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Indexing Instructions:  
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Harrison County, Mississippi



# FLORENCE GARDENS

Declaration  
of  
Charter, Easements,  
Covenants and Restrictions  
For The  
Residential Neighborhood of Florence Gardens

Florence Gardens, LLC, a Mississippi limited liability company to be known as the "Founder," makes this Declaration on the 31st day of March, year of 2006.

## STATEMENT OF PURPOSE:

A. The Founder is developing upon real property in Harrison County, Mississippi, a neighborhood development to be known as Florence Gardens. It is contemplated that Florence Gardens will be comprised of two principal Districts: the Neighborhood, which is the primarily residential District; and Town Center or something similar, which brings together a mixture of commercial and residential uses. There may be other or additional

Districts of the community. Unlike typical suburbs which separate homes from businesses and force dependence on the automobile, the Florence Gardens design is intended to mix commercial, civic and residential uses in a way that enlivens the Neighborhood.

B. This Declaration is intended to provide for the maintenance and operation of the Neighborhood, while Town Center, if developed, shall be subject to a separate Declaration. The residential units within Town Center are to be made members of the Neighborhood association on a limited basis so that the residents can enjoy the recreational facilities and activities of the Neighborhood.

C. The Neighborhood will have an owners' association to own and maintain certain Commons and Limited Commons. Florence Gardens is subject to Master Deed Restrictions, recorded immediately prior to this Declaration. Among other things, the Master Deed Restrictions regulate the construction and modification of buildings and other improvements within Florence Gardens.

D. The Founder records this Declaration for the Neighborhood, and establishes an owners' association to enhance Neighborhood life, to institute and enforce certain covenants and restrictions, to provide for further maintenance of the Neighborhood, and to allow for self-governing of the Neighborhood by its Owners.

## DECLARATION:

The Founder, who except as set forth hereinbelow, is the owner of all of the property described on Exhibit "A" (the "Neighborhood"), hereby submits and subjects the Neighborhood to this Declaration of Charter, Easements, Covenants and Restrictions. The Founder hereby declares that the Property comprising the Neighborhood shall be held, sold, conveyed and subject to the covenants, restrictions and easements of this Declaration, which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Neighborhood. C A Brown Developments, Inc., a Mississippi corporation, L. J. & L. Enterprises, Inc., a Mississippi corporation, Joan Cravens, Inc., a Mississippi corporation, and Harbor Oaks, Inc., a Mississippi corporation, are each the Owners of Lots in Florence Gardens and have joined in the execution of this Declaration to indicate their agreement with and consent to the terms, conditions and provisions hereof and to bind and subject their property to this Declaration.

## ARTICLE I: Definitions

1.1 Articles. "Articles" are the Articles of Incorporation of the Association.

1.2 Assessments. “Assessments” is the collective term for the following Association charges:

- a) General Assessment. The “General Assessment” is the amount allocated among all Members to meet the Association’s annual budgeted expenses, as described in Section 10.3.
- b) Individual Parcel Assessment. An “Individual Parcel Assessment” is a charge made to a particular Parcel Owner for charges relating only to that Parcel, as provided in Section 10.5, or for Limited Common or Zone charges, if any.
- c) Special Assessment. A “Special Assessment” may be charged to each Parcel for capital improvements, emergency expenses or other matters, in accordance with the provisions of Section 10.4.
- d) Other Assessments. Any other assessment which may be charged in accordance with this Declaration.

1.3 Association. “Association” is the Florence Gardens Residential Neighborhood Owners Association, Inc., a Mississippi nonprofit corporation, its successors and assigns. The Association, whose members are the Owners, is responsible for maintaining the Neighborhood and enforcing the Declaration.

1.4 Board. “Board” is the Board of Directors of the Association. The Board shall be appointed by the Founder during the Development Period.

1.5 Building. “Building” is any residential, mixed-use or commercial building constructed on any Lot. If permitted by the Florence Gardens Design Standards, a Building may be attached to another Building and share party walls. The Florence Gardens Design Standards may permit the construction of two or more Buildings or two or more Residential Units on a Lot. Interpretation of the Florence Gardens Design Standards is in the unfettered discretion of the Founder or its assignee.

1.6 Bylaws. “Bylaws” are the Bylaws of the Association.

1.7 Commons. “Commons” or “Common Area” comprises real property within the Neighborhood as designated on a plat or specifically conveyed to the Association, for the common use and enjoyment of all Owners. “Commons” also include any improvements on that real property, all utilities, utility easements and other easement rights or personal property for the Owners’ common use, and any other property of any type specifically designated as Commons. The Commons may include areas dedicated to the public to the extent that the Association agrees to maintain, or is required by this Declaration to maintain, such property.

1.7(a) Limited Commons. “Limited Commons” or “Limited Common Area” is a particular type of Common Area which comprises real property within the Neighborhood, if any, designated on a plat or specifically conveyed to the Association for the common use and enjoyment of only certain Owners of lots located adjacent to the Limited Common Area. The Association agrees to maintain, or is required by this Declaration to maintain, such Limited Common Area and shall assess the affected Lot Owners only for the cost of maintenance of said Limited Common Area. Said affected Lot Owners shall pay the cost of maintenance of same as a form of Special Assessment.

1.8 Neighborhood Roads. “Neighborhood Roads” are the streets and alleys located within the Neighborhood that are intended for automobile traffic. Most of the Neighborhood Roads are intended to be dedicated to the public. Any Neighborhood Roads not dedicated to the public shall be part of the Commons or Limited Commons. The Plat or Plats should be reviewed for more detailed information about roads and streets.

1.9 Declaration. “Declaration” is this Declaration of Charter, Easements, Covenants and Restrictions for the Residential Neighborhood of Florence Gardens.

1.10 Design Standards. The “Design Standards” or “Florence Gardens Design Standards” establish the plan for the development of Florence Gardens through its regulation of land use, architecture and environment. The Florence Gardens Design Standards are originally adopted by the Founder as provided in the Master Deed Restrictions and may be amended from time to time. The Florence Gardens Design Standards do not need to be recorded to be effective but shall be available from the Florence Gardens Design Review Committee. The Design Standards may be amended from time to time by Founder or the Florence Gardens Design Review Committee.

1.11 Design Review Committee. The “Design Review Committee” is the panel established to administer the Florence Gardens Design Standards, as established by the Master Deed Restrictions and described in Article IV.

1.12 Development Period. Development Period, as defined in this Declaration and the Master Deed Restrictions and other Declarations contemplated herein, shall mean the period of time commencing with the execution hereof and continuing for six (6) months after Founder neither owns any of Florence Gardens nor holds any property for sale within Florence Gardens in the normal course of business. The Development Period may sometimes be referred to as the Construction Period.

1.13 Founder. The “Founder” is Florence Gardens, LLC, a Mississippi limited liability company, its successors and assigns.

1.14 Lot. A “Lot” is a parcel of land intended for a single building, or a building and an outbuilding. Ordinarily, Lots are designated as numbered or lettered, separately

identifiable parcels on the recorded subdivision plat(s) of Florence Gardens, or, for unplatted areas, as shown on a site plan of property offered for sale as a part of Florence Gardens. A Lot may contain condominium, apartments, commercial or other mixed use designations whose owners may form their own association.

1.15 Master Deed Restrictions. The Founder, as the grantor of deeds within Florence Gardens, has recorded an instrument immediately prior to this Declaration known as the Master Deed Restrictions. The Master Deed Restrictions, which apply to all deeds and conveyances granted within Florence Gardens, are intended to ensure the proper application of the Florence Gardens Design Standards during the development stage and to impose other restrictions designed to further the development of the Neighborhood.

1.16 Master Plan. The Master Plan is the initial plan for the development of the Master Plan Area. The Master Plan is subject to reasonable change based on market conditions, governmental requirements and other modifications that may be made as development progresses.

1.17 Master Plan Area. As further defined in the Master Deed Restrictions, the Master Plan Area comprises approximately 355 acres intended for development as a single, unified neighborhood development to be known as Florence Gardens.

1.18 Member. Each Owner is a “Member” of the Association, as provided in Articles VI and VII of this Declaration.

1.19 Mortgagee. A “Mortgagee” is any institutional lender that holds a bona fide first mortgage encumbering a Parcel as security for the performance of an obligation. The term “institutional lender” specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency.

1.20 Neighborhood. The “Neighborhood” is the real property described on *Exhibit A*. The Neighborhood shall also include any additional property added by Supplemental Declaration.

1.21 Neighborhood Meeting. The “Neighborhood Meeting” is the public meeting of Members for discussion and voting, as described in Article VII.

1.22 Owner. “Owner” is the record owner, whether one or more persons or entities, of the title to any Parcel within the Neighborhood. Owners shall not include those having such interest merely as security for the performance of an obligation.

1.23 Parcel. A “Parcel” is the smallest piece of real property that may be separately conveyed. A Parcel may be a Lot (whether or not improved by a Building), a Special Use Parcel, or certain Residential Units such as condominium units.

1.23 (a) Plat. The official map or plat of Florence Gardens or any part thereof.

1.23 (b) Property. Property as used herein shall be the land subject to these covenants as same may be amended from time to time. The initial Property is described on Exhibit “A” attached hereto and made a part hereof by reference. The Property size and configuration may be amended by annexation, sale, addition, supplement or deletion in the discretion of Founder.

1.24 [Intentionally Deleted]

1.25 Residential Unit. A “Residential Unit” is an individual Residential Unit and shall include a townhouse or other attached Residential Unit (such as each half of a duplex unit), an apartment or condominium unit, a Residential Unit within a mixed-use building, or an assisted living facility unit (but not a nursing home). Residential Units may be established at the discretion of the Founder.

1.26 Special Use Parcel. A “Special Use Parcel” is a Parcel of unconventional size, shape, location or use that calls for special design considerations. Typically, a Special Use Parcel will be used for commercial purposes, multi-family residential or Neighborhood or recreation facilities or such other use as the Founder establishes from time to time.

1.27 Supplemental Declaration. “Supplemental Declaration” is any declaration that may be recorded by the Founder or the Association in accordance with Article II to add Additional Property to the Neighborhood.

1.28 Zone. “Zones” are smaller, contiguous areas within the Neighborhood of distinct building type, character or within a specific location. The Founder, in its sole discretion, may elect to develop or utilize Zones in the development of Florence Gardens and the Neighborhood. The Founder or its assigns shall form and establish zones as it deems necessary. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone.

## ARTICLE II:

### Property comprising the Neighborhood

2.1 Property. The real property that shall be held, transferred, conveyed, leased and occupied subject to this Declaration consists initially of that real described on *Exhibit A*.

2.2 Development Plan.

(a) Property. The property that comprises the Master Plan Area is intended for development as a single, unified neighborhood development and is intended to include

both residential and commercial properties. Portions of the Master Plan Area that are primarily commercial may be submitted to this Declaration in accordance with Section 2.3, or may be submitted to a separate declaration and maintained by a separate association. The number and type of associations shall be determined by the Founder or its assignees.

### 2.3 Additional Property.

(a) By the Founder. The Founder shall have the right, but not the obligation, for a period of thirty (30) years from this date, from time to time in its sole discretion, to add to the Neighborhood any part of the Master Plan Area as “Additional Property.” This reserved development right may be exercised with respect to different portions of the Master Plan Area at different times. No assurances are made as to the boundaries of those portions or order in which the portions will be added. Exercising any development right in any portion of the Master Plan Area does not necessarily mean the right will be exercised in the remainder of the Master Plan Area.

The Founder may also add to the Neighborhood contiguous property, or property any portion of which is within one mile of any portion of the Neighborhood (including any property separated from the Neighborhood by a public street, body of water or other property) or any other property with a reasonable relationship to the Neighborhood. The Founder may also add individual Residential Units (such as apartments or condominium units above stores or offices) that are within primarily commercial portions of the Master Plan Area, even if the land surrounding the units is not added.

(b) By Members. Additional property of any type may be added to the Neighborhood by a majority vote of the Board. The Founder must approve of the addition of any additional property so long as it owns any of the Master Plan Area or any of Florence Gardens.

(c) Supplemental Declaration. A Supplemental Declaration adding the additional property shall become effective upon being recorded in the county’s public records.

(d) Special Provisions. The Supplemental Declaration may modify or add to the provisions of this Declaration if needed to reflect the different character of the additional property. A Supplemental Declaration may define Zones; may designate certain Commons as “Zone Commons” for the use of certain Zones; and may create an assessment procedure by which certain Zones are assessed separately for Zone Commons. However, no such Supplemental Declaration shall deny use of existing Commons to those Owners who had such right prior to the recording of the Supplemental Declaration. If individual Residential Units that are within primarily commercial portions of the Master Plan Area are added, the amount of assessments to be paid by such

units may be reduced, based upon a reasonable estimate of the units' usage of the Commons as determined by Founder or its successors and assigns.

2.4 [Intentionally Deleted]

2.5 Zones.

(a) Intent. Zones are intended to provide a flexible means for providing additional maintenance or capital improvements for a small portion of the Neighborhood that has special needs. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone.

(b) Designation. Zone boundaries may be designated at the time of the addition of the property by Supplemental Declaration during the Development Period, or at any later time by the Board.

(c) Characteristics. To the extent reasonably possible, all Parcels on both sides of a street shall be included within the same Zone. Separate Zones may be created if the street is interrupted by cross streets, by changes in topography or by Commons, or if Parcels on opposing sides of the street are of significantly different character. During the Development Period the Founder shall make all determinations concerning Zones.

## *ARTICLE III:*

### *Easements*

3.1 Easements in Favor of the Association. The Founder hereby reserves for the Association and its assigns the following easements, which shall benefit the Neighborhood, the Founder or its successors and assigns:

(a) Utility Easements. A blanket easement upon, across, over, through, and under the Neighborhood for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, electricity and other equipment. By virtue of this easement the Association, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Parcel. During the Development Period this easement may be altered, terminated, amended or assigned as Founder deems appropriate.

(b) Police Powers. A blanket easement throughout the Neighborhood for private patrol services, and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.



(c) Drainage, Erosion Controls. A blanket easement and right on, over, under and through the ground within the Neighborhood to inspect, maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

(d) Encroachment. An easement for any improvements constructed on the Commons which encroach on any Parcel, whether due to any minor deviation from the subdivision plat of the Neighborhood or the settling or shifting of any land or improvements.

(e) Maintenance of Commons. To the extent reasonably necessary, an easement over any Parcel for maintenance of the Commons and Limited Commons.

### 3.2 Relationship between Lots.

(a) Intent. The design for Florence Gardens is intended to maximize land usage and sense of Neighborhood by providing squares and parks while also offering smaller but private yards for individual use. As provided by the Florence Gardens Design Standards, certain buildings within the Neighborhood may be attached as townhouses, or may be detached but placed on or near the property line. The easements in this Section 3.2 are intended to provide guidelines for reasonable cooperation between neighbors. The Association and/or Founder may make rules for maintenance and use of easement areas and shared improvements that shall be applied uniformly to all Lots similarly configured.

(b) Lot Lines. Lots may not be subdivided or separated into smaller Lots, or any portion of a Lot separately conveyed, except by the Founder or with the specific consent of the Florence Gardens Design Review Committee. However, this shall not prohibit corrective deeds or similar corrective instruments. The Founder may redefine Lots prior to sale by dividing or combining Lots or portions of Lots and adjusting the boundary of a Lot. The Founder shall also have the right to modify subdivision plats of the Neighborhood to make adjustments to Lot boundary lines with consent only of those Owners whose Lot boundaries are to be changed. The division or combination of Lots may be subject to zoning or other governmental regulation, which may require, among other things, that the number of Residential Units not be reduced if Lots are combined.

(c) Party Walls. Each Owner grants to the Owner of each adjacent Parcel the right and easement to maintain and to utilize any exterior or interior wall of a Building that forms a party wall between them. A wall will be considered a party wall only if it serves to separate Parcels on their property line. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose Building faces such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and

maintenance of the party wall, the Owner damages the adjacent Owner's Lot or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

(d) Exterior Walls along a Lot Line. An exterior wall which supports the Building on only one Lot, or which encloses a courtyard on one Lot, shall not be considered a party wall. The Association may make rules and regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining owners for all insurance requirements, painting and repair and granting access over the adjoining Lot as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Florence Gardens Design Standards.

(e) Yard Easements. To allow most efficient use of a Lot while complying with governmental setback requirements, a portion of a Lot along a Lot line may be subject to an easement for use by the adjoining Lot Owner. Such easements may be designated on the plat, the Florence Gardens Design Standards or on the deed from the Founder to the first Owner other than the Founder. Such use easements may be up to four feet wide and shall run along a boundary line, but shall not encroach upon more than one boundary line. In addition, the Owner of such a Lot subject to an easement shall be the beneficiary of a similar easement along another portion of the Lot, unless the Lot is a corner Lot or is larger than the surrounding Lots. Subject to regulation under the Florence Gardens Design Standards, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure) upon the easement area.

(f) Roof Overhang; Footings. For certain building types, such as sideyard or zero-lot-line houses, which are to be built along a property line, the Florence Gardens Design Standards may permit roofs, gutters, soffits and downspouts to overhang this property line, and may allow footings and rain leaders to intrude below the surface of the same property line. To the extent allowed by the Design Standards and local governmental regulations the adjacent property shall be subject to an easement for such intrusion. However, roofs, gutters, downspouts and rain leaders may not discharge water onto adjacent property.

(g) Townhouse or Row house Roof. If a townhouse or row house wall or parapet is constructed along or very near the property line, the owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building, in accordance with industry standards and in order to make the new building watertight. This right shall include the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and watertightness of the existing building is not impaired. The cost for flashing shall be incurred by the owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property owners.

# ARTICLE IV:

## Commons

### 4.1 Title.

(a) Association-Owned Commons. The Association shall hold title to certain Commons or Common Area, including in certain instances Limited Common Area. For those portions of the Commons that consist of easements and other rights, the Association shall be the holder of those rights.

(b) Additional Commons. The Founder may convey to the Association additional Commons that the Association shall accept for maintenance.

### 4.2 Maintenance; Capital Improvements.

(a) Generally. The Association shall be responsible for the management, control and improvement of the Commons, including the Limited Commons, and shall keep the Commons attractive, clean and in good repair.

(b) Capital Improvements. Subject to design review, the Association may make capital improvements to the Commons and may modify the uses of the Commons. For example, the Association may add new recreational facilities (which improvements must be approved in accordance with the architectural review provisions of the Master Deed Restrictions). Expenses for substantial capital improvements must be approved in accordance with Section 8.6.

### 4.3 Owners' Easements of Access and Enjoyment.

(a) Commons. The Founder hereby grants and conveys to every Owner a right and easement of appropriate use and enjoyment of the Commons, subject to the Association's right of regulation in accordance with this Declaration and the Founder's right to use the commons as provided in paragraph 4.4 (C), and subject also to any limitations contained in the conveyance of those Commons to the Association. These easements shall be appurtenant to and shall pass with title to every Parcel. Only certain Owners shall have a right of easement and use as to the Limited Commons.

(b) Tenants, Guests. Any Owner may delegate, subject to the provisions of this Declaration, the Bylaws and the Rules and Regulations, his right to enjoyment to the Commons to the members of his family, his tenants or his guests who reside on the Parcel or are accompanied by the Owner. The Association may adopt rules to prohibit or restrict use of the Commons recreational facilities by a non-resident Owner whose Residential

Unit has been leased to a tenant, except when the Owner is a bona fide guest of the tenant.

#### 4.4 Use of Commons.

(a) Members' Benefit. The Association shall maintain the Commons for the benefit of its Members.

(b) Non-Members. The Association may permit limited use and access for all or a portion of the Commons that are not dedicated to the public, through the sale of club memberships or other fees. Any such revenue shall benefit the Association.

(c) Open-Air Market and Festivals. The Founder reserves, for itself or its various assigns, the right to use portions of the Commons as an open-air market for the rental of space for pushcarts, kiosks, stands or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. Founder also reserves, for itself or its various assigns, the right to use portions of the Commons for festivals or other events intended to enrich and enliven the Neighborhood. Founder further reserves a right of access through the Commons for all such purposes. Founder may, but is not obligated to, assign such rights to the Association at any time.

(d) No Commercial Use. Except as specifically permitted by this Declaration, there shall be no commercial use of the Commons, nor shall the Commons be subdivided or sold. Notwithstanding the foregoing, Founder, during the Development Period, shall have the right to change the use, designation and configuration of the Commons.

4.5 Neighborhood Road Regulation. To the extent permitted by Florence Gardens, the Association may make rules and regulations concerning driving and parking within the Neighborhood, and may construct traffic calming devices as approved by the Design Review Committee, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving on the Neighborhood Roads. To the extent permitted by Florence Gardens and applicable law the Association may enforce any violation in accordance with Section 11.8 and may tow offenders.

4.6 Surface Water or Stormwater Management System. The Association shall have the power and duty to maintain proper drainage within the Neighborhood. In the exercise of this power and duty, the Association shall have a blanket easement and right on, over, under and through the ground within the Neighborhood to maintain and to correct drainage of surface water. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements.

4.7 Damage or Destruction of Commons by Owner. If any Owner or any of the Owner's guests, tenants, licensees, agents, employees or members of his family damages

any of the Commons as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. If the damage was intentional and not the result of a reasonable accident, the cost of repair shall be the responsibility of that Owner and shall become an Individual Parcel Assessment payable by the responsible Owner. The Association may, but is not required to, seek compensation for intentional damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable.

4.8 Limitation of Liability. Each Owner, by taking title to a Parcel, and the Association by its joinder in the Declaration and each person using any such facility agrees that neither Founder nor any entity designing, constructing, owning, operating or managing the Commons and Limited Commons shall be liable to the Owner or the Association or any invitee of the Owner or the Association for any loss or damage for personal injury, damage to property, trespass or any other alleged wrong attributable to the Commons or the Limited Commons or to the usage thereof. This release of liability shall apply without limitation, to any such claim arising in whole or in part from the negligence of Founder or any other entity or person designing, constructing, managing, operating or owning the Commons and Limited Commons. Each Owner and the Association agree to indemnify and hold harmless Founder and any other entity designing, constructing, managing, operating or owning the Commons and Limited Commons against all claims by their respective guests, invitees or licensees with respect to any claims above described. The provisions of this Section shall apply to the Commons and Limited Commons as originally designed and constructed and as same may be altered in design, layout and construction from time to time.

## ARTICLE V: Neighborhood Planning and Administration of The Design Standards

5.1 Master Deed Restrictions. The Master Deed Restrictions establish the Florence Gardens Design Standards as the guide for all construction within the Master Plan Area and create the Florence Gardens Design Review Committee. All construction or modification of any building or other improvements, any tree removal or landscaping or any material alteration of the topography of any Lot or Commons must be approved in advance by the Florence Gardens Design Review Committee.

5.2 Binding Effect. The Master Deed Restrictions, which are recorded in the public records, are binding upon all of the property in the Master Plan Area. Unless a notice is recorded specifically to the contrary, the submission of additional property to the Declaration for Florence Gardens shall automatically extend the provisions of the Master Deed Restrictions to the additional property.

5.3 Assignment to Association. The Master Deed Restrictions provide for the Founder's enforcement of the Florence Gardens Design Standards during the

Development Period. At the end of the Development Period, the Founder shall assign to the Association its rights to enforce the Florence Gardens Design Standards, as provided in the Master Deed Restrictions. Upon such assignment or if for any reason the Founder is unable or unwilling to perform its powers under Articles I and II of the Master Deed Restrictions, the provisions of Articles I and II of the Master Deed Restrictions shall become part of this Declaration as if originally included. At that time, the Association shall have and assume the responsibility of appointing members of the Florence Gardens Design Review Committee and enforcing all violations of Articles I and II of the Master Deed Restrictions with all of its powers under the Master Deed Restrictions and this Declaration.

## *ARTICLE VI:*

### *Owners' Association*

6.1 Duties. The Association shall maintain, repair and replace the Commons, shall enforce the terms of this Declaration, and shall perform all other duties required by this Declaration or by Mississippi law, and by other government entities having jurisdiction.

6.2 Additional Powers. To the extent permitted by governmental authorities, the Association may, but is not obligated to, and as further limited by exclusive reservations in favor of the Founder, provide the following services or engage in the following activities:

(a) water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable television or communication lines and other utility services; supply of irrigation water; garbage and trash collection and disposal; laundry equipment or service;

(b) insect and pest control; improvement of vegetation and wildlife conditions; forestry management, pollution and erosion controls;

(c) emergency rescue, evacuation or safety equipment; fire protection and prevention; lighting of Neighborhood Roads which are not dedicated roads or lighting of dedicated roads; restricted or guarded entrances, traffic and parking regulation and security patrols within the Neighborhood;

(d) transportation; day care and child care services; landscape maintenance; recreation, sports, craft and cultural programs; and newsletters or other information services;

(e) maintenance of easement areas, public rights-of-way, sidewalks, drainage areas, traffic signage and other public or private properties located within reasonable

proximity to the Neighborhood if its deterioration would affect the appearance or safety of, or access to the Neighborhood, or as otherwise agreed to by the Association; and

(f) any other service allowed by law to be provided by a homeowners' association organized under the appropriate governing law.

The Board may, by majority vote, initiate or terminate any of the above services, which shall take effect sixty (60) days after notice to the Members, except in an emergency. As determined by the Board depending upon the nature of the service, such additional services may be part of the common expenses of the Association, may be assessed as an Individual Parcel Assessment to affected Parcels, or may be provided on a fee-for-service or other reasonable basis. If requested by petitions signed by at least 10% of the Members, a Neighborhood Meeting may be called and, if a quorum is present, the Board's action to initiate or terminate an additional service under this Section 6.2 shall be repealed by majority vote of the Members. Upon such repeal, the Board may not re-institute or terminate the service for five years unless also approved by majority vote of the Members.

6.3 Contracts. The Association may contract with any party, including the Founder, or any affiliate of Founder or any entity in which Founder owns an interest, for the performance of all or any portion of the management of the Association and its maintenance, repair obligations and other services. The cost of the contracts shall be included within the General Assessment, Special Assessment, or Individual Parcel Assessment as applicable. The Association may require that Owners contract for certain routine yard maintenance, in order to provide a uniform level of care. The Association also may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Association, the cost of which would be assessed to that Owner as an Individual Parcel Assessment. The terms and conditions of all such contracts shall be at the discretion of the Board.

6.4 Membership. The Members of the Association shall be and consist of every Person who is or who becomes, an Owner of record of the title to a Parcel and is included in the definition of an Owner hereunder. When more than one Person owns or holds an interest or interests in a Parcel, then all such Persons shall be Members.

6.5 Action by Members. The Association shall have two classes of voting Members. Class A Members shall consist of all Members, except the Founder. The Class B Member(s) shall be the Founder. Whenever any provision of this Declaration requires a vote of a specified percentage of the voting power of each class of Members, then such provision shall require a separate vote by the specified percentage of the voting power of the Class A Members and by the specified percentage of the voting power of the Class B Members. Whenever any provision of this Declaration requires a vote of a specified

percentage of the voting power of the Members, then such provision shall require a vote by the specified percentage of the combined voting power of all Members.

6.6 Members' Voting Rights . Except as otherwise specifically provided in the Articles or the Bylaws, the voting rights of the Members shall be as follows:

(a) Whenever a vote of the Class A Members is required or permitted under this Declaration, the aggregate voting power of all Class A Members shall be equal to the aggregate number of Lots owned by all Class A Members. Class A Members shall be entitled to cast one vote for each Lot owned by such Class A Members. When more than one Member owns or otherwise holds an interest or interests in a Lot, then the one vote cast for such Lot shall be exercised as such Members shall determine, but in no event shall more than one vote be cast with respect to any Lot except for condominium unit(s) as provided in Section 6.11 hereof. The vote for each Lot may not be divided or fractioned.

(b) Until such time as the Founder executes, delivers and files of record a relinquishment of its voting rights as a Class B Member hereunder, the Class B Members shall be the Founder who shall be entitled to one vote for each Lot owned by Founder and in addition two votes for each one vote of a Class A Member.

6.7 Membership Appurtenant to Real Property . The membership of both the Class A Members and the Class B Member shall be appurtenant to the ownership of a Lot. A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance, conveyance or alienation of the Lot to which the membership is appurtenant.

6.8 Voting Conflict Between Members . If the title to a particular Lot is owned of record by more than one Member, then the one vote appurtenant to such Lot may be exercised by any one of such Members, unless the other Members who own an interest in such title to the Lot shall object prior to the completion of voting upon the particular matter under consideration. In the event of any such objection, the one vote appurtenant to such Lot shall not be counted.

6.9 Termination and Reinstatement of Class B Members . If on any one or more occasions all Class B memberships should terminate or the Class B Member should relinquish its rights hereunder, and if after any such termination or relinquishment, the Founder, by annexation to the Property in accordance with the Declaration, should add additional property to the Property theretofore subject to the Declaration, then on each such occasion the status of the Founder as a Class B Member shall be fully reinstated with a full vesting of all rights previously relinquished, and following each such occasion, the Founder, or the nominee or nominees, if any, of the Founder, shall continue to be Class B Members with all rights vested herein until such time as the Founder



thereafter relinquishes such rights. Following each such reinstatement of the Class B memberships, for so long thereafter as the Class B memberships shall continue to exist, the Founder, and their nominee or nominees, if any, shall have all rights and powers of Class B membership, as herein provided.

6.10 Other Voting Provisions. The Articles and/or the Bylaws contain other provisions relating to voting rights of Members with respect to matters or issues unrelated to this Declaration, including, but not limited to, the election of individuals to the Board of Directors.

6.11 Condominium Unit(s). In the event a Residential Unit or other improvement constituting a condominium unit(s) is constructed on a Lot, then upon conveyance of the condominium unit(s), each Owner of the condominium unit shall be entitled to one vote appurtenant to such condominium unit; provided, however, in such instance there shall not be a vote appurtenant to the common areas which are a part of such condominium unit(s). In no event shall the total number of votes appurtenant to a Lot upon which condominium units are located exceed the number of condominium units on such Lot. Further, in the event an Owner of a condominium unit on a Lot owns more than one such condominium unit on the same Lot, then such Owner shall be entitled to only one vote for all condominium units owned by such Owner on the Lot.

6.12 Election of Board of Directors.

(a) Procedure. Elections shall be conducted in accordance with the Bylaws and procedures established by the then-current Board.

(b) Initial Selection by Founder; Selection during the Development Period. The Founder shall appoint and remove the initial officers and members of the Board and shall elect the Board during the Development Period. The Founder may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the development period, in which case the Founder reserves the right to record an instrument specifying that, until the time Founder would have been required to end control of the Board, certain actions of the Association or Board must be approved by the Founder before they become effective.

6.13 Classes of Votes.

(a) Intent. It is anticipated that a single Owner, alone or with affiliates, may own condominiums or other Parcels and thereby control a significant number of votes, which could unduly influence the election of owner representatives from the remaining Parcels. Furthermore, if the Neighborhood includes a significant number of apartment units, it is deemed desirable that tenants participate in the operation of the Neighborhood.

(b) Block Vote. If, after the Development Period any Owner, alone or with affiliates, controls at least 20% of the votes of the Association, that Owner shall select

one member or 20% of the Board, whichever is greater, but shall not vote for any other members of the Board. If such Owner controls at least one third of the votes of the Association, that Owner shall select two members or one third of the Owner-selected members of the Board, whichever is greater, but shall not vote for any other members of the Board. In all membership votes other than election of Board members, such Owner shall be entitled to cast votes in the same manner as any other Owner. The Founder shall elect all board members during the Development Period.

(c) Tenants. Tenants within the Neighborhood may at any time form a Tenant Advisory Committee and may elect one delegate as a non-voting member of the Board of the Association. If, after the end of the Development Period the number of rental units equals at least one third of the total Residential Units in the Neighborhood, then the number of directors shall be increased so that tenants may elect one voting member of the Board of the Association.

(d) Calculation. For purposes of paragraph (b), the calculation of numbers of Board members shall not include the tenant delegate. For example, if a condominium or apartment building owner controlled one-third of the votes, the Board could comprise two members elected by the condominium or apartment building Owner, four members elected by other Owners, and one member elected by tenants.

6.14 No Compensation for Directors. Directors shall receive no compensation for their services unless expressly provided for in resolutions adopted by the Members, but may be reimbursed for expenses.

6.15 Additional Provisions. Additional provisions concerning the operation of the Association and the Board are contained in the Articles and Bylaws.

6.16 Limitation of Liability and Indemnification.

The Association shall indemnify every officer, director and committee member, Founder, Founder Members, Founder employees and agents against any and expenses, including counsel fees and expenses, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake or judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct, illegal activities, or bad faith. The officers, directors or committee members shall have no personal liability with respect to any contract or commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be

exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled.

## ARTICLE VII: Decision Making

### 7.1 Neighborhood Meeting.

(a) When called. After the Development Period the Neighborhood Meeting shall be called annually for the election of members of the Board, and whenever any action is required by this Declaration to be taken by vote or assent in writing of the Members. As a convenient reference and not as a limitation, actions requiring a vote of the Members, or assent in writing, include the following:

Annexation of Additional Property.....	Section 2.3
Repeal of Additional Services .....	Section 6.2
Election of the Board of Directors .....	Section 6.12
Approval of General Assessments when increased more than 15%.....	Section 8.4
Ratification of expenditures for capital improvements.....	Section 8.6
Approval of Zone expenses .....	Section 8.7
Amendment of Declaration.....	Section 13.1
Dedication of the Commons .....	Section 13.2
Merger into, or Dedication of Commons to, Municipality .....	Section 13.4
Termination of the Declaration.....	Section 13.5

(b) Quorum. Voting at a Neighborhood Meeting requires presence of members representing the percentage of votes necessary to transact business. The necessary percentage is determined by the Bylaws, and if permitted by the Bylaws and by statute, the Board may revise this percentage from time to time.

(c) Notice. Notice of the meeting must be given to Members in accordance with Section 14.4 (“Notices”) and in accordance with the Bylaws. Notice of meetings shall also be posted in at least one place within the Commons.

(d) Proxies; Electronic Voting. To the extent allowed by the Bylaws and statute, proxies and limited proxies may be used to establish a quorum and for voting purposes. To the extent allowed by law and in accordance with procedure that may be adopted in the Bylaws, a quorum may be evidenced, and votes may be cast, by electronic means.

7.2 Action without Meeting. If permitted by the Board, the membership may approve any matter (specifically including the election of directors) by a written vote conducted by mail, by electronic ballot, or by written consent without a meeting. Notice may be

waived in the event of an emergency. Voting or consents shall be in accordance with the Bylaws and statute. Wherever used in this Article, “electronic means” or “electronic ballot” shall specifically include e-mail and, upon approval of the Board, other similar means of communication which may be developed in the future.

### 7.3 Board Meetings.

(a) Board’s Responsibility. Except as specifically provided in this Article or elsewhere in this Declaration, the Board has been delegated the power, and shall have the authority to act on behalf of the Association and to make all decisions necessary for the operation of the Association, the enforcement of this Declaration and the care of the Commons.

(b) Quorum. Voting at a Board meeting requires presence of at least one-half of the directors, in person or telephone conference or, if allowed by law, by proxy. If permitted by law, any action required to be taken by vote of the Board may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the Board. With the approval of all directors, meetings may be conducted by electronic means.

7.4 Record Keeping. The Board shall keep a record of all meetings, both of the Board and of the Association. For each action taken, the record shall state the vote and a description of the action approved, and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The record shall be available for inspection by any Member.

7.5 Approval. Wherever used in this Declaration, approval by a majority or other proportion of the Members refers to a vote in accordance with this Article, either at a properly called Neighborhood Meeting or through a voting procedure established under Section 7.2. Where the Declaration specifies consent in writing, or request in writing, by a majority or other proportion of all Members, then the necessary number is based on the number of votes represented by the total Membership of the Association, and signatures may be collected without a Neighborhood Meeting or other voting procedure.

## ARTICLE VIII: | Association Budget |

8.1 Fiscal Year. The fiscal year of the Association shall begin January 1 of each year and end on December 31 of that year, unless the Board selects a different fiscal year.

8.2 Budget Items. The budget shall estimate total expenses to be incurred by the Association in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies, taxes,

licenses, fees and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Board, for working capital for the Association and for reserves. If the Commons are taxed separately from the Parcels, the Association shall include such taxes as part of the budget. Fees for professional management of the Association, accounting services, legal counsel and other professional services may also be included in the budget.

8.3 Reserves. The Association may build up and maintain reserves for working capital, contingencies and replacement, which shall be included in the budget and collected as part of the annual General Assessment. Extraordinary expenses not originally included in the annual budget that may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a majority vote of the Members. If the reserves are inadequate for any reason, including nonpayment of any Member's assessment, the Board may at any time levy an emergency assessment in accordance with the provisions of Section 10.4 ("Special Assessment"). If there is an excess of reserves at the end of the fiscal year and the Board so determines, the excess may be returned on a prorated basis to all Members who are current in payment of all assessments due the Association, or may be used to reduce the following year's assessments, at the Board's discretion.

#### 8.4 Preparation and Approval of Annual Budget.

(a) Initial Budget. The Founder shall determine the budget for the fiscal year in which a Parcel is first conveyed to an Owner other than the Founder. The Founder is authorized to establish an assessment for the first year and collect same at the closing and conveyance of the Lot to an Owner.

(b) Subsequent Years. Beginning with the year in which a Parcel is first conveyed to an Owner other than the Founder and each year thereafter, at least one month before the end of the fiscal year, the Board shall, by majority vote, adopt a budget for the coming year and set the annual General Assessments at a level sufficient to meet the budget. At least two weeks before the fiscal year to which the budget applies, the Board shall send to each Member a copy of the budget in reasonably itemized form, which shall include the amount of General Assessments payable by each Member.

(c) Approval. If General Assessments are to be increased to greater than 115% of the previous year's General Assessment which was not a year in which General Assessments were guaranteed in whole or in part by Founder, and petitions signed by at least 10% of all Members request review within thirty (30) days after the budget is delivered to Members, the Board shall call a Neighborhood Meeting to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless the percentage required to transact business is present and the budget is rejected by

a majority of the Members present. If the budget is rejected, the Board shall approve a new budget within ten (10) days and send a copy to each Member.

8.5 Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year, or review of the budget under paragraph 8.4 (C), shall not waive or release a Member's obligation to pay General Assessments whenever the amount of such assessments is finally determined. In the absence of an annual Association budget each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

8.6 Capital Improvements. Any substantial capital improvement to the Commons approved by the Board must be ratified by a majority of the Members. If the substantial capital improvement is approved by the Members, the Board shall determine whether it shall be paid from General Assessments or by Special Assessment. A capital improvement shall be considered substantial if the cost to the Association of the improvement is more than six percent (6%) of the Association's annual budget, or if, when added to other capital improvements for the fiscal year, totals more than ten percent (10%) of the Association's annual budget. However, any repair or replacement of existing improvements shall not be considered a capital improvement. Approval of the Florence Gardens Design Review Committee is required for all capital improvements. This section shall not limit the right of the Founder to make improvements to the Commons.

8.7 Zone Expenses.

(a) Capital Improvements. Any Zone may, by two-thirds (2/3) vote of the Members within that Zone and approval of the Board, vote to assess themselves for capital improvements to Commons which will primarily benefit that Zone.

(b) Additional Services. Any Zone may, by majority vote of the Members within that Zone and approval of the Board, vote to assess themselves for maintenance or services in addition to those normally provided by the Association.

(c) Combined Zones; Smaller Groups. Zones may be combined or join together for such assessments. If more than one Zone is to vote, the Board shall determine whether approval and assessment is to be by Zone or by the combined group of Zones. If a group smaller than a Zone wishes to be assessed for capital improvements or services, all of those being assessed must agree to the assessment.

(d) Assessment Levy. Any assessment so approved shall be assessed to all Owners within that Zone or designated group as an Individual Parcel Assessment. Assessments may be collected at the time of the sale to the first non-Founder owner.

(e) Limited Common Area Assessment. Notwithstanding anything contained herein to the contrary, the Owners located adjacent to or affected by the Limited

Common Area shall be subject to and pay a Limited Common Area Assessment for the cost of maintenance of the Limited Common Area and related expenses. This Limited Common Area Assessment is automatic and can not be waived or voted out by the Owners.

8.8 Accounts. Reserves shall be kept separate from other Association funds, either in a single account for all reserves or separated by purpose. All other sums collected by the Board with respect to Assessments and charges of all types may be commingled in a single fund.

## ARTICLE IX: Allocation of Expenses

9.1 Generally. The common expenses of the Association shall be generally allocated among Parcels on a pro-rata basis, with each Parcel responsible for and being assessed an equal amount for the General Assessment. This method of assessment shall apply to residential Lots in the Neighborhood upon which are built individual residential units. Parcels which consist of other types of residential units such as apartments or condominiums may be assessed in a different manner, as determined and set forth in a Supplemental Declaration within which condominiums, apartments or other such uses are planned. Founder shall in its sole discretion set and determine the method and allocation of Assessments for such other uses in said Supplemental Declarations.

9.2 [Intentionally Deleted]

9.3 Special Use Parcels. Assessments for Special Use Parcels shall be determined by the Founder based on the anticipated use of the parcel.

9.4 Exempt Parcels. Parcels that are used by non-profit entities primarily for the benefit of residents of the Neighborhood may have a zero allocation, at the discretion of the Founder. The Founder may grant such exempt status of record at any time up to and including the time of conveyance of the parcel to someone other than the Founder. Once granted, such exempt status shall continue so long as the use of the Parcel remains substantially the same. The Association also has the authority to grant exempt status for qualified entities upon terms and conditions established by the Association.

9.5 Additional Property. If Parcels of substantially different size or use are created within Additional Property, the Founder may by Supplemental Declaration establish a different relative value for those Parcels based on a reasonable determination of the expected usage levels consistent with the determination for other properties within the Neighborhood. If individual Residential Units which are within primarily commercial portions of the Master Plan Area are added and the property surrounding such units is not

added, the amount of assessments to be paid by such units may be reduced, based upon a reasonable estimate of the units' usage of the Commons.

## ARTICLE X: Covenants for Maintenance Assessments

10.1 Obligation for Assessments. The Founder, for each Parcel or Lot owned within the property submitted and subject to this Declaration or Supplemental Declaration hereby covenants for each subsequent Owner, and each Owner of any Parcel of Lot by acceptance of a deed or other transfer instrument, whether or not it shall be so expressed in such instrument, is deemed to covenant and agree to pay to the Association the following (to be known collectively as "Assessments"):

- (a) General Assessments for expenses included in the budget,
- (b) Special Assessments for the purposes provided in this Declaration,
- (c) Individual Parcel Assessments for any charges particular to that Parcel, including, but not limited to assessments for use and maintenance of Limited Common Area, and
- (d) other Assessments as allowed in the Declaration,

together with a late fee and interest, as established by the Board, and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought. Upon default in the payment of any one or more installments, the Board may accelerate the entire balance of such Assessment, which shall be declared due and payable in full. The assessment may be collected at the time the Lot is conveyed to the Owner or non-Founder party or entity.

10.2 Allocation of Common Expenses. Expenses shall be allocated among the Parcels on a pro-rata basis as provided in Article IX ("Allocation of Expenses").

Notwithstanding any provisions in this Article to the contrary, Founder, so long as it owns a Lot shall have a choice of payment of its share of the Assessments. It may in its sole determination either (a) pay the difference in the amount of the receipts due from Owners and the amount of the actual costs of operations, or (b) it may pay the full annual Assessment for each Lot it owns.

In the event that any financial deficiency occurs in the operation of the Association as a result of the non-payment of Assessments by Owners who owe the Assessment but have



not paid them, the Founder may, but is in no way obligated to do so, advance these sums temporarily to the Association. In such event, the advance will be considered a loan from the Founder and the Association and each Owner and Member of the Association is liable for the repayment of that loan on terms acceptable to the Founder including reasonable interest

### 10.3 General Assessments.

(a) Establishment by Board. The Board shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments. Notwithstanding the foregoing, the Founder may set, estimate and collect assessments at the time of the conveyance of a Lot or Parcel to an Owner in the manner as set forth below.

(b) Date of Commencement. The annual General Assessments shall begin on the day of conveyance of the first Parcel to an Owner other than the Founder. The initial Assessment on any Parcel subject to assessment shall be collected at the time title is conveyed to the Owner. During the initial year of ownership, each Owner shall be responsible for the pro-rata share of the annual General or Special Assessment charged to each Parcel, prorated to the month of closing.

10.4 Special Assessment. In addition to the General Assessment, the Board may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four succeeding years as follows:

(a) Capital Improvements. Any substantial capital improvement that has been approved in accordance with Section 8.6 (“Capital Improvements”) or any capital improvement not required to be approved by the Members may be paid by Special Assessment.

(b) Emergency Assessment. By a two-thirds (2/3) vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense which this Declaration or the law requires the Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

10.5 Individual Parcel Assessments. The Association may levy at any time an Individual Parcel Assessment against a particular Parcel for the purpose of defraying, in whole or in part, the cost of any special services to that Parcel, for expenses approved by that Zone in accordance with Section 8.7, or any other charges designated in this Declaration as an Individual Parcel Assessment, including charges relating to use and maintenance of Limited Common Area.

10.6 Capital Contribution. At the closing and transfer of title of each Parcel to the first Owner other than the Founder or the builder, and at all subsequent transfers of title, the purchaser of the Parcel shall contribute an amount equal to at least six months of annual Assessments. The exact amount of the capital contribution shall be determined by the Founder during the Development Period and the Board thereafter. This capital contribution, which shall be enforceable in the same manner as an Assessment, shall be deposited in the general funds of the Association for capital expenses of the Association and for working capital for the Association, and shall not be considered a pre-payment of Assessments. This capital contribution is separate and apart from Assessments. The Founder may also determine to collect tax assessments as a lump sum or other method

10.7 Effect of Nonpayment of Assessment; Remedies

(a) Personal Obligation. All Assessments, together with any late fee, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Parcel at the time when the assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel. Notwithstanding the foregoing, the Founder's Members shall not be held personally liable for any Assessment Charge owed by the Founder.

(b) Creation of Lien. The Assessment Charge shall also be charged on the land and shall be a continuing lien upon the Parcel against which the Assessment Charge is made, which may be enforced upon recording of a claim of lien. This lien, in favor of the Association, shall secure the Assessment Charge which is then due and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. Any subsequent owner of the Parcel shall be deemed to have notice of the Assessment Charge on the land, whether or not a lien has been filed. Notwithstanding the foregoing, any Assessment Charge due on any property owned by Founder shall not be a lien and may not be enforced upon recording of a claim of lien.

(c) Suit for Payment; Foreclosure of Lien. The Association and/or Founder may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Parcel foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel.

(d) Other Remedies. The Association and/or Founder have the right to assess fines and suspend the voting rights and right to use of the Commons by an Owner for any period during which any Assessment against his Parcel remains unpaid. The Association and/or Founder may bring such action at law or in equity or both as shall allow for the

complete enforcement of this Declaration. Notwithstanding the foregoing, Founder may not lose the right of use of any of the Commons for itself, its employees or agents.

10.8 Transfer Fee and Certificate of Payment. Upon the sale or other transfer of any Parcel (other than the sale of Parcel by the Founder) there shall be paid to the Association a "Transfer Fee" equal to one dollar (\$1.00) for every ten thousand dollars (\$10,000.00) of the purchase price of the Parcel (including the cost of the improvements constructed thereon). This Transfer Fee shall be remitted to the Association immediately following the closing of the sale or other transfer of a Parcel, together with the full name and address of the new Owner of the Parcel.

Also, prior to the sale of any Parcel in the Neighborhood, the closing attorney or other party handling the closing of the sale and purchase must contact the Association to determine the status of the Assessments against the property and similar matters and to receive a certificate of payment. This procedure must be followed for any sale or transfer of a Parcel in the Neighborhood.

The treasurer of the Association, upon request of any Owner, shall furnish a certificate signed by a member of the Board stating whether any assessments are paid to date by that Owner. Such certificate, when co-signed by the secretary of the Association, may be relied upon by a good faith purchaser or mortgagee as conclusive evidence of payment of any assessment therein stated to have been paid.

## ARTICLE XI: Use of Parcels

*The following covenants are designed to protect the quality of life for all Owners within the Neighborhood and to set a standard for reasonable cooperation within the Neighborhood.*

### 11.1 Permitted Uses.

(a) Determination. Permitted uses for Parcels, which may include residential use, civic use or retail, office, restaurant, hotels, bed and breakfasts, health spas, private clubs, recreational use or other commercial use, shall be determined based on the Florence Gardens Design Standards and the plat, subject to the zoning requirements of the appropriate governmental agency or entity. At the Founder's discretion, the Founder shall make the determination of record at the time of the Parcel's addition to the Neighborhood, or at any time up to and including the time of conveyance of the parcel to someone other than the Founder. If the Founder fails to make such a determination of record, the Florence Gardens Design Standards, or the approval of the Building or modification under this Declaration, may describe permitted uses.

(b) Home-based Businesses. Unless prohibited by law, home-based businesses that do not generate significant noise, odor, parking problems, increased traffic or which encourages vehicles other than automobiles (as defined herein), shall be

permitted in any residential area. Signage for home-based business shall be regulated under the Florence Gardens Design Standards. The type of home-based business allowed and/or encouraged in Florence Gardens shall be determined by the Board of Directors in its sole discretion. The Board's decision is final, not appealable to any court or other authority and may be arbitrary and capricious.

#### 11.2 Prohibited Uses.

(a) Nuisances. No nuisance or other use that creates an unreasonable disturbance shall be permitted on any Parcel. The Association and/or Founder may from time to time define and determine unacceptable uses.

(b) Insurance. Nothing shall be done or kept on any Parcel or the Commons that will increase the rate of, or result in cancellation of, insurance for the Commons or any other Parcel or its content, without the prior written consent of the Association.

(c) Soliciting. The Association may regulate or prohibit soliciting within the Neighborhood.

(d) Time Sharing. No time-share ownership of Parcels is permitted without the Association's approval. For this purpose, the term "time-share ownership" shall mean a method of ownership of an interest in a Parcel under which the exclusive right of use, possession or occupancy of the Parcel circulates among the various owners on a periodically reoccurring basis over a scheduled period of time. Leasing a building or ownership of a Parcel by a corporation, partnership or other entity or by not more than four individuals or married couples will not normally be considered time-share ownership, unless otherwise determined in the Association's sole discretion.

#### 11.3 Attractiveness and Safety of Parcels.

(a) Generally. Each Owner shall keep all parts of his Parcel in good order and repair and free from debris. The Florence Gardens Design Standards or the Association may regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks), and other matters affecting the attractiveness or safety of Parcels.

(b) Signage. Except for uniform mail boxes and address numbers approved by the Association and such signs as may be required by legal proceedings, no signs, advertising or ornaments of any kind shall be maintained or permitted in or on the dwelling, the Parcel or any improvement on the Parcel, including "For Sale" or "For Lease" signs of the Owner or realtor representing an Owner. Builders or realtors of builders of newly constructed dwellings may place "For Sale" signs on the designated property of a design and size individually and specifically approved by the Association. Inappropriate signs or signs not in good repair will be removed by the Association. The

Association may change sign design requirements at any time.

Notwithstanding the foregoing, the restrictions of this Section shall not apply to Founder, its agents and affiliates during the Development Period.

The Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Area and within those easement areas established under the Declaration including but not limited to speed limit signs, directional signs and no parking signs.

(c) Parking and Vehicles.

(i) No Parking Zone. The Neighborhood has been designed with a roadway system that minimizes the impact on the natural beauty of the Property, therefore on-street parking at any times throughout the Neighborhood is prohibited. Additional off-street guest parking will be provided by the Founder at selected locations throughout the Property. In addition, for large private gatherings, guests of Owners may request approval of the Association to reserve and use designated parking areas developed with the Common Facilities. Failure to conform to the no-parking areas will be a violation of the Declaration. Notwithstanding the foregoing, Founder during the Development Period and the Association after the Development Period may provide rules and guidelines concerning temporary parking for contractors, builders and their vendors while constructing, remodeling or performing maintenance on Owner's houses or the Commons.

(ii) Parking for Residential Units. Each single family Residential Unit to be constructed on a Lot having an area greater than 12,000 square feet shall provide for enclosed (garage) parking for a minimum of two automobiles. Each single family attached Residential Unit and each single family detached Residential Unit to be constructed on a Lot having an area of 12,000 square feet or less shall provide for enclosed (garage) parking for a minimum of one automobile. Off-street parking shall be required for each Residential Unit. The number of off-street parking spaces, excluding the use of the driveway that provides access to the garage(s), will be a minimum of two on each Lot having an area greater than 12,000 square feet, and one on each Lot having an area of 12,000 square feet or less. Anything to the contrary notwithstanding, the Founder or the Design Review Committee may increase the enclosed parking or off-street parking requirements on any Residential Unit.

The Committee will have the authority to consider variances to the number of enclosed parking spaces and off-street parking spaces on Lots that it deems to have unusual circumstances or where it believes in its sole opinion that the required parking standard will contribute to a poor design solution for the Lot.

Owners and their guests must park in their provided off-street parking or may park in spaces as provided within the Common Areas if prior approval has been obtained from the Association.

(iii) Other Motorized Vehicles. The Board shall have authority to promulgate rules and regulations to govern the parking upon any Lot, on the street or within any portion of the Commons of motor homes, tractors, trucks (other than three quarter ton and small pickup trucks which are considered automobiles) commercial vehicles of any type, campers, motorized campers, trailers, boats and other water craft, boat trailers, ATV's, motorcycles, motorized bicycles, motorized go-carts, or any other forms of transportation devices (collectively "Other Motorized Vehicles"). Furthermore, although not expressly prohibited hereby, the Board may at any time, promulgate rules and regulations banning Other Motorized Vehicles or any specific type included in the definition of Other Motorized Vehicles from being kept, placed, stored, maintained, or operated upon any portion of the Property. Any Motorized conveyance that cannot be licensed for use on public streets will be prohibited from use on all streets and Common Areas for the Neighborhood.

(iv) Restrictions on the Use of Certain Vehicles. All Terrain Vehicles, four wheelers, motorized go-carts and other similar vehicles may not be ridden anywhere on the Property. Motorcycles, use for transportation, may be ridden from the entrance to their destination and parked and must be equipped with a muffler.

(v) Repair of Vehicles. Owners, their tenants and Invites shall not repair or restore any vehicle of any kind upon which any Lot, Residential Unit, or within any portion of the Commons, except within enclosed garages or workshops or for emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(d) Sports Equipment. Play structures, such as basketball hoops and backboards and swing sets, must be kept in good repair and may be limited, in accordance with the Florence Gardens Design Standards, to back yards or alleys. Large play structures such as skateboard ramps that are visible from outside the Parcel may be prohibited.

11.4 Leasing. Residential Parcels or separate Residential Units within a Parcel, such as an outbuilding, may be rented by the owner, subject only to applicable law and to reasonable rules and regulations as promulgated by the Association, which may be modified from time to time. The Association may establish a minimum lease term of at least six months. The Association may prohibit the leasing of any Residential Unit while the Owner is in default in the payment of Assessments. If the Residential Unit is leased in violation, the Association may attach rentals and may evict the tenant as if it were a tenant violation hereunder.

11.5 Pets. Pets may be kept by an Owner on his Parcel but only if such pets do not cause an unsafe condition or unreasonable disturbance or annoyance within the Neighborhood in the sole determination of the Association. Each Owner shall be held strictly responsible to immediately collect and properly dispose of wastes and litter of his pets. The Association reserves the right to regulate the number, type and size of pets (specifically including particular breeds of dogs deemed to create unreasonable danger); to prohibit the keeping of animals other than customary household pets, which it may define, acting reasonably; to designate specific areas within the Commons where pets may be walked and to prohibit pets on other areas; to require pets to be on leash; and to restrict the rights of tenants to keep pets.

11.6 Temporary Structures; Camping. The Florence Gardens Design Standards may prohibit or regulate construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Parcel. However, reasonable, occasional use of tents for festive occasions or children's backyard camping is part of life and should be enjoyed. In addition, the Association or Founder may permit the use of tents, trailers and other temporary buildings on the Commons or elsewhere within the Neighborhood during art festivals, craft fairs, block parties and other special events which are encouraged, subject to regulation by the Florence Gardens Design Standards. No other camping is permitted within the Neighborhood unless designated campgrounds are added to the property.

11.7 Outside Burning. Exterior fires are prohibited at all times. No Owner shall permit any condition upon its Property which creates a fire hazard or is in violation of fire prevention regulations. Notwithstanding the foregoing, the restrictions of this Section shall not apply to the Founder relative to the Founder's development activities on the Property including but not limited to the construction of roadways and Commons and the installation of utilities services.

11.8 Exterior Lights. The design and location of permanent exterior lighting and other types of landscape lighting shall be subject to the approval of the Design Review Committee. Neither these nor any other illumination devices shall be located anywhere on the structure or grounds of any Lot in such a manner to adversely illuminate or affect the nighttime environment of any adjoining Property. The Design Review Committee will promulgate rules and regulations concerning the temporary use of exterior lights for seasonal occasions. Each single family residential unit shall include one or more natural gas fueled coach lights at the front entrance of the residential unit. The design and location of the coach light(s) shall be subject to the applicable provisions of the Design Standards.

11.9 Hazardous Materials. Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or Association rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not

limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the “Hazardous Materials”). No Owner, his family, his tenants, or invitees shall knowingly use, generate, manufacture, store, release, dispose of, transport to or from or permit to exist in, on, under or about his Lot, the Commons or any portion of the Property and Hazardous Materials except in compliance with the Environmental Laws.

#### 11.10 Rules and Regulations.

(a) Generally. The writing of rules is one way to address specific issues that arise within the Neighborhood. The Association and/or Founder may adopt or amend rules and regulations interpreting or expanding upon the basic principles of this Article and other portions of this Declaration. Rules should strive to address the problem in the least restrictive way. The Board should review the Rules and Regulations regularly and remove or amend those that are unnecessary or overly restrictive.

(b) Effect. Rules and Regulations shall take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by at least 25% of the Members, a Neighborhood Meeting may be called and any Rule or Regulation may be repealed by majority vote of the Members.

(c) Notice. A copy of the Rules and Regulations adopted from time to time shall be posted in a conspicuous place within the Neighborhood or furnished to each Owner.

(d) Responsibility. Each Owner and the Owners’ family members, guests and tenants are required to abide by the covenants contained in this Declaration, which are covenants running with the land, and any Rules and Regulations adopted by the Association. Each Owner is responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

11.11 Enforcement. In order to enforce the Declaration, the Board may take any of the following actions:

(a) Fines. The Board has the right to assess fines up to the maximum allowed by law and may restrict the resident’s use of the Commons for up to sixty (60) days or until the violation is remedied, whichever is longer. However, the primary goal of this chapter is not to punish but to resolve problems. The Association may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Association.

(b) Pets. If the Board finds that a pet causes an unsafe condition or



unreasonable disturbance or annoyance, it may require the resident or Owner to take steps to cure or limit the offensive condition. If such steps are ineffective, if the resident or Owner fails to cooperate or if the pet is considered to create an unsafe condition or unreasonable disturbance or annoyance, the Association may require that an Owner or resident permanently remove the pet from Florence Gardens.

(c) Corrective Action for Parcel Maintenance. If the Board determines that any Owner has failed to maintain any part of a Parcel (including the yard and any wall, fence, or building for which the Owner is responsible) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, Florence Gardens Design Standards and applicable Rules and Regulations, the Board shall notify the Owner of its findings and may assess fines. If the violation continues for ten days after notice to the Owner, the Association shall have the right without liability to enter the Parcel to correct, repair, restore, paint and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Parcel Assessment.

(d) Tenant Violations. If after notice to both the tenant and the Owner and opportunity for a hearing the Board determines that a tenant has violated this Declaration or Rules and Regulations, the Association may assess fines against the Owner. In addition, if the violation continues for ten days after notice to the Owner of the findings, or if the tenant materially violates the same covenant more than once in any one-year period, the Association shall have the right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Parcel Assessment.

(e) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Association shall also have the right to bring suit to enforce the covenants contained in this Declaration, including the right to an injunction. The Association, the Founder and their successors and assigns shall have the right to bring such action at law and/or in equity so as to afford the aggrieved party a proper remedy. The party adjudicated at fault shall pay all costs, expenses and fees incurred in enforcing this Declaration or any Declaration contemplated herein.

## ARTICLE XII: Insurance

*Insurance is essential to protect the interests of the various Owners and to assure that funds will be available for rebuilding after a casualty. However, because insurance costs may increase significantly or new types of coverage made available, this Article gives some flexibility to the Board to select insurance coverage that is reasonable for the conditions that exist at that time.*

12.1 Review of Coverage. The Board shall review limits of coverage for each type of insurance at least once each year. Insurance can protect the Association's assets and financial security. However, insurance is a large, and sometimes volatile, item on the Association's budget. At least once each year, the Board should review types of insurance and terms and limits of coverage for insurance held by the Association. Changes in replacement costs or anticipated liabilities can make old insurance inadequate. In rare cases, if coverage becomes too expensive, the Association may make a decision to drop certain coverage or to take a higher deductible. In any event, the Board is expected to exercise the "prudent person" principle in determining how to deal with insurable risks of the Association.

12.2 Severability of Interest. Whenever practical, insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement that prevents the insurer from denying the claim of an insured because of negligent act of other insured.

12.3 Types of Insurance. The Association should consider the following types of coverage:

(a) Casualty Insurance. The Board should consider whether the Commons include structures or other improvements that can and should be insured against casualty loss. Certain improvements, such as green space or landscaping, may not be insurable. However, buildings or other structures usually are insurable. Endorsements for fire and extended coverage, vandalism, malicious mischief, flood (if in a flood-prone area) and windstorm should be obtained where available at reasonable cost. Coverage should be in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy or "agreed amount" insurance should be obtained.

(b) Public Liability. The Board may obtain public liability insurance in such limits as the Board determines, insuring against liability arising out of, or incident to, the ownership and use of the Commons and any topographic conditions or water access located on or adjoining Florence Gardens. At the Board's discretion, such coverage may include easements, such as walkways.

(c) Director Liability Insurance. The Board may obtain liability insurance insuring against loss for actions taken by members of the Board, officers of the

Association and advisory members in the performance of their duties. The Board may also obtain fidelity insurance or bonding for Board members, officers and employees.

(d) Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law and such other insurance as the Board may determine or as may be requested from time to time by a majority vote of the Members.

12.4 Parcel Coverage. Each Owner shall obtain casualty insurance for improvements on the Parcel. If available at reasonable cost, the policy shall name the Association as an additional insured. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements constructed on the Parcel. If requested by the Association, an Owner shall provide evidence of such insurance to the Association.

12.5 Repair and Reconstruction after Fire or Other Casualty.

(a) Commons. If fire or other casualty damages or destroys any of the improvements on the Commons, the Board shall arrange for and supervise the prompt repair and restoration of the improvements unless the area is to be redeveloped as provided in Section 13.3 ("Redevelopment"). The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

(b) Parcel Improvements. If fire or other casualty damages or destroys a Building or any other improvements on a Parcel, the Owner of that Parcel shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Florence Gardens Design Review Committee or the area is to be redeveloped as provided in Section 13.3. If the Owner fails to clean and secure a Parcel within 30 days after a casualty, the Association may, in accordance with the provisions of paragraph 11.9(C) ("Corrective Action for Parcel Maintenance"), remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Parcel Owner as an Individual Parcel Assessment.

# ARTICLE XIII: Amendment, Redevelopment and Termination

*Property Owners should be able to rely on the Declaration and the general principles it states. Amendment should not be easy except in cases where Founder deems it necessary during the Development Period. However, new solutions will be proposed from time to time to make the Association operate more efficiently or to adjust to changing conditions. Where clearly to the Neighborhood's benefit, these new provisions should be incorporated into the Declaration.*

*When, over long periods of time, conditions change so that redevelopment is necessary, the Declaration allows for a unified plan of redevelopment and compensation for affected owners.*

## 13.1 Amendment.

(a) By Members. This Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of the Association, certifying approval in writing by Parcel Owners representing sixty seven percent (67%) of the votes in the Association.

(b) By the Founder. During the Development Period the Founder specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party (i) for any reason prior to December 31, 2007, (ii) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (iii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iv) to comply with governmental requirements, or (v) to clarify the Declaration's provisions, correct errors or modify same due to market conditions.

(c) Limitations. Whenever any action described in this Declaration requires approval of greater than sixty seven percent (67%) of the Parcel Owners, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly. Rights reserved to the Founder may not be amended without the specific written consent of the Founder.

(d) Recording. Any amendment shall take effect upon recording in the public records.

## 13.2 Dedication.

(a) Neighborhood Roads. If any portion of the Neighborhood Roads has not previously been dedicated to the public, the Founder or Association shall have the right to

convey title to or dedicate the Neighborhood Roads to the appropriate public agency or authority.

(b) Commons. All other Commons may be dedicated to the public by the Founder during the Development Period and by the Board upon consent in writing of Parcel Owners representing sixty seven percent (67%) of the votes in the Association after the Development Period.

(c) Alleys; footpaths. At least twenty (20) years from the recording of this Declaration, if the Association determines that it no longer wishes to maintain all or some of the alleys or footpaths between Parcels, the ownership of such alleys or footpaths may be divided evenly between the adjacent Parcel Owners, with the consent in writing of Parcel Owners representing sixty seven percent (67%) of the votes in the Association. The property shall be subject to an easement for any then-existing utilities, and an easement may be reserved for continued use of the alleys or footpaths if required by the approving Owners.

(d) Necessary Approval. Any dedication or conveyance described above is subject to acceptance by the applicable governmental agency.

### 13.3 Redevelopment.

(a) Purpose. If the Neighborhood should ever be struck by a natural disaster or other casualty, all or a portion of the Neighborhood might be destroyed and need to be rebuilt. In general, after any casualty loss, improvements are to be rebuilt in accordance with the original plan. Alternatively, this section provides a method for redevelopment in accordance with a new plan when Parcel Owners representing sixty seven percent (67%) of the votes in the Association, the Founder and a majority of the mortgagees agree that it is necessary and desirable to do so. This super-majority approval is designed to protect individual property owners' rights and expectations in their property. However, when such consensus is achieved, this section allows redevelopment, while continuing to protect the dissenting owners by assuring payment to them of fair market value, plus a relocation allowance. The same method may be used when, after long periods of time, changing uses and conditions make redevelopment desirable. The requirements of this section are not applicable to vacant land, Lots or Parcels owned by the Founder.

(b) Definitions. Redevelopment is the process of rebuilding all or a portion of the Neighborhood, known as a Redevelopment Area, in accordance with a revised Florence Gardens Design Standards, combined with the offer to purchase the property of any dissenting Parcel Owners. A Redevelopment Area must be a defined, logical section for redevelopment comprising a Zone or Zones, or the entire Neighborhood. The plan may allow buildings that are currently in serviceable condition to remain but require that such buildings, if rebuilt or remodeled in the future, to be rebuilt in accordance with the redevelopment plan. The plan for redevelopment may include termination of the

Declaration for the Redevelopment Area. If the Declaration is terminated for a Redevelopment Area, the Founder may sell or donate to the Owners within the Redevelopment Area the Commons located there, reserving access and use easements as appropriate.

(c) Redevelopment; When Available. Redevelopment shall be available only upon the occurrence of one of the following:

(i) Any time after thirty (30) years from the recording of this Declaration, or

(ii) Upon a casualty loss destroying at least two-thirds, by value, of the insurable improvements, either within the entire Neighborhood, or within a Redevelopment Area. If the necessary approvals are not obtained within ninety (90) days after the casualty, the damage must be repaired in accordance with Section 12.5 (“Repair and Reconstruction after Fire or Other Casualty”).

(d) Approvals. After the Development Period, redevelopment requires the consent in writing of Parcel Owners representing sixty seven percent (67%) of the votes within the Redevelopment Area and mortgagees holding mortgages on a majority, by assessment interests, of the Parcels encumbered by such mortgages. If the plan is approved, consenting Owners must rebuild in accordance with the redevelopment plan, and, unless the plan provides otherwise, must participate in the purchase of dissenting Owners’ Parcels. Prior to the end of the Development Period redevelopment also requires the approval in writing of the Founder, which may be granted or withheld in its sole discretion.

(e) Redevelopment Corporation. The plan may include formation of a redevelopment corporation or other entity to purchase the Parcels of dissenting Owners. Unless otherwise agreed, the consenting Owners would be required to contribute to the capital of the redevelopment corporation in proportion to their General Assessments, as a portion of all consenting Owners. The plan may authorize the Association, on behalf of the redevelopment corporation, to collect the Owners’ shares as an Individual Parcel Assessment.

(f) Option to Purchase. Upon approval of the redevelopment plan, the redevelopment corporation or other designee of the consenting Owners shall deliver an option to purchase to all remaining Owners of Parcels within the Redevelopment Area. The option to purchase must be delivered in person or by registered mail to each Owner of a Parcel to be purchased. The recipient of such an option shall, within 30 days, choose either to join the consenting Owners, or to sell the Parcel to the consenting Owners. Failure to agree to the sale within 30 days shall be deemed to be agreement to join the consenting Owners. The sale price shall be paid in cash or upon terms approved by the

seller, and the sale shall be closed in a timely fashion following determination of the sale price.

(g) Price. The price for each Parcel to be purchased shall be its fair market value determined by agreement between the seller and the designee of the consenting Owners within 30 days of the delivery or mailing of the notice. In the absence of agreement, the purchasing Owners and the selling Owners shall each select a real estate appraiser, which appraiser shall then choose a third appraiser, and the purchase price shall be the average (mean) of the three appraisals. The fair market value of the property shall be determined in its present, as-is condition, subject to the Declaration, and the seller shall be entitled to any insurance proceeds attributable to that Parcel distributed on account of the casualty loss. The expense of the appraisals and all closing costs shall be paid by the purchaser.

(h) Relocation Allowance. In addition to the purchase price, the purchaser shall pay to the seller a relocation allowance of five percent (5%) of the purchase price.

(i) Enforcement. A judgment of specific performance of the purchase based upon the determination of the price by the appraisers and any other relief at law or in equity may be entered in any court of competent jurisdiction.

(j) Limitation. Redevelopment shall be subject to applicable zoning and other governmental regulation. If necessary for this section's validity under the Rule Against Perpetuities or similar law, this option shall expire 90 years from the time of recording of this Declaration, or whatever greater time period allowed by law.

13.4 Formation of Municipality. If all or substantially all of Florence Gardens is incorporated as a municipality or other local government unit, the following would apply:

(a) Merger of Association. Members of the Association may, by majority vote, dissolve the Association or, if allowed by law, merge the Association into the municipality. Upon such dissolution or merger, all the Commons shall be dedicated to the public and the municipality shall have all the rights and obligations of the Association provided by this Declaration.

(b) Dedication without Merger. Alternatively, Owners could approve by majority vote a plan by which Commons are dedicated to the public, but the Association would retain some of its powers and duties, such as architectural review and enforcement of the covenants and restrictions.

(c) No Dedication. If no dedication is approved, the Association and Commons shall be maintained without change.

13.5 Duration; Termination. The covenants and restrictions contained in this Declaration shall run with and bind the Neighborhood and shall inure to the benefit of and be enforceable by the Founder, the Association, and all Owners of property within the Neighborhood, their respective legal representatives, heirs, successors or assigns for sixty (60) years, and shall be automatically extended for each succeeding ten year periods unless an instrument signed by Owners representing 90% of the votes in the Association and the Founder shall have been recorded, agreeing to terminate the Declaration as of a specified date.

This Declaration may also be terminated in any of the following ways:

(a) Unanimous Consent. The Declaration may be terminated at any time by the consent in writing of all Owners and the Founder.

(b) Dedication of Commons. The Declaration may be terminated by consent in writing by Parcel Owners representing sixty seven percent (67%) of the votes in the Association and the Founder, if the Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (except that alleys or footpaths between two Parcels may be divided evenly between the adjacent Parcel Owners in accordance with Section 13.2).

(c) Redevelopment. The Declaration may be terminated for all or a part of the Neighborhood in accordance with the redevelopment provisions of Section 13.3.

13.6 Re-recording. Unless this Declaration is terminated, the Association shall re-record this Declaration or other notice of its terms at intervals necessary under Mississippi law to preserve its effect.

13.7 Condemnation. If all or part of the Commons is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such property.

## ARTICLE XIV: |

### General Provisions |

14.1 Interpretation.

(a) Construction. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of the Neighborhood as a Neighborhood of the highest quality. The italicized portions at the beginning of each Article, if any, and all headings



are intended to state the purposes for the provisions that follow and may be used as an aid to interpretation. However, if the italicized portion conflicts with the operative provision, the operative provision shall govern.

(b) Governmental Regulation. All provisions of this Declaration, including without limitation modifications to the Master Plan and redevelopment provisions, shall be subject to applicable government regulation or agreements.

14.2 Invalidity. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

14.3 Enforcement of Declaration.

(a) Enforcement. Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Association, the Founder or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity. The Board shall be empowered to bring suits on behalf of the Association.

(b) No Waiver. Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

(c) Association's Legal Fees. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Association in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Parcel Assessment to the Owner against whom such action was taken.

14.4 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Parcel and, if different, to the last known address of the person who appears as Owner of the Parcel as that address is stated on the records of the Association at the time of the mailing. If the Owner has given approval, notice may be given by electronic means to an address provided by the Owner.

14.5 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

#### 14.6 Consent of Mortgagees.

(a) When Consent Required. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by a mortgage on a Parcel. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests of a mortgagee shall be adopted without the prior written consent of Mortgagees as provided in subsection (b). This section shall not be construed, however, as a limitation upon the rights of the Founder, the Association or the Members to make amendments that do not adversely affect the Mortgagees.

(b) Percentage Required. Wherever consent of the Mortgagees is required, if any, it shall be sufficient to obtain the written consent of Mortgagees holding a lien on one-half or more of all Parcels encumbered by a mortgage. Specifically, there is no requirement to obtain the consent of mortgagees to amend, alter or change this Declaration.

(c) Timely Response. Any such required consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within 30 calendar days of receipt of request for consent shall be deemed given.

14.7 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of Mississippi.

14.8 Sidewalks and Walking Trails. Owners are responsible for the construction of sidewalks or walking trails where such sidewalks or walking trails abut the street side boundary line(s) of the Owner's Lot or are incorporated into an easement within the Lot as shown in the plans for the Neighborhood. Completion of the sidewalk or walking trail shall correspond to the completion of the driveway for the Lots and shall be built in strict conformance with the Design Standards and construction plans developed under the direction of the Founder or Design Review Committee. If the acceptance of the sidewalk or walking trail maintenance and repair is made by the Association, City of Gulfport, or other governmental agency having jurisdiction, the Owner's responsibility to keep the sidewalk or walking trail in repair shall be terminated.

#### 14.9 Residential Unit Sizes and Setbacks.

(a) The minimum square feet of heated living area to be contained within any Residential Unit or any Lot shall not be less than 1100 square feet if one level Residential Unit and 1400 square feet if a multi level Residential Unit. The Founder, in its sole discretion, may increase or decrease the minimum square feet of heating living area by Zone ,street or by groups of contiguous parcels or on the Additional Property as it is developed by recording an amendment to the Declaration reflecting the change; or in the

alternative, the Founder may enforce the minimum square feet by the use of deed restrictions on individual Lots.

(b) Any building setback dimensions that violate the ordinances or other regulations established by the City of Gulfport or other governmental agency having jurisdiction will require a variance from the City or governmental agency having jurisdiction which variance may not be granted; however, in no event, except as provided in (c) below, shall any Residential Unit or other building be erected on any Lot nearer than three feet from the Lot line, ten feet from the rear lot lines or three feet from the side lot lines except for Residential Units constructed as attached single family structures or zero lot line structures which set backs may be zero feet. On corner lots, the set back on the side yard adjacent to the street must be a minimum of ten feet.

(c) For some Lots, neighborhoods or streets in the Neighborhood it may be impossible or inadvisable to enforce the above stated set back requirements due to the natural terrain, lot configurations, proximity of adjacent structures or other considerations that the Design Review Committee deems appropriate. Therefore, notwithstanding anything else herein to the contrary, the Design Review Committee or the Founder may establish or approve specific deviations (both increases and decreases) to said set back requirements which it believes to be beneficial to a specific Lot, neighborhood, street or on the Additional Property as it is developed by recording an amendment to the Declaration reflecting the change; or in the alternative by the use of deed restrictions on individual Lots.

14.10 Venue. Any disputes, legal matters or arbitration shall be conducted or litigated in Harrison County, Mississippi

(Signature Page Follows)

In witness whereof, the Founder has executed this Declaration as of the day and year first above written.

FLORENCE GARDENS, LLC,  
a Mississippi limited liability company

By: \_\_\_\_\_  
Martin C. Goldin, Manager

The undersigned Owners of certain Lots or Parcels in Florence Gardens do hereby execute this Declaration as of the day and year first above written to indicate their consent to and agreement with the terms, conditions and provisions thereof and to bind and subject their property to this Declaration.

C A Brown Developments, Inc.  
a Mississippi corporation

By: \_\_\_\_\_  
Craig A. Brown, President

L. J. & L. Enterprises, Inc.,  
a Mississippi corporation

By: \_\_\_\_\_  
Randall J. Cofield, President

Joan Cravens, Inc.,  
a Mississippi corporation

By: \_\_\_\_\_  
Joan Cravens, President

Harbor Oaks, Inc.  
a Mississippi corporation

By: \_\_\_\_\_  
David B. Sellers, President

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this the \_\_\_ day of \_\_\_\_\_, 2006 within my jurisdiction, the within named Martin C. Goldin, duly identified before me, who acknowledged that he is Manager of Florence Gardens, LLC, a Mississippi limited liability company, and that for an on behalf of said limited liability company, and as its act and deed, he executed, signed and delivered the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

GIVEN under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*(Additional Acknowledgment Pages Follow)*

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this the \_\_\_ day of \_\_\_\_\_, 2006 within my jurisdiction, the within named Craig A. Brown, duly identified before me, who acknowledged that he is President of C A Brown Developments, Inc., a Mississippi corporation, and that for and on behalf of said corporation, and as its act and deed, he executed, signed and delivered the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

GIVEN under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this the \_\_\_ day of \_\_\_\_\_, 2006 within my jurisdiction, the within named Randall J. Cofield, duly identified before me, who acknowledged that he is President of L. J. & L. Enterprises, Inc., a Mississippi corporation, and that for and on behalf of said corporation, and as its act and deed, he executed, signed and delivered the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

GIVEN under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this the \_\_\_ day of \_\_\_\_\_, 2006 within my jurisdiction, the within named Joan Cravens, duly identified before me, who acknowledged that she is President of Joan Cravens, Inc., a Mississippi corporation, and that for and on behalf of said corporation and as its act and deed, she executed, signed and delivered the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

GIVEN under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this the \_\_\_ day of \_\_\_\_\_, 2006 within my jurisdiction, the within named David B. Sellers, duly identified before me, who acknowledged that he is President of Harbor Oaks, Inc., a Mississippi corporation, and that for and on behalf of said corporation and as its act and deed, he executed, signed and delivered the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

GIVEN under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **EXHIBIT "A"**

Florence Gardens Phase 1-A, a subdivision according to the map or plat thereof which is on file and of record in the office of the Chancery Clerk of Harrison County, Mississippi in Plat Book 46 at Page 17, reference to which is hereby made in aid of and as a part of this description.

Florence Gardens Phase 1-B, a subdivision according the map or plat thereof which is on file and of record in the office of the Chancery Clerk of Harrison County, Mississippi in Plat Book 47 at Page 8, reference to which is hereby made in aid of and as a part of this description.