby County, Alabama.

11.2 Amendment by Developer. For so long as there is any Parcel without an Improvement within the Commerce Center, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Shelby County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 11.4 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Parcel or materially and adversely affects the title to any Parcel, then such amendment shall be valid only upon the written consent of the Owners affected thereby (including Developer who shall have the voting rights attributable to any Parcels owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby; and (c) for so long as the Residential Developer has the right to appoint the Board under the Residential Covenants, such amendment shall be valid only upon the written consent thereto by the Residential Developer. Any amendment made pursuant to this Section 11.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Parcel, and each Mortgagee, by acceptance of a Mortgage on any Parcel, agrees to be bound by all amendments permitted by this Section 11.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Commerce Center if such amendment is (i) required by an Improvement District in order to enable such Improvement District to finance the construction, operation, maintenance or repair of Improvements for the benefit of the Commerce Center; (ii) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (iii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Parcels, (iv) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Parcel, or (v) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Parcel.

11.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 11.2 above, shall be proposed and adopted by the Owners in the following manner:

(a) The Owners of not less than twenty percent (20%) of the Parcels may submit a written petition to the Association indicating their desire to amend the Declaration which petition shall be signed by said Owners and shall state the proposed amendment with particularity in the petition. The date of delivery of such petition to the Association shall be the record date and the Association shall establish a date, time and place for a meeting of the Owners not less than ten (10) nor more than fifty (50) days after the record date.

(b) The Association shall thereupon deliver written notice of the date, time, place and purpose of the meeting to all Owners on the record date. At the meeting, the proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the Parcels in order to be adopted; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Parcel, then Developer must approve such proposed amendment, (iii) during any period that the Residential Developer has the right to appoint the Board under the Residential Covenants, then the Residential Developer must approve such proposed amendment, and (iv) to the extent the proposed amendment affects any of the matters described in Section 11.4 below, then the provisions of Section 11.4 below shall be applicable to such proposed amendment.

(c) Any and all amendments which have been approved in accordance with the provisions of Section 11.3(a) and (b) above shall be set forth in a written instrument executed by the proper officers of the Association and such written instrument shall include the sworn statement of the President or the Chairman of the Board of the Association stating unequivocally that the vote of the requisite number of Owners was duly obtained in accordance with the provisions of this Declaration. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama.

11.4 Restrictions on Amendment. Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 2.2, 2.3, 2.5, 2.6, 3.1 through 3.15, 4.2, 4.3, 4.6, 4.8, 9.3, 11.2, 11.3, 11.4 and 14.1 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE XII ENFORCEMENT

12.1 Authority and Enforcement. In addition to the provisions of Section 8.2 above, in the event any Owner or Occupant or their respective agents, contractors invitees, violates any of the provisions of this Declaration or the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Parcel and shall be a personal obligation of such Owner which is guilty of such violation; (ii) suspend an Owner's right to vote; (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the Common Areas or the Limited Common Areas, (iv) suspend services the Association provides (except that no notice is required if the Owner is more than 60 days delinquent in paying any assessment); (v) exercise self-help or take action to abate any violation of the Declaration occurring on a Parcel in a non-emergency situation (including removing personal property that violates the Declaration) and (vi) levy Individual Assessments to cover costs incurred by the Association to bring a Parcel in compliance with the Declaration, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

12.2 Procedure.

(a) In the event any of the terms or provisions of this Declaration and the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, or infringe upon or suspend any other rights pursuant to Section 12.1 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration or the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 12.1 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

(b) In addition, the Board or its designees may take the following enforcement actions to obtain compliance with the Declaration, the Bylaws or the Certificate of Formation without prior notice:

(i) exercising self-help or taking action to abate a violation on a Parcel in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, towing vehicles that are in violation of parking rules and regulations);

(ii) exercising self-help or taking action to abate a violation on the Common Area and/or Limited Common Area under any circumstances; or

(iii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation or perform such required maintenance and assess all costs incurred against the Parcel and the Owner as an Individual Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

12.3 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XII are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

12.4 Board's Decision to Pursue Enforcement Action. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may, but shall not be required to, enforce applicable city and county ordinances and Shelby County may enforce their ordinances within the Development.

12.5 Developer's Right to Impose Sanctions. In the event the Association fails or refuses to take action or impose sanctions under this Article after notice from the Developer of a violation of the Declaration, the Bylaws, or the Certificate of Formation, the Developer shall have the right to levy monetary fines on behalf of the Association after notice, as set forth in 12.2, is provided to the Owner. In addition, the Developer may exercise self-help or take action to abate a violation or bring suit in law or in equity in the same manner as the Association in Section 12.1.

ARTICLE XIII DISPUTE RESOLUTION AND LIMITATION OF LITIGATION

13.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) From time to time, disputes may arise between Owners, or between an Owner and the Association, Developer, or others involved in the Development. This Article commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Development.

Developer, the Association and its officers, directors and committee members, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Commerce Center 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 described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relation to

(i) the interpretation, application, or enforcement of the Declaration, the Bylaws, or the Certificate of Formation;

(ii) the rights, obligations and duties of any Bound Party under the Declaration, the Bylaws, or the Certificate of Formation; or

(iii) the design or construction of improvements within the Development, other than matters of aesthetic judgment under Article V, which shall not be subject to review and shall not be subject to this Article;

(c) The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) 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 Association's ability to enforce the provisions of Articles V, VI and VII of this Declaration;

(iii) any suit that does not include Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, the Bylaws, or the Certificate of Formation;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in section 13.2; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll or extend the Claim's statute of limitations to comply with this Article.

13.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the board stating plainly and concisely:

(i) the nature of the claim, including the persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire 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 Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 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 providing dispute resolution services in the Birmingham area. Each Bound Party shall submit to the mediator a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in 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 Bound Parties do not settle the Claim within 30 days after submitting 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 Bound 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 Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound 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. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

13.3 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding against the Developer or anyone else unless first approved by a vote of Members entitled to cast 75% of the total Member votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Developer's control of the Board as set forth in Section 4.2;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments, and foreclosure of liens ;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor (exclusive of the Developer), vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it;

This Section 13.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

In the matters listed above, the Board shall be indemnified for their decisions pursuant to the Declaration, the Certificate of Formation and the Bylaws.



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ARTICLE XIV MISCELLANEOUS PROVISIONS

14.1 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE COMMERCE CENTER, DEVELOPER HEREBY RESERVES THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Parcel, agrees that Developer and Residential Developer shall have the authority to appoint and remove members of the Board of the Association in accordance with the foregoing provisions of this Section 14.1 and the provisions of Section 4.2 above.

14.2 Legal Expenses. In addition to the rights and remedies set forth in Section 8.4 and in Article XII above, in the event either the ARC, the Developer, or the Association, through their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated.

14.3 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

14.4 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

14.5 Pronouns and Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

14.6 Binding Effect. The terms and provisions of this Declaration shall be binding upon, and shall inure to the benefit of Developer, the Association and its members, each Owner, Tenant, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns.

14.7 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. If there are conflicts between Alabama law and the Declaration, Alabama law shall control. If there are any conflicts between or among any of the Declaration, the Articles or Incorporation or the Bylaws, then the Declaration, the Certificate of Formation, and the By-Laws (in that order) shall prevail.

14.8 No Reverter. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

14.9 Interpretation. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and give that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Commerce Center. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

14.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Association and its Members, the Improvement District, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Commerce Center of its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

14.11 No Trespass. Whenever the Association, Developer, ARC, the Improvement District and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Parcel, the entering thereon and the taking of such action shall not be deemed a trespass.

14.12 No Partition. Each Owner, by its acceptance of a Parcel, waives any right to seek or obtain judicial partition of any portion of the Commerce Center.

14.13 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Parcel by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

14.14 Standards for Review. Whenever in this Declaration Developer, the Association or the ARC has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the Association or the ARC, as the case may be.

14.15 Oral Statements. Oral statements or representations by Developer, the Association, a Sector ARC or any of their respective employees agents, representatives, successors or assigns, shall not be binding on Developer, the Association or the ARC.

14.16 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Parcel within the Commerce Center. All notices to the Association or to the ARC shall be delivered or sent in care of Developer to the following address:

Chelsea Park Commerce Association, Inc.
2700 U. S. Highway 280, Suite 325

Birmingham, Alabama 35223

or to such other address as the Association or the ARC may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

14.17 Assignment. Subject to the provisions of Section 14.13 above, Developer shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer.

14.18 Further Assurances. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

14.19 No Waiver. All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

14.20 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Billy D. Eddleman.

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed as of the day and year first above written.

Chelsea Park Investments, Ltd.
by its General Partner
Chelsea Commercial, LLC

By: Douglas D. Eddleman
Douglas D. Eddleman, Manager

By: Billy D. Eddleman
Billy D. Eddleman, Manager

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a notary public in and for said County in said State, hereby certify that Douglas D. Eddleman and Billy D. Eddleman, whose names as Managers of CHELSEA COMMERCIAL, LLC, an Alabama limited liability company as general partner of CHELSEA PARK INVESTMENTS, LTD., are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such officers with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as aforesaid.

Given under my hand and official seal, this the 1 day of September, 2011.

Brand K Parsons
Notary Public

My Commission Expires: 4/4/14

EXHIBIT "A"

PROPERTY

20110906000262680 53/59 \$186.00
Shelby Cnty Judge of Probate, AL
09/06/2011 01:38:26 PM FILED/CERT

A part of the Northeast one-fourth of the Southeast one-fourth of Section 25, Township 19 South, Range 1 West, and Northwest one-fourth of the Southwest one-fourth of Section 30, Township 19 South, Range 1 East, Shelby, County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of Section 25, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed North 00° 17' 20" West along the East boundary of said section for a distance of 1520.52 feet to the point of beginning. From this beginning point proceed North 89° 52' 13" West for a distance of 206.43 feet; thence proceed South 40° 16' 32" West for a distance of 93.28 feet; thence proceed North 54° 20' 45" West for a distance of 120.47 feet to the P. C. of a concave curve left having a delta angle of 72° 25' 02" and a radius of 345.60 feet; thence proceed Southwesterly along the curvature of said curve for a chord bearing and distance of South 89° 26' 44" West, 408.31 feet to the P. T. of said point also being the P. C. of a concave curve right having a delta angle of 25° 28' 54" and a radius of 535.06 feet; thence proceed Southwesterly along the curvature of said curve for a chord bearing and distance of South 66° 56' 45" West, 236.01 feet to the P. T. of said curve; thence proceed North 42° 24' 39" West for a distance of 127.72 feet; thence proceed South 88° 25' 47" West for a distance of 245.90 feet to a 5/8" rebar (Jon P. Strength, PLS 21181), said point being located on the West boundary of the Northeast one-fourth of the Southeast one-fourth of said Section 25; thence proceed North 00° 19' 32" West along the West boundary of said quarter-quarter section for a distance of 845.76 feet to a 6" x 6" concrete monument in place, said point being located on the Southerly right-of-way of U. S. Highway 280; thence proceed South 87° 36' 43" East along the right-of-way of said highway for a distance of 128.92 feet to a 5/8" rebar in place (Strength); thence proceed North 86° 49' 13" East along the right-of-way of said highway for a distance of 100.42 feet to a 5/8" rebar in place (Jon P. Strength, PLS 21181); thence proceed South 87° 21' 18" East along the right-of-way of said highway for a distance of 599.80 feet; thence proceed South 86° 53' 10" East along the right-of-way of said highway for a distance of 1199.50 feet to a 5/8" rebar in place (Jon P. Strength, PLS 21181), said point also being the P. C. of a concave curve right having a delta angle of 1° 36' 13" and a radius of 22768.31 feet; thence proceed Southeasterly along the curvature of said curve and along the right-of-way of said highway for a chord bearing and distance of South 84° 07' 30" East, 637.22 feet to a point on the East boundary of the Northwest one-fourth of the Southwest one-fourth of Section 30, Township 19 South, Range 1 East; thence proceed South 00° 25' 29" East along the East boundary of said Northwest one-fourth of the Southwest one-fourth for a distance for 890.18 feet; thence proceed North 87° 18' 23" West for a distance of 1012.54 feet; thence proceed North 16° 50' 06" East for a distance of 170.43 feet; thence proceed North 89° 52' 13" West for a distance of 377.58 feet to the point of beginning.

LESS AND EXCEPT THE right-of-way for Chelsea Park Drive as recorded on Map Book 34 at Page 21-A and also the BellSouth Mobility 35 foot ingress and egress easement as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Inst# 200408160000457750.

EXHIBIT "B"

Initial Rules

Unless specifically defined in these Initial Rules, all capitalized terms used herein shall have the meanings attributed to them in the Declaration of Covenants, Conditions and Restrictions for Chelsea Park Commerce Center to which this Exhibit "C" is attached.

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance. It is expressly intended that the Review under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove actions or items, or to enforce or not enforce technical violations of the governing Documents, based upon aesthetic or other considerations consistent with the Governing Documents. As such, while something may be approved or permitted under one set of circumstances, the same thing may be disapproved under a different set of circumstances. Exercising discretion in approvals or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any circumstances it deems appropriate.

The following shall apply to all of the Commerce Center until such time as modified pursuant to this Declaration.

1. **General.** The Commerce Center shall be used only for purposes consistent with the Declaration, and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within the Commerce Center:

(a) Parking any vehicles in designated "no parking" areas, or parking of mobile homes, recreational vehicles, boats and other watercraft, and trailers in areas other than those designated for such purposes; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to any Parcel or the Common Area and temporary marketing and construction trailers are permitted in areas the Developer or the board designates. Keeping stored or inoperable vehicles anywhere within the Commerce Center is prohibited, except that vehicles may be stored in assigned parking spaces in residential developments:

(b) Raising, breeding or keeping animals, wildlife, livestock, reptiles or poultry of any kind, except that a reasonable number of domesticated household birds and fish, house dogs or domesticated house cats may be permitted on a Parcel. All animals shall be leashed (if outdoors) or kept within the Parcel and shall not be permitted to roam free. The Association may restrict the walking of pets to certain areas. Owners who walk their pets on Common Areas must clean up after their pets. Commercial activity involving pets, including, without limitation, boarding, breeding, grooming or training is not allowed. The ability to keep a pet is a privilege, not a right. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Commerce Center. Pets may not be left unattended or leashed in yards or garages or on porches or lanais. Pursuant to rules and regulations, the Board may further regulate pets, including but not limited to number and type of pets. No dog houses shall be permitted.

(c) Any activity that emits foul or obnoxious odors or creates excessive noise or other conditions that tend to disturb the peace or threaten the safety of others, each as determined in the Board's reasonable discretion;

(d) Any activity that violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Activities that tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures;

(f) Any noxious or offensive activity which in the Developer's or the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the common Area or other portions of the Commerce Center;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of permitted construction;

(h) Use and discharge of firecrackers and other fireworks, except that the Association may sponsor or otherwise permit structured and supervised fireworks displays from time to time;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(j) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored for emergency purposes and for maintenance vehicles, generators, and similar equipment;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Commerce Center or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution; and

(m) Any modification of any thing, permanently or temporarily, on any Parcel, whether such portion is improved or unimproved, except in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, fences of any kind, and satellite dishes and antennas, except that:

(i) a satellite dish designed to receive direct broadcast satellite services, including direct satellite services, that is one meter or less in diameter; or

(ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Parcels, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Standards, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Developer 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 the Commerce Center, should any master system or systems be utilized by the Association and require such exterior apparatus;

(n) Placement of any sign, banner, flag, billboard or advertisement of any kind, including, without limitation, informational signs, "for sale" or "for rent" signs and those of contractors and subcontractors, without the prior written consent of the Board. If permission is granted to any Owner to erect a sign within the Parcel, the Board reserves the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees. Owners may not erect any sign on a Parcel or on any of the Common Area; and

(o) Alteration or obstruction of the Common Area by a Owner in any way including, but not limited to, interfering with any storm water drainage facility. Owners and occupant of a Parcel may not store anything in or on the Common Area without the prior written approval of the Board;

3. **Prohibited Conditions.** The following shall be prohibited within the Commerce Center:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Commerce Center; and

(b) Structures, equipment, or other items on the exterior portions of any Parcel which have become rusty, dilapidated, or otherwise fallen into disrepair.

EXHIBIT "C"

Allocating Liability for Assessments and Allocating Votes Among Parcels

1. Assignment of Commerce Center Points. For purposes of allocating Common Area Expenses among Parcels, and for purposes of allocating votes in the Association among Parcels, each Parcel shall be assigned Commerce Center Points. The number of Commerce Center Points for each Parcel is determined in accordance with the table set forth below based upon the size of the Parcel and the land use classifications within the Parcel, including all uses within the Parcel, as determined by actual uses.

<u>Land Use Classification*</u>	<u>Commerce Center Points</u>
All Parcels, developed or undeveloped -without regard to use (excluding Common Areas)	500 per acre of land (prorated by one-hundredth of an acre)
Retail and service establishments, including, without limitation, banks (including ATM's) and other financial services and institutions and travel agencies	.5 per square foot of gross floor area**
Restaurants, bars, nightclubs	.5 per square foot of gross floor area
Entertainment (including dinner theaters, theme-based attractions, etc.)	.5 per square foot of gross floor area
Movie Theaters	.1 per square foot of gross floor area
Art galleries, museums, places of worship, libraries, nonprofit educational, research, or cultural institutions	.1 per square foot of gross floor area
Office	.25 per square foot of gross floor area
Health clubs and medical facilities, including health and fitness area within a hotel	.25 per square foot of gross floor area
Service stations and industrial or light industrial uses, including warehouse, mini-storage, and manufacturing facilities	.1 per square foot of gross floor area
Residential units (single family attached, detached and condominium)	50 per dwelling unit***
Multi-family rental apartments and congregate care facilities	50 per apartment dwelling unit
Other uses	*****
Exempt property (or as provided in Section 13.8)	0

* Allocations based on the acreage of the Parcel shall be made at the time a Parcel is submitted to this Declaration: Additional points based on actual uses will be allocated to each Parcel upon the earlier of (i) the issuance of a certificate of occupancy for the Improvement containing, or to contain, such use, or (ii) the date upon which the intended use commences. In the case of a change in use, the new allocation shall be made as of the date upon which the new use actually commences. A "certificate of occupancy" is that certificate or approval issued by Shelby County, Alabama, as a final condition of occupancy or use of an Improvement on a Parcel.

** "Gross floor area" shall be the area within an enclosed structure intended for occupancy or other use, as determined by a licensed engineer or architect.

*** A dwelling unit shall be the structure or the portion of a structure designed for occupancy by a single household (*e.g.*, a condominium unit or a single rental apartment unit).

***** So long as Developer may amend this Declaration, the Developer unilaterally may amend this Exhibit "C" to create additional Land Use Classifications to determinations of land use classification and to assign Commerce Center Points to such new use. Thereafter, the Board shall determine land use classifications; provided the land use classification of a Parcel or any portion of a Parcel hereunder shall not be changed once established unless there has been a change in predominant use.

2. Calculating Commerce Center Points - Examples.

- A 10-acre Parcel containing 100,000 gross square feet of entertainment use, 10,000 square feet of retail use, and 10,000 square feet of restaurant use would be assigned 65,000 Commerce Center Points (10 acres X 500 = 5000; 100,000 square feet of entertainment X .5 = 50,000; 10,000 square feet of retail X .5 = 5,000; 10,000 square feet of restaurant X .5 = 5,000).
- A 5-acre Parcel containing a 150-room hotel, 20,000 square feet of conference/meeting space, 10,000 square feet of retail use, and 10,000 square feet of restaurant use would be assigned 29,500 Commerce Center Points (5 acres X 500 = 2,500; 150 rooms X 100 = 15,000; 20,000 square feet of conference / meeting space X .1 = 2,000; 10,000 square feet of retail X .5 = 5,000; 10,000 square feet of restaurant X .5 = 5,000).

3. **Calculation of Assessments.** The share of any Common Area Expenses to be assessed by the Association against a Parcel shall be represented by a fraction, the numerator of which is the number of Commerce Center Points assigned to the particular Parcel and the denominator of which is the total number of Commerce Center Points assigned to all Parcels subject to such assessment. Such fraction shall be multiplied by the total dollar amount of the Common Area Expense budget assigned to all Parcels in order to determine the dollar amount of the assessment to be levied against the particular Parcel.

4. **Calculation of Votes.** Each Parcel shall be allocated the number of votes corresponding to the number of Commerce Center Points within the Parcel.

5. **Computation by Board.** The land use classification and number of Commerce Center Points assigned to each Parcel, and the share of assessments (stated as a percentage) to be levied on each Parcel subject to assessment, shall be computed at least annually by the Board. If a use within a Parcel changes during the fiscal year, the Board shall be authorized to adjust the assessment against the Parcel effective with such change in use, but the Board need not reallocate assessments against all Parcels to take into account such change until the next annual budget. Notice of the percentages for each Parcel

(including a summary of the computations) shall be sent to each Owner together with the notice of the assessment.

In the event that additional real property is made subject to this Declaration during the Association's fiscal year, for computation of Commerce Center Points, the Board shall recompute assessment percentages and votes for each Parcel and send notice of such recomputed percentages to each Owner; provided, no adjustments shall be made in any assessments previously levied to reflect such recomputation.