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STATE OF ALABAMA:  
COUNTY OF BALDWIN:

**DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS**

**OF**

**QUAIL HOLLOW SUBDIVISION**

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (this "Declaration") is made this 29<sup>th</sup> day of December, 2014, by SF APT 2012, L.L.C., an Alabama limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, on December 22, 2014, Declarant recorded at Slide Numbers 2523-E and 2523-F in the Office of the Judge of Probate of Baldwin County, Alabama, a subdivision plat for Quail Hollow Unit 1 (the "Phase 1 Plat") pertaining to certain real property owned by Declarant in Baldwin County, Alabama, as more specifically described on the Phase 1 Plat.

NOW, THEREFORE, DECLARANT HEREBY DECLARES, that subject to the provisions hereof, all of the Lots (hereinafter defined) shall be held, sold and conveyed by the Owners and the Common Property (hereinafter defined) shall be held by the Association subject to the restrictions, covenants and conditions contained herein for the purposes of protecting the value and desirability of, and which shall run with, the Community Property (hereinafter defined) and be binding on all parties having any right, title or interest in the Community Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion thereof.

**ARTICLE ONE**  
**GENERAL PROVISIONS**

1.01 Restrictive Covenants and Easements Running with the Land. The use of the Community Property shall be in accordance with the provisions and restrictions of this Declaration, all of which are to be construed as restrictive covenants and/or easements, as applicable, running with the land and with the title to each and every Lot and shall be binding

upon all Owners and other persons having interests therein and upon their heirs, personal representatives, successors, grantees and assigns.

1.02 Terminology. Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine or neuter gender.

1.03 Definitions. The following terms, when capitalized herein, shall have the meaning set forth in this Section 1.03:

- (a) "Additional Property" means that certain real property described on Exhibit "A" attached hereto.
- (b) "Adult" means a person of age twenty-one (21) or older.
- (c) "Architectural Review Committee" means the Architectural Review Committee as established by the Board of Directors in accordance with the Bylaws.
- (d) "Articles of Incorporation" means the Articles of Incorporation of Quail Hollow Owners Association, Inc., an Alabama non-profit corporation, as recorded in the records of the Office of the Judge of Probate of Baldwin County, Alabama, as the same may hereafter be amended, altered or repealed from time to time.
- (e) "Association" means Quail Hollow Owners Association, Inc., an Alabama non-profit corporation.
- (f) "Board" or "Board of Directors" means the Board of Directors of the Association, established in accordance with the Articles of Incorporation and Bylaws of the Association.
- (g) "Builder" means any commercial home builder or contractor who is in the business of constructing residential structures to sell to owner-occupants and shall include, without limitation, DHI.
- (h) "Bylaws" means the Bylaws of Quail Hollow Owners Association, Inc., an Alabama non-profit corporation, as the same may hereafter be amended, altered or repealed from time to time.
- (i) "Common Expense" means any and all expenses of the Association (i) associated with the ownership, maintenance, repair and/or replacement of the Common Property; (ii) in repairing and maintaining any Party Roof, the exterior of any Townhome(s), and otherwise performing any repair and/or maintenance in accordance with the terms and conditions of Article Eleven hereof; (iii) in obtaining and maintaining any and all insurance required or otherwise permitted in accordance with Article Twelve hereof; and (iv) otherwise denominated hereunder as a Common Expense.

- (j) "Common Property" means all (i) real property within the Subdivision which is owned or leased by the Association or dedicated for use or maintenance by the Association or its members, regardless of whether title has been conveyed to the Association, and (ii) any and all personal property and fixtures owned by the Association.
- (k) "Community Property" means all of the Lots and the Common Property, collectively.
- (l) "Declarant" means the initial Declarant named in the introductory paragraph hereof and its successors and assigns (where the rights of the Declarant hereunder are expressly assigned to and assumed by such assignee).
- (m) "DHI" means D.R. Horton, Inc. – Birmingham, an Alabama corporation.
- (n) "Lot" means each and every numbered lot shown on the Plat of Subdivision.
- (o) "Member" means every person or entity who is a member of the Association.
- (p) "Mortgagee" means a holder or beneficiary of any mortgage, deed with vendor's lien reserved, or any other form of instrument used for the purpose of encumbering or conveying real property as security for payment or satisfaction of any obligation.
- (q) "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding mortgagees, lien holders, lessees, tenants, and those having such interests solely as security for the performance of an obligation.
- (r) "Party Roof" means a common roof system for any Townhome sharing a Party Wall(s).
- (s) "Party Wall" means a common wall separating any Townhomes located on two (2) or more separate Lots that is constructed, improved, maintained, repaired and replaced on the boundary line between said two (2) or more Lots.
- (t) "Person" means any individual, corporation, trust, partnership, joint venture, limited liability company or other entity.
- (u) "Plat of Subdivision" means, collectively, the Phase 1 Plat and any additional plat or plats of real property that are hereafter recorded where such real property is annexed to this Declaration in accordance with the terms of Section 10.02 hereof.
- (v) "Subdivision" means Quail Hollow Subdivision, as shown on the Plat of Subdivision.

- (w) "Townhouse" or "Townhome" means any single family dwelling unit situated upon a Lot.
- (x) "Townhome Building" means two (2) or more Townhomes that are attached to one another via the sharing of a Party Wall(s).
- (y) "Turnover" means the earlier to occur of (i) Declarant relinquishing control of the Association in a written instrument recorded in the real property records of Baldwin County, Alabama, (ii) three (3) months after ninety percent (90%) of the lots in the Subdivision, including lots to be created out of the Additional Property in accordance herewith, have been conveyed to persons other than Declarant or Declarant's successors or assigns, or (iii) December 31, 2024; provided however, in the event of a conflict between the Alabama law and the foregoing, the applicable Alabama law shall control.

## **ARTICLE TWO** **COMMON PROPERTY**

2.01 Common Property. The Association, subject to the rights of the Owners set forth in this Declaration, the Articles of Incorporation and the Bylaws, shall be responsible for the exclusive maintenance, management, and control of the Common Property and all improvements thereon (whether now in existence or hereafter constructed and/or installed), and shall keep the Common Property in good, clean, attractive, and sanitary condition, order, and repair pursuant to the terms and conditions of this Declaration. Buildings and improvements of a permanent nature erected or placed on the Common Property and any activities that alter the nature of the Common Property shall require the prior approval of the Members. The Association has the right to restrict the use and govern the operation of the Common Property by promulgating reasonable rules and regulations, including with respect to any Common Property facilities, the right to charge reasonable one-time or monthly fees for the use thereof by the Owners as the Association deems necessary or appropriate. Rules and regulations may be established by the Association to regulate the use of the Common Property. The necessary work or maintenance, repair and replacement of the Common Property and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration, the Articles of Incorporation and the Bylaws.

2.02 Right of Enjoyment. Subject to any rules and regulations promulgated by the Board of Directors, every Member shall have a right and easement of enjoyment of the Common Property, and such easement shall be appurtenant to and pass with the title to each Lot.

2.03 Restrictive Covenant on Common Property. A restrictive covenant is hereby imposed on the Common Property such that no part of the Common Property may be developed for residential or commercial purposes; provided, however, that the Declarant and/or the Association shall have the right, but not the obligation, to construct and install amenities on the Common Property that are for the use and enjoyment of the Members, subject to the terms and conditions hereof and any rules and regulations adopted by the Association. This restrictive

covenant shall run with each Lot and shall exist for the benefit of the Owners and be binding upon their successors and assigns.

2.04 Lots Subject to Covenants, Restrictions, Limitations and Term. Each Lot that shall be conveyed, held, devised, leased, or demised at any time hereafter shall be subject to all the terms, conditions, covenants, restrictions, and limitations herein contained, and the obligation to observe and perform the same whether or not it be so expressed in the deed or other instrument of conveyance of the Lot or real property, and such shall run with the Lot or real property and be appurtenant thereto as if fully set out in such deed or instrument of conveyance, subject to the terms and conditions hereof.

2.05 Easements.

- (a) Access Easement. An easement for vehicular and pedestrian access is hereby reserved over and across all private roadways in the Subdivision for the benefit of the Association, all Owners, and all agents, contractors, tenants and guests of all Owners (the "Access Easement"). The Association shall have the right to promulgate rules and regulations for the use of the Access Easement. The maintenance and repair of the road surface that constitutes the Access Easement shall be performed by the Association and shall be a Common Expense.
- (b) Easements and Buffer Strips. All easements and buffer strips shown on the Plat of Subdivision, if any, are hereby adopted as part of this Declaration and all Lots in the Subdivision shall be subject to such easements and buffer strips.
- (c) Structures. No dwelling unit, house, home, and/or other structure of any kind shall be built, erected, or maintained upon any easement, and said easements shall at all times be open and accessible to public and quasi-public utility corporations, and to other persons erecting, constructing, or servicing such utilities, and to the Association, its successors or assigns, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under, and upon said locations for the carrying out of any of the purposes for which said easements are hereby reserved and may hereafter be reserved.
- (d) Overhead Wires. No Lot shall be served with any overhead electrical or communications service, and no Owner shall erect power poles for such service; provided, however, that nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting provided that such lighting is constructed in accordance with the terms and conditions hereof.

2.06 Control of Common Property. The Association may, upon approval by the Members, sell, subdivide, lease, mortgage, grant easements over or otherwise encumber the Common Property, or exchange all or any portion of the Common Property for Lots or other real property, or purchase or acquire any additional real property and dedicate the same as Common Property subject to the terms of this Declaration.

2.07 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the voting interests of the Members. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

2.08 Liability. Owners, occupants and their guests shall use and enjoy the Common Property at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the Common Property. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by an Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, utility line, facility, or from any portion of the Common Property, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or occupant for loss or damage, by theft or otherwise, of any property of such Owner or occupant.

### **ARTICLE THREE** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.01 The Association. The operation and administration of the Common Property shall be handled by the Association. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Owners with reference to the Common Property and with reference to any and all other matters in which all of the Owners have a common interest. The Association shall have all the powers and duties set forth in the Articles of Incorporation and the Bylaws. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Common Property and further, shall have the right to grant permits, licenses, and easements over the Common Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Common Property. The Board of Directors shall have the authority and duty to levy and enforce the collection of general and specific assessments for common expenses and is further authorized to provide adequate remedies for failure to pay such assessments.

3.02 Membership. Each Owner shall be a Member, subject to the terms and conditions of the Articles of Incorporation and the Bylaws.

3.03 Voting. Voting by Owners shall be in accordance with the Bylaws.

3.04 Assignment. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance of said Owner's Lot.

3.05 Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property, the Party Roofs, the Party Walls, and for such other purposes as may be set forth herein (the "Reserve Account"). The Reserve Account shall be maintained out of regular assessments for Common Expenses.

#### **ARTICLE FOUR** **COVENANT FOR ASSESSMENTS**

4.01 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for the Common Expenses, (2) special assessments for capital improvements to the Common Property, and (3) the lien for assessments for capital improvements to the Common Property by any governmental entity ("Governmental Assessments"), as such assessments are hereinafter established and shall be collected as hereinafter provided. The annual, special, and Governmental Assessments, together with interest, costs, late fees, administrative fees, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Any payment received and accepted by the Association shall be applied first to any interest accrued, then to any administrative or late fee, then to any costs and reasonable attorney's fees, and then to the delinquent assessments. Each such assessment, together with interest, costs, late fees, administrative fees, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to successors in title.

4.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide for the (a) management, care and maintenance of the Common Property and any improvements constructed thereon, including provision for appropriate insurance against casualty and liability and for the purposes set forth herein, (b) maintenance and repair of any aspect of the Townhomes that is delegated to the Association in accordance with Article Eleven hereof, and (c) performance of any and all matters that are declared herein to be a Common Expense. The Association shall have the obligation to maintain the Common Property (including, without limiting the generality of the foregoing, any and all roads, easements, drainage facilities, landscaping, structures, holding and retention ponds, and the like, whether denominated as such or otherwise) and shall pay all ad valorem property taxes assessed upon them. The Association may fund in the Reserve Account such sums as it determines in good faith are necessary and adequate to make periodic repairs and improvements to any part of the Common Property, the Party Roofs and the Party Walls.

4.03 Annual Assessments. To provide the total sum necessary for the Common Expenses, each Member for each Lot owned shall pay a portion of the total amount necessary for such purposes to the Association. The portion to be paid by each Member for each Lot owned shall be calculated as set forth in the Articles of Incorporation. The amount of assessment assessed against each Member as provided under the foregoing sentence shall be assessed by the Association as a lien at the beginning of each annual assessment period.

4.04 Special Assessments for Capital Improvements Upon Common Property. In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property and any entrance wall or signage, including fixtures and personal property related thereto; provided, however, that the total of all such special assessments for any given calendar year shall not exceed \$500.00 per Lot, unless such special assessments in excess of such total are approved by the affirmative vote of the Members holding a majority of the voting rights in the Association.

4.05 Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to a particular Lot upon conveyance of the Lot to any Owner who is not Declarant or a Builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall have the authority to require annual assessments to be paid in monthly, quarterly or semi-annual installments.

4.06 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall (a) bear interest thereon at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama, and (b) be subject to the imposition of late fees and administrative fees as determined by the Board of Directors from time to time. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, foreclose a lien against the property or seek injunctive relief. Interest, costs, late fees, administrative fees, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to or other conveyance of an interest in a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of said Owner's Lot. The Board of Directors may also suspend the use rights of

any Owner of the Common Property in the event of a failure to pay any assessment within thirty (30) days of the applicable due date.

4.07 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein, except for any Governmental Assessment, shall be subordinate to the lien of any first mortgage on a Lot. Sale or transfer of any Lot shall not effect the assessment lien; provided, however, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage on said Lot or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, except any Governmental Assessment. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof or relieve the prior Owner from any personal liability for any unpaid assessments occurring prior to said sale or transfer.

4.08 Estoppel Letter. The Association shall, within thirty (30) days after receiving a written request therefor and for a reasonable charge, as established by the Board of Directors, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

#### **ARTICLE FIVE** **MAINTENANCE AND REPAIR OF COMMON PROPERTY**

5.01 Maintenance. The Association shall provide maintenance of the Common Property. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Subdivision and to enter into easement and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners.

5.02 Damage to Common Property. Notwithstanding anything contained in this Article Five to the contrary, each Owner shall be personally responsible and personally liable for any damage to the Common Property, or any portion thereof, caused by the Owner and/or the Owner's family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Owner, the Owner's family members, guests, invitees, lessees or licensees shall be a special assessment against the Owner responsible therefor and the Lot of such Owner.

#### **ARTICLE SIX** **ARCHITECTURAL CONTROL**

6.01 Submission of Plans and Specifications. No Townhome, building, fence, wall, or other structure or improvement shall be constructed, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted by an Owner to and approved in writing as in harmony with this Declaration and the external design and location of the surrounding structures and topography by

the Architectural Review Committee. Two (2) copies of the final building or construction plans, specifications, and plot plan showing the location of each building, structure, or improvement (collectively, the "Plans") shall be submitted to the Architectural Review Committee. Prior to commencement of any construction activities on a Lot, an Owner's Plans must be approved by the Architectural Review Committee as to conformity and harmony with this Declaration and of external design with the existing or planned structures in the Subdivision and as to location of the building, structure, or improvement with respect to topography and finished ground elevation. The Architectural Review Committee may, from time to time, establish additional written design guidelines for the Subdivision, and a copy of any such guidelines then in effect shall be made available to any Member requesting a copy of same from the Association.

6.02 Approval or Disapproval. The Architectural Review Committee shall indicate its approval or disapproval of such plans and specifications by delivering, in writing, notice of such approval or disapproval to the requesting Owner. In the event the Architectural Review Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed automatically given.

6.03 Right of Inspection. The Architectural Review Committee shall have the right, but not the obligation, to inspect the Owner's Lot and improvements during construction and prior to occupancy to insure construction in accordance with the construction plans submitted and approved by the Architectural Review Committee. Failure of an Owner to comply with the provisions of this Section 6.03, or failure of an Owner to carry out construction in accordance with the provisions of this Article, shall subject such Owner to such remedies as might be available at law or in equity (including, but not limited to, specific performance and injunction, payment of the prosecuting parties' reasonable legal fees and expenses).

6.04 Limited Review. The scope of review by the Architectural Review Committee is limited to appearance only and does not include any responsibility for structural soundness, suitability of construction or materials, compliance with building or zoning codes or standards, this Declaration, or any other similar or dissimilar factors.

6.05 Waiver of Liability. Neither the Architectural Review Committee nor any architect nor agent thereof nor the Association nor any agent or employee of any of the foregoing shall be responsible in any way for the failure of any improvements to comply with the requirements of this Declaration, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to herein and further agree to and do hereby release said entities and persons for any and every such cause.

**ARTICLE SEVEN**  
**USE RESTRICTIONS**

7.01 Residential Use. Each Lot is hereby restricted to a private, single-family dwelling for residential use.

7.02 Subdivision of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof, to easements and rights-of-way, and matters of public record. No Lot may be subdivided into a smaller Lot or Lots unless approved by the Association; provided, however, that an entire Lot may be combined with an entire adjacent Lot and occupied as one Lot but assessed and governed as two Lots.

7.03 Signs. No sign of any kind shall be displayed on any Lot, except (i) that any Owner actively attempting to sell or lease such Owner's Lot and/or Townhome may place a "for sale" or "for lease" sign of less than four (4) square feet on his Lot provided that such sign must contain black lettering on a white background and otherwise conform to any additional rules that may be promulgated by the Association from time to time hereunder; (ii) during the building of homes in the Subdivision, the Declarant and/or the Builders in the Subdivision may place signs at the entrance and/or on any Lot to advertise the Subdivision and the Lots for sale therein; and (iii) any Owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home.

7.04 Noxious and Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Owner.

7.05 Design Criteria; Structure. All improvements to be constructed or otherwise located on a Lot by an Owner shall comply with the following requirements:

- (a) Any Townhouse shall contain a minimum of nine hundred fifty (950) square feet of heated and cooled living space.
- (b) No Townhouse may exceed three (3) habitable stories above grade.
- (c) Air-conditioning and heating units, blowers, towers, condensers or structures related thereto, when erected between the side of any building or structure and the side Lot line of the Lot on which said building or structure is located, shall be enclosed in conformity with the general architecture of the primary residential building or structure, or shielded by shrubbery. No window air-conditioning units shall be permitted without the prior approval of the Architectural Review Committee.
- (d) Underground electrical distribution facilities are required and no overhead electrical or similar wiring or lines shall be permitted.

- (e) All outside radio and T.V. antennas (including satellite dishes and other signal receiving/transmitting equipment) shall be installed in such a way as not to be visible from the front of the Lot and shall be placed on the back side of any roof, except as is otherwise approved by the Architectural Review Committee.
- (f) No plumbing or heating vent shall be placed on the front side of any roof. All vents protruding from roofs shall be painted the same color as the roof covering.
- (g) Driveways must be made of concrete, or if not, the alternative surface must be approved by the Architectural Review Committee; provided, however, that in no event may any Driveway be painted, scored or otherwise colored.
- (h) During construction, all Builders must keep homes and garages clean and yards cut.
- (i) No walls or fences may be constructed or erected around or on any Lot.
- (j) No outside clothes lines shall be permitted.
- (k) Existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot.
- (l) Any roof constructed over any structure on any Lot must be covered with composite shingles or such other types of roof coverings of a higher grade and quality than composite shingles as are approved by the Architectural Review Committee.

7.06 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, and other household pets may be kept subject to the rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose. Pets must be kept leashed and/or under control at all times.

7.07 Waste. No rubbish, trash, garbage, or other waste material shall be kept or permitted upon any Lot except in sanitary containers located in appropriate area, screened and concealed from view.

7.08 Miscellaneous. Except as otherwise provided for herein, no patio cover, building or storage unit of any kind shall be erected, placed or set on any Lot unless such structure is attached to the Townhouse erected on the same Lot and the architecture and character of such structure matches that of said Townhouse.

7.09 Temporary Structures. No structure of a temporary character, trailer, mobile home, motor home, modular building unit, basement, tent, shack, garage, barn, or other outbuilding shall be used at any time on the Lots as a residence, either temporarily or permanently.

7.10 Vehicles.

- (a) No inoperative cars, trucks, trailers, boats, campers or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in an enclosed garage.
- (b) No commercial trucks larger than a two-ton pickup shall be parked in the Subdivision, except those reasonably necessary to complete approved improvements and those parked temporarily for purposes of delivery of items to an Owner.
- (c) Recreational vehicles, campers, and boats shall be parked in garages or basements or stored out of view from the street.
- (d) No permanent parking on streets is allowed except in designated parking spaces (if any).
- (e) There shall be no major repair performed on any motor vehicle on or adjacent to any Lot unless performed inside an enclosed garage.
- (f) No noxiously loud or dangerous vehicles shall be allowed to be operated on any Lot.

7.11 Construction.

- (a) When the construction of any improvement upon any Lot has begun, work thereon shall be pursued diligently and continuously until full completion. During construction on any Lot, all vehicles involved in such construction, including those delivering materials and supplies, shall enter upon such Lot only at such a location as to not interfere with the flow of traffic in the Subdivision, and such vehicle shall not be parked on the streets and roads of the Subdivision. All construction sites must be kept clean, and debris shall not be allowed to accumulate. During construction, the use of dumpsters for routine cleaning of construction sites is permitted.
- (b) No residence constructed on any Lot may be occupied prior to its substantial completion.
- (c) In addition to compliance with the requirements set forth under this Declaration, any and all improvements on any Lot shall comply with the standards and provision of Baldwin County, and its applicable building code.

7.12 Pollution. There shall be no noxious emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or magnetic disturbance, detectable at the lot line or beyond.

7.13 Commercial Activity. No commercial activities of any kind whatsoever shall be conducted in any building or in any portion of any Lot; provided, however, that an Owner may conduct a business entirely within his Townhome so long as such business uses only ten percent (10%) of the total square footage of such Townhome and so long as such business is secondary to the use of the Lot for residential purposes.

7.14 Outdoor Lighting. All outside lights shall be of an intensity not to exceed 100 watts and shall be placed so as to avoid an annoyance to any neighbor. Said lighting shall be turned toward the ground and shall be shielded completely or by frosted glass or plastic in all directions so that it does not shine toward neighboring Lots. Flood lights which shine all night are specifically prohibited.

7.15 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or waste. All storage equipment for such material shall be kept in a clean and sanitary condition.

7.16 Oil and Mining Operations. No activity or hardware used for the purpose of exploration or extraction of minerals, oil, or gas shall be allowed on any Community Property at any time.

7.17 Firearms and Fireworks. The display or discharge of firearms or fireworks on any Lot or any Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Property to or from an Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

7.18 No Hanging of Items. No clothes, sheets, blankets, towels, laundry of any kind or other articles shall be hung out or exposed on any balconies, patios, or railings. Notwithstanding the foregoing, in the event the Association purchases any flags or other decorative items, each Owner shall hang any such flag or other decorative item from the exterior of such Owner's Townhome at the location, in the manner and at such times as shall be required by the Association in the Association's sole and absolute discretion.

7.19 Hazardous Items. No one shall use or permit to be brought onto any Lot or upon any of the Common Property any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed hazardous to life, limb or property, without the written consent of the Board of Directors.

7.20 Water and Sewer Service. The Owner of each Lot shall be required to connect to and use the central water distribution system and central sanitary sewage disposal system serving the Subdivision, and shall be responsible for paying all connection fees and assessments. No septic tanks or wells will be permitted.

7.21 Windows and Window Treatments. Reflective glass shall not be permitted on the exterior of any Townhouse or other structure. No foil or other reflective materials shall be

installed on any windows or used for sunscreens, blinds, shades or for other purposes. All exterior window styles, materials, and colors must be approved by the Architectural Review Committee; provided, however, that in no event shall burglar bars and/or wrought iron doors be permitted.

7.22 Lots on Wetland Areas, Body of Water. No Lot shall be increased in size by filling in of any wetlands, body of water, creek or any waterway on which it may abut without appropriate governmental permits (if any are required) and prior written approval of the Architectural Review Committee.

7.23 Compliance With Law. In all cases, each Owner shall comply in all respects with all applicable laws, rules and regulations (including, without limitation, applicable zoning ordinances) promulgated by any governmental authority having jurisdiction over the Lots and the Common Property.

## **ARTICLE EIGHT** **ADDITIONAL RESTRICTIONS**

8.01 Leasing. Townhomes and Lots may be leased by an Owner for residential purposes only; provided, however, that such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Lots and Townhomes and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. No such lease shall be for less than six (6) months. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. Any Owner who leases his Townhome or any portion thereof shall be responsible for the acts of his tenants, including, without limitation, the violation of this Declaration and/or any rules and regulations promulgated by the Association hereunder.

8.02 Restrictions on Mortgaging Lots. Nothing contained herein shall be construed to place any restrictions on an Owner's right to mortgage his Lot.

8.03 Regulations. Reasonable regulations concerning the use of the Lots and the Common Property may be made, altered and amended from time to time by the Board of Directors.

8.04 Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Common Property or the Lot securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

**ARTICLE NINE**  
**ENFORCEMENT; DURATION; AMENDMENT**

9.01 Enforcement. The Association, the Board of Directors, the Architectural Review Committee and/or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed by the provisions of this Declaration. Failure by the Association, the Board of Directors, the Architectural Review Committee and/or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.02 Enforcement by Owners. An Owner may file a legal action for the violation of this Declaration (the "Complainant"), provided that the following procedure is strictly followed:

- (a) The Complainant must first give the Association written notice of the alleged violation of this Declaration together with a demand seeking that the Association enforce the terms of this Declaration as against said violator; and
- (b) The Association must fail to cause a cure of the alleged violation or, if the alleged violation has not been cured, fail to commence legal proceedings against said violator for the enforcement of the terms and conditions of this Declaration within one hundred twenty (120) days of the date of the Association's receipt of the notice referenced in subsection (a) hereof.

9.03 Attorneys' Fees. In any action (whether in advance of or prior to the initiation of any legal or equitable proceeding, in arbitration, in trial, in any administrative or other similar proceedings, or in any appeal from any of the same) pertaining to any condition, restriction or covenant herein contained (due to their alleged violation or breach) or for the enforcement of any lien against any Lot or against any Person, unless otherwise expressly provided in this Declaration to the contrary for specific instances and conflicts, the prevailing party shall be entitled to recover all costs, including reasonable legal fees and expenses.

9.04 Term. This Declaration is to take effect upon recordation and shall be binding upon the Association and all Owners and all persons and entities claiming title under and through them for fifty (50) years after the date this Declaration is recorded in the public records, after which it shall be automatically extended for successive ten (10) year periods unless an instrument in writing, signed by Members holding at least eighty percent (80%) of the voting interests in the Association, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

9.05 No Additional Burden. Except as provided in Article Ten, no amendment of this Declaration shall place an additional burden or restriction or requirement on any Lot where the Owner of such Lot does not join in said amending instrument.

9.06 Amendments. Except as provided in Article Ten, this Declaration may be amended by vote of the Members having sixty-seven percent (67%) of the voting interests in the Association, or by a written instrument signed by the same percentage of Members. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or such Owner's Mortgagee.

## **ARTICLE TEN** **RESERVED DECLARANT RIGHTS**

10.01 General Reserved Rights. Until Turnover, Declarant reserves unto itself, its successors and assigns:

- (a) A right-of-way and easement for ingress and egress and easement for utilities, drainage, maintenance, repairs and other related uses over, along, and across the Common Property for all purposes relating in any manner to the subdividing, developing or aiding in the development of the Subdivision or any parts or parts thereof or additions thereto by Declarant or others.
- (b) The right to grant easements and rights-of-way of ingress and egress and for drainage, utilities, maintenance and repairs along, over, across and under the Common Property to any person, firm, corporation or entity for use as ingress or egress or for drainage, utilities, maintenance and repairs.
- (c) The right to maintain, and grant Builders the right to maintain, a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the Subdivision therein and therefrom.

Except as set forth in Section 10.04, all of the above rights and interests reserved by Declarant may be exercised by Declarant without the consent or concurrence of the Association or any Member.

10.02 Right to Annex Property. Declarant hereby reserves the right, exercisable in its sole and absolute discretion, to (a) make any or all of the Additional Property subject to all or any of the terms and conditions of this Declaration and/or (b) permit owners of Additional Property to become Members of the Association. No assurances can be made as to whether any Additional Property will be annexed. Furthermore, Declarant expressly reserves the right to exercise this right on multiple occasions until such time as all Additional Property has been annexed into the Subdivision and made subject to this Declaration. No assurances can be made with respect to the boundaries of any portions of any Additional Property that might be annexed. The Additional Property may be annexed in accordance with this Section by an amendment to

this Declaration, which amendment may be made and entered into by Declarant in its sole and absolute authority and discretion without the consent, approval or signature of the Association or any Member (except for the consent rights granted in Section 10.04). Notwithstanding anything contained in this Section to the contrary, (a) no Additional Property shall be subject to this Declaration unless and until Declarant executes and records an amendment to this Declaration affirmatively exercising Declarant's rights hereunder in the office in which this Declaration is recorded, and (b) in the event Declarant exercises its right to annex any Additional Property in accordance with this Section, Declarant shall also have the sole and exclusive right to alter, or otherwise replace with other terms, the terms of Section 7.05 hereof as those terms pertain to any Lots created out of such Additional Property.

10.03 Amendment of Declaration by Declarant. Until Turnover, Declarant reserves unto itself the right, authority and power to amend this Declaration in any manner Declarant deems necessary and appropriate. Any amendment to this Declaration made in accordance with this Section shall require only the signature of Declarant and shall not require the signature of any other Owner or any Mortgagee of any Owner, except as required by Section 10.04.

10.04 Consent of D.R. Horton to Certain Matters. Declarant may not exercise any rights or take any action or grant any approval as Declarant under this Declaration without obtaining the prior written consent of DHI, except as follows: (a) Declarant may take any action or give any approval in the ordinary course as an Owner and not as Declarant; (b) Declarant may annex any or all of the Additional Property into this Declaration in accordance with Section 10.02 hereof; and (c) the consent rights of DHI shall terminate on the earlier to occur of (i) such time as DHI no longer owns at least one (1) Lot, and (ii) December 31, 2020. DHI shall respond to any Declarant request for its consent under this Section within thirty (30) days of DHI's receipt of such request, and, in any event, DHI shall not unreasonably withhold its consent to any such request.

10.05 Turnover. All rights of Declarant hereunder shall automatically terminate upon Turnover, except those rights that expressly survive Turnover and those rights that Declarant holds as an Owner and not by virtue of being the declarant under this Declaration, which shall continue as long as Declarant is an Owner.

## **ARTICLE ELEVEN** **TOWNHOME ISSUES**

11.01 General Rules of Law to Apply. Each wall built and located on the common or dividing line between adjoining Lots shall constitute a Party Wall. Each roof system built over structures on adjoining Lots shall constitute a Party Roof. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and party roofs and liability for property damage due to negligence, or willful acts or omissions, shall apply thereto.

11.02 Repair and Maintenance of a Party Wall. When the need arises for repair or other maintenance of any part of a Party Wall as originally built or as later extended, the cost of such repair shall be divided equally between the Owners of the Lots on which the Party Wall is located as to parts of the Party Wall then being used by both parties; as to any remaining portion,

the entire cost shall be borne by the party using that portion. Any Owner who shall cause a Party Wall to be exposed to the elements shall be solely responsible for any damages to adjoining improvements.

11.03 Repair and Maintenance of a Party Roof. When the need arises for repair, replacement or other maintenance of any part or all of a Party Roof, the Association shall perform (or cause to be performed) such repair, and the cost of such repair shall be a Common Expense. No Owner may cause any such repairs or maintenance to be so performed; provided, however, that in the event of any material damage to a Party Roof that may result in water or other elements penetrating the Party Roof and damaging the Townhome(s), an Owner shall have the right to make any emergency repairs such Owner deems reasonably necessary to protect his or her Townhome from damage; provided, further, however, that in the event an Owner exercises such right, he or she shall immediately notify the Association of such repairs.

11.04 Maintenance of Exterior of Townhomes. The Association shall maintain the exterior walls, excluding windows and doors, of Townhomes and shall repaint when necessary the Townhomes, and the cost thereof shall be a Common Expense.

11.05 Lawn Maintenance and Irrigation. The Association shall perform all lawn and irrigation maintenance around the Townhomes, including mowing, weeding and fertilizing and the cost thereof shall be a Common Expense.

11.06 Termite Bond. The Association shall maintain termite bonds on each Townhome and shall perform such repairs and treatments as may be necessary to maintain and renew said bonds, and all of the costs and expenses associated therewith shall be a Common Expense.

11.07 Owner Maintenance Responsibilities. Except for the items that are specifically reserved to the Association in accordance with the terms and conditions of this Declaration, each Owner shall be responsible for the maintenance, repair and upkeep of such Owner's Townhome, including, the interior of such Townhome and any exterior doors and windows of such Townhome; provided, however, that an Owner may not replace any exterior door or window without first obtaining the prior written approval of the Association as to the specific type of window or door, as applicable, to be used in such replacement. Each Owner shall properly maintain any balcony or terrace, including but not limited to the flooring surface of such balcony or terrace, appurtenant to such Owner's Townhome; provided, however, that no Owner shall puncture, or otherwise cause or allow to be punctured, the surface of any such balcony or terrace.

11.08 Cost of Construction. If the Owner of any Lot erects a Party Wall at a time when the adjoining Owner is not ready to construct, then the Party Wall must be located on the Lot line, but entirely within the Lot on which construction is to begin and such Owner shall bear the entire cost of constructing said Party Wall. If the adjoining Owner later erects a building utilizing said Party Wall, or any part thereof, he shall promptly pay to the Owner who originally bore the entire Party Wall cost an amount equal to the ratio that the portion of the Party Wall utilized for support, attachment or joinder bears to the original cost thereof, divided by one-half.

11.09 Adjoining Lot. The first Owner to erect a Party Wall shall have the right to enter the adjoining Lot(s) and shall have the right to authorize entry by his contractor, agents, employees, and suppliers to the extent reasonable and appropriate for construction purposes. Such right includes the right to make necessary excavations or to do other work required in connection with the construction of the Party Wall; provided, however, that on completion of the Party Wall, the adjoining Lot(s) shall be restored to their condition prior to the start of construction. The first Owner to erect a Party Wall shall erect said Party Wall and any party Roof in such a manner so as not to encroach into the Lot of any adjoining Owner; provided, however that such Party Wall and Party Roof may, with the advance written approval of the Architectural Review Committee, have a finished eave or other overhang structure encroaching into such adjoining Owner's Lot; provided, further, however, that such eave or other overhang structure shall be subject to the rights of an adjoining Owner to thereafter eliminate or modify such eave or other overhang structure to accommodate the construction of an adjoining Townhome; and the elimination or alteration of any such eave or other overhang structure shall, in all events, be subject to the equitable and final discretion of the Architectural Review Committee. No construction shall be undertaken in a manner so as to adversely affect the structural integrity of any Townhome located on a Lot.

11.10 Sprinkler Systems. Every Townhome (including all accessory structures attached thereto) shall be (a) equipped with an automatic sprinkler system which meets all the standards of all applicable laws or (b) constructed in such a manner as to not adversely affect the fire rating of any other Townhome. Each Owner shall be responsible for the repair and maintenance of the sprinkler system within such Owner's Townhome. The purpose of this Section is to allow Townhomes to be fire rated as separate and distinct units without deficiency charge.

11.11 Failure to Maintain. In the event an Owner shall fail to maintain and repair his Lot and/or Townhome as required herein, and that failure to so maintain shall cause damage or injury to the adjoining Townhome, Party Wall, and/or Party Roof, the Association, after approval by a majority vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the Townhome and any other improvements erected thereon. The cost of the same shall be added to and become part of the assessment to which such Lot is subject.

11.12 Right of Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

11.13 Easement for Encroachment. There shall be (a) reciprocal perpetual easements of encroachment between each adjacent Lot, and (b) perpetual easements of encroachment over and across any adjacent Common Property, for purposes of allowing for the unintentional placement, settling, or shifting of Party Walls constructed, reconstructed, or altered thereon to a distance of three feet (3') as measured from any part on the common boundary along a line perpendicular of such boundary at such point.

11.14 Easement for Lateral Support. There shall be reciprocal perpetual easements of lateral support between each adjacent Lot upon the structural components, including the Party

Walls for lateral support of each Unit. No Owner shall demolish, modify, or interfere with a Party Wall so as to diminish or in any way alter the lateral support which such Party Wall affords any Townhome.

11.15 Access and Garage Easement. As shown on the Plat of Subdivision, the Lots are separated in three (3) Lot clusters. Attached hereto as Exhibit "B" is a drawing depicting the typical layout for the Townhome Building to be constructed on such three (3) Lot clusters with the three (3) Lots labeled by the letters A, B and C.

- (a) Vehicular and pedestrian access for ingress and egress to and from those Lots is provided by a driveway and/or sidewalks over and across the Common Property located adjacent to such Lots to the nearest street within the Subdivision (singularly, a "Common Path" and collectively, the "Common Paths") and an easement is hereby reserved in favor of the Owners of Lots A, B and C, respectively, over and across such Common Path for such purposes. The Association shall be responsible for the maintenance of the Common Paths, and the expense thereof shall be a Common Expense.
- (b) A garage easement is reserved in favor of Lots B and C, respectively, over and across a portion of the adjoining Lot A (the "Garage Easement"). The purpose of the Garage Easement shall be to provide Lots B and C each with its own garage which shall be constructed on the ground level of Lot A, and connected by a driveway as described above in this Section. The diagram attached as Exhibit "B" hereto is a typical representation of the driveway and pedestrian access easements over and across the Common Property and the Garage Easement upon Lot A. The Garage Easement for the Lot B garage is shown and depicted as "Garage Easement BG" on Exhibit "B". The Garage Easement for the Lot C garage is shown and depicted as "Garage Easement CG" on Exhibit "B". The boundaries of the Garage Easement areas shall extend to the interior surfaces of the walls and ceilings for purposes of affixing shelves, cabinets, and garage door openers. The Garage Easement shall not apply to the garage constructed on Lot A for the benefit of Lot A, and the Owner thereof, or to any other portion of the Lot A Townhome constructed thereon, including, but not limited to, any portion of the Lot A Townhome constructed as a second story unit over and above the driveway, the Lot B garage and the Lot C garage.
- (c) The respective driveway and pedestrian access easements and the Garage Easements for Lot B and Lot C of each three (3) Lot cluster shall be limited to those portions of Lot A and the Common Property upon which a garage, driveway, and sidewalks are initially constructed to serve each of the Lots in such three (3) Lot cluster. The easements described and reserved in this Section shall be exclusive easements for the benefit of Lots A, B and C, respectively, of each three (3) Lot cluster, are perpetual, shall run with the land, and shall be irrevocable.

## ARTICLE TWELVE INSURANCE ISSUES

12.01 Insurance on Common Area. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Subdivision. Accordingly, the Board shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall obtain a public liability policy applicable to the Common Area covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board. In addition to the other insurance required by this section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association. The expense of all insurance coverage obtained by the Association in accordance with this Section shall be a Common Expense.

12.02 Insurance on Townhomes - Association. Except as is provided in Section 12.07 hereof to the contrary, the Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other townhome-style projects similar in construction, design, location and use, insuring the Townhomes against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements. If the Townhome Lots are located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Association shall, to the extent obtainable, insure the Townhomes and the Lots against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the Townhomes (but excluding interior sheetrock, wallboard, fixtures, appliances, and improvements or betterments made to a Townhome by the applicable Owner after the initial construction of such Townhome) and any accessory structures attached to a Townhome (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage) (collectively, the "Covered Property"). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association for the use and benefit of the individual Owners. Periodically, and in any event at least once every two (2) years, prior to

the renewal of any such policy or policies of insurance, the Association shall either obtain an opinion or an appraisal from a qualified insurance appraiser for the purpose of determining the full replacement cost of the Covered Property for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of this Article and shall (i) contain a standard mortgagee loss payable clause endorsement in favor of the Mortgagee or Mortgagees of each Townhome, if any, as their respective interests may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner. Premiums upon insurance policies purchased by the Association in accordance with this Section shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Townhome or its appurtenances by an Owner of a Townhome shall be specially assessed against that Owner.

12.03 Townhome Owner Insurance. The Owner of each Lot shall be responsible for, at the Owner's expense, obtaining insurance coverage for (a) loss of or damage to any sheetrock, wallboard, fixtures, furniture, appliances, furnishings, decorations, personal effects, and other property belonging to such Owner and located within such Owner's Townhome or otherwise on such Owner's Lot (b) loss of or damage to any improvements or betterments made to such Owner's Townhome, and (c) personal liability for injury to the person or property of another while within such Owner's Townhome or upon such Owner's Lot. Risk of loss of or damage to any fixtures, furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored upon any Lot, and any improvements or betterments made to such Owner's Townhome shall be borne by the Owner of each Lot. All insurance obtained by the Owner of each Lot shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or the Declarant, and their respective servants, agents, employees and guests.

12.04 Damage and Destruction to Common Areas. Not later than ninety (90) days after damage or destruction by fire or other casualty to any portion of any improvement located upon a Common Area (a "Common Improvement"), the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to a Common Improvement covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within one hundred twenty (120) days after the casualty, a proposal not to repair or reconstruct such Common Improvement is approved by at least seventy-five percent (75%) of the voting interests of the Members. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one (1) year. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special

assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

12.05 Destruction of Townhome. In the event of damage or destruction to one or more Townhomes due to fire or other disaster (whether one or more, a "Damaged Townhome"), the insurance proceeds, if sufficient to reconstruct the Damaged Townhome, shall be deposited into a bank account which requires, for withdrawals, the signatures of the Owner of such Damaged Townhome and an officer of the Association. Thereafter, the Owner of such Damaged Townhome and the Association shall promptly authorize the necessary repair and reconstruction work, and the insurance proceeds shall be applied by the Association and the Owner of the Damaged Townhome to pay for the cost and expense thereof. "Repair and reconstruction" of a Damaged Townhome, as used herein, shall mean restoring the improvements to substantially the same condition in which they existed prior to the event causing such damage.

12.06 Damaged Townhome – Insufficient Insurance Proceeds. If the insurance proceeds are insufficient to repair and reconstruct any Damaged Townhome, such damage or destruction shall be promptly repaired and reconstructed by the Association, using all available insurance proceeds and the proceeds of a special assessment levied against the Owner of such Damaged Townhome. Any such special assessment shall be equal to the amount by which the cost of reconstruction and repair of the Damaged Townhome exceeds the sum of the insurance proceeds allocable to such Damaged Townhome. Such special assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after the levy of such special assessment. The special assessment provided for in this Section shall be a debt of the Owner of the affected Damaged Townhome and a lien against such Owner's Lot and any improvements located thereon and may be enforced and collected in accordance with Article Four hereof. Notwithstanding the foregoing to the contrary, each Owner and Mortgagee holding a security interest in a Damaged Townhome may agree that a Damaged Townhome shall promptly be demolished and all debris and rubble caused by such demolition be removed from the Subdivision and the Lot be re-graded and landscaped in a manner that is reasonably acceptable to the Board of Directors. The cost of such demolition work, re-grading and landscaping shall be paid for by any and all insurance proceeds available. Any excess insurance proceeds remaining therefrom shall be disbursed to such Owner and such Owner's Mortgagee, jointly, in accordance with their respective interests.

12.07 Insurance and Maintenance During Construction. Notwithstanding anything contained herein to the contrary, the HOA shall have no obligation to insure or maintain the Townhomes located in a particular Townhome Building until such time as at least one (1) or more of the Townhomes located in such Townhome Building is occupied by an Owner or the lawful tenant of an Owner. During such time, the Owner(s) of the Lots on which such

Townhome Building is located shall be obligated to insure and maintain all Townhomes that are a part of such Townhome Building.

**ARTICLE THIRTEEN**  
**MISCELLANEOUS**

13.01 Savings. If any provision or provisions of this Declaration, or any article, section, sentence, clause, phrase, or word herein, or the application thereof, is in any circumstances held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

13.02 Captions. The captions in this Declaration are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions of this Declaration.

13.03 Applicable Law. The laws of the State of Alabama shall govern this Declaration. All actions or proceedings in any way, manner or respect, arising out of or from or related to this Declaration shall be litigated only in courts having situs within the county in which the Subdivision is located. Each Owner hereby consents and submits to the jurisdiction of any local, state or federal court located within said county and state and hereby waives any rights it may have to transfer or change the venue of any such litigation. The prevailing party in any litigation in connection with this Declaration shall be entitled to recover from the other party all costs and expenses, including without limitation fees of attorneys and paralegals, incurred by such party in connection with any such litigation.

13.04 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations hereunder is not a consent or waiver to or of any breach or default in the performance by that Person of the same or any other obligations of that Person. Failure on the part of a Person to complain of any act or to declare any Person in default hereunder, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default.

13.05 Headings. The headings and captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

13.06 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a subdivision in accordance with Alabama law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

13.07 Notice. All notices required or desired under this Declaration to be sent to the Association shall be sent certified mail, return receipt requested, by hand delivery or by a recognized overnight courier who maintains verification of delivery, to the Secretary of the Association, at such address as the Association may designate from time to time by notice in writing to all Owners. All notices to any Owner shall be delivered by hand delivery, by a

recognized overnight courier who maintains verification of delivery in person, or sent by first (1<sup>st</sup>) class mail to the address of such Owner's Lot, or to such other address as he may have designated from time to time, in a writing duly received, to the Association.

13.08 Conflict Between Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles of Incorporation, the Bylaws or any rules and regulations promulgated hereunder, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles of Incorporation and the terms and conditions of the Bylaws or any rules and regulations promulgated hereunder, the terms and conditions of the Articles of Incorporation shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of any rules and regulations promulgated hereunder, the terms and conditions of the Bylaws shall control.

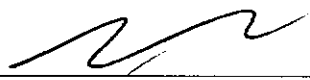
*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Declarant has executed this Declaration by and through its duly authorized representative as of the date first set forth above.

**DECLARANT:**

SF APT 2012, L.L.C., an Alabama limited liability company

By: Fortuna Investments, L.L.C., an Alabama limited liability company, as its Manager

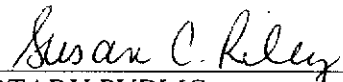
By:   
Nathan L. Cox  
As Its Manager

STATE OF ALABAMA :  
COUNTY OF BALDWIN :

I, the undersigned Notary Public, in and for said State and said County, hereby certify that Nathan L. Cox, whose name as Manager of Fortuna Investments, L.L.C., an Alabama limited liability company, acting in its capacity as the Manager of SF APT 2012, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily as and for the act of said Fortuna Investments, L.L.C., acting in its capacity as the Manager of said SF APT 2012, L.L.C., on the day the same bears date.

Given under my hand and official notarial seal this the 22<sup>nd</sup> day of December, 2014.

{SEAL}

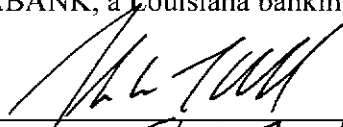
  
NOTARY PUBLIC  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Jan 11, 2016  
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS**

**MORTGAGEE'S CONSENT AND SUBORDINATION**

IBERIABANK ("Mortgagee"), (a) the mortgagee under that certain Mortgage, executed by SF APT 2012, L.L.C., an Alabama limited liability company, dated June 22, 2012 and recorded in Instrument Number 1345179 of the Office of the Judge of Probate of Baldwin County, Alabama (the "Mortgage"), and (b) the lender under that certain Assignment of Rents executed by SF APT 2012, L.L.C., an Alabama limited liability company, dated June 22, 2012 and recorded in Instrument Number 1345180 of the Office of the Judge of Probate of Baldwin County, Alabama (the "Assignment") (the Mortgage and the Assignment are sometimes hereinafter collectively referred to as the "Security Instruments"), does hereby consent to the recording of this Declaration. Furthermore, Mortgagee does hereby subordinate in all respects its interest in and to the Community Property (as that term is defined in this Declaration) described in the Security Instruments to this Declaration; provided, however, that the lien of the Association for assessments under this Declaration shall be subordinate to the liens of the Mortgagee under the Security Instruments, as provided in Section 4.07 of this Declaration. Mortgagee does hereby acknowledge and agree that this Declaration shall be given priority over the Security Instruments, and shall be unaffected by any default, foreclosure or exercise of any other remedy under the Security Instruments, the same as if this Declaration were executed, delivered and recorded prior to the execution and recording of the Security Instruments.

IN WITNESS WHEREOF, Mortgagee has caused this Consent and Subordination to be executed by and through its duly authorized representative as of the 22 day of December, 2014.

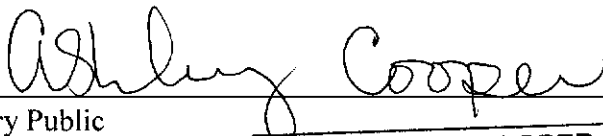
IBERIABANK, a Louisiana banking corporation

By:   
Name: John W. Therrell  
As Its: Vice President

STATE OF Alabama  
COUNTY OF Mobile

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that John W. Therrell as the Vice President for IBERIABANK, a Louisiana banking corporation, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, s/he has executed the same voluntarily for and as the act of said entity.

Given under my hand and seal this 22 day of December, 2014.

  
Notary Public  
My Commission Expires: 

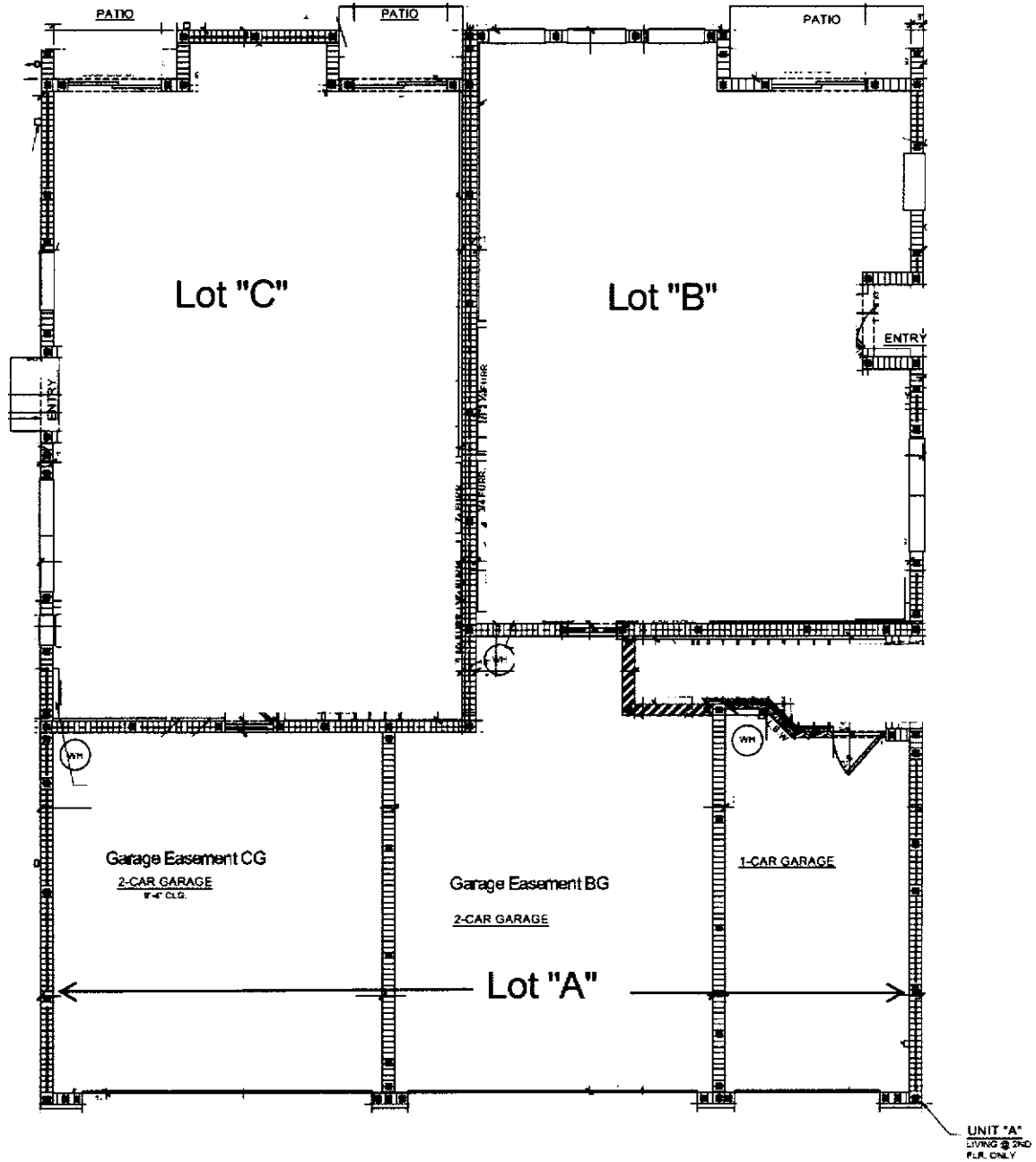
<b>ASHLEY COOPER</b> Notary Public, Alabama State At Large My Commission Expires August 2, 2017
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**EXHIBIT "A"**

Description of the Additional Property

Parcel 4, Parcel 5 and Parcel 6 of Quail Hollow Subdivision according to the plat thereof recorded at Slide Number 2523-D in the Office of the Judge of Probate of Baldwin County, Alabama.

**EXHIBIT "B"**  
Depiction of Three Lot Clusters



NOTE: Door and window locations and construction materials shown and depicted hereon are not necessarily reflective of the action door and window locations and the actual materials to be used on the Townhomes in the Subdivision.