

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR**

**Stablewood, LLC**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS** is made on the \_\_\_\_ day of August, 2005, by Stablewood, LLC, a Mississippi Limited Liability Company, hereinafter referred to as "Stablewood" or "Declarant".)

Stablewood is the owner of all that certain real property located in Harrison County, Mississippi, more particularly described on Exhibit A attached hereto, which is referred to as the "Stablewood Subdivision" and hereby makes this Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") for the Stablewood Subdivision for the purposes hereinafter set forth.

Declarant hereby declares that the Properties, shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the following covenants, conditions, restrictions, easements and provisions, which shall run with the Properties and shall be binding upon, and inure to the benefit of, all parties now or hereafter having any right, title or interest in such property or any part thereof, and their heirs, personal and legal representatives, successors and assigns.

**ARTICLE I**

**PURPOSE AND INTENT**

Stablewood is the owner of certain real property located in Harrison County, Mississippi and it is in the interest of Declarant and the Owners and residents of the Stablewood Subdivision that the Properties be developed as a first-class residential community. In order to establish and create a common scheme and plan for the improvements and maintenance of the property now comprising the Stablewood Subdivision and in order to promote the interests unique to the Owners and residents of the Stablewood Subdivision, Declarant has declared that the Properties shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Community Association Documents.

Declarant desires to ensure the attractiveness of the individual lots and parcels and facilities developed within the Stablewood Subdivision, to prevent any future impairment thereof and to preserve, protect, and enhance the values and amenities of the Stablewood Subdivision. It is the intent of Declarant to guard against the erection within the Stablewood Subdivision of Improvements built of improper, unsuitable or inappropriate materials or with improper or inappropriate quality or methods of construction. Declarant intends to encourage the erection of attractive improvements appropriately designed and located to preserve a harmonious appearance and function and to encourage a creative architectural philosophy for the harmonious development of the Stablewood Subdivision.

Declarant desires and intends to develop a quality project in the Stablewood Subdivision consisting of residential facilities of similar types and amenities that Declarant deems appropriate. This Declaration is imposed for the benefit of Declarant and all Owners and creates specific rights and privileges that may be shared and enjoyed by Declarant and all Owners. If any provision of this Article is deemed invalid by law the remainder hereof shall remain in full force and effect.

## **ARTICLE II**

### **DEFINITIONS**

Certain words and terms as used in this Declaration shall have the meanings given to them by the definitions and descriptions in this Article.

"Architectural Review Committee" or "Committee" shall mean the committee formed pursuant to this Declaration to maintain the quality and architectural harmony of Improvements in the Stablewood Subdivision.

"Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Community Association that are, or will be, filed with the Secretary of State of Mississippi.

"Assessments" shall mean Base, Special, and Default Assessments, collectively, levied pursuant to Article VII hereof to provide the funds to meet the estimated cash requirements of the Community Association.

"Base Assessment" shall mean the Assessments levied in accordance with Section 7.4 of this Declaration.

"Board of Trustees" or "Board" shall mean the board of trustees of the Community Association.

"Building" shall mean a building or structure constructed on a Residential Lot or on the Common Area.

"Code of Regulations" shall mean the code of regulations of the Community Association.

"Common Area" shall mean all real property and related facilities now or hereafter owned or operated by Declarant or its successors in interest or assigns in which the Community Association may own an interest for the common use and enjoyment of all of the Members. Such interest may include, without limitation, estates in fee, for a term of years, or easements.

"Community" shall mean the real property that is or hereafter may become subject to the Declaration pursuant to the terms thereof.

"Community Association" or "Association" shall mean The Stablewood Property Owners Association, Inc., a Mississippi nonprofit corporation, or any successor thereof by whatever name, charged with the duties and obligations hereinafter set forth and in the Articles of Incorporation and the Code of Regulations of the Community Association.

"Community Association Documents" shall mean any and all documents, instruments and agreements established by Declarant creating and governing the Community Association, including, but not limited to, this Declaration, the Articles of incorporation and Code of Regulations, and any procedures, rules, regulations or policies adopted thereunder by the Community Association.

"Community Association Properties" shall mean all real and personal property, including, but not limited to, the Common Area and any Improvements thereon, now or hereafter owned by the Community Association or with respect to which the Community Association holds an easement for the use, care or maintenance thereof or with respect to which it holds any right, title or interest. The Community Association Properties shall not include any Residential Lot.

"Community Association Rules" shall mean the rules adopted by the Community Association as provided in Section 4.14.

"Declarant" shall mean Stablewood, LLC, a Mississippi Limited Liability Company, and its successors in interest. A person or entity shall be deemed a successor in interest of Stablewood only if specifically so designated in a duly recorded written instrument. All decisions, appointments, approvals and other actions of Declarant or their duly authorized successors in interest shall be final.

"Default Assessment" shall mean an Assessment levied in accordance with Section 7.7 of this Declaration.

"Design Guidelines" shall mean those guidelines and rules published from time to time by the Architectural Review Committee.

"Eligible Holder" is defined in Section 12.2 hereof.

"Improvement" shall mean any and all Buildings and structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and any and all other site work including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement" does not include turf, shrub, or tree repair or replacement of a magnitude that does not change exterior colors or exterior appearances. "Improvement" does include both original Improvements and all later changes and Improvements.

"Maintenance Fund" shall mean the fund created by Assessments and fees levied pursuant to Article VII hereof to provide the Community Association with the funds it requires to carry out its duties hereunder.

"Member" shall mean any person or entity holding membership in the Community Association.

"Mortgage" shall mean any mortgage, deed of trust, or other document pledging a Residential Lot or interest therein as security for the payment of a debt or obligation. "First Mortgage" means any Mortgage that is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute.

"Mortgagee" shall mean the holder or beneficiary of a Mortgage as well as a named mortgagee. "First Mortgagee" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

"Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Residential Lot, but shall not mean or refer to any person or entity who holds such interest merely as Mortgagee, unless and until such person or entity has acquired fee simple title whether pursuant to foreclosure or otherwise.

"Properties" shall mean all of the real property described in Exhibit A attached hereto.

"Plat" shall mean any plat maps, subdivision approvals or other evidences of governmental approvals which splits or divides parcels of real property into two or more legally transferable lots or parcels filed in the appropriate public records of the jurisdictions in which the Community is located, as they may be amended from time to time, describing all or any portion of the Stablewood Subdivision.

"Residential Lot" or "Site" shall mean (a) any lot or parcel of land depicted on the Stablewood Subdivision Plat, (b) any real property designated as a Residential Lot by Declarant, including any Improvements thereon within the Stablewood Subdivision. "Residential Lot" or "Site"

shall not include: (i) any property owned by a public body, or (ii) the Community Association Properties.

"Special Assessment" shall mean the Assessments levied in accordance with Section 7.6 of this Declaration.

"Supplemental Declaration" shall mean a written instrument that is executed and recorded for the purpose of amending, modifying or supplementing this Declaration.

"Stablewood Subdivision" or "Stablewood" shall mean the planned community created by this Declaration consisting of the Stablewood Subdivision and all of the Improvements located thereon.

"Turnover Date" is defined in Section 3.5 hereof.

### **ARTICLE III**

#### **COMMUNITY ASSOCIATION OPERATIONS**

Section 3.1. Community Association. The Community Association has been or will be formed as a nonprofit corporation. The Community Association shall have the duties, powers and rights set forth in this Declaration and in the Articles of Incorporation and/or Code of Regulations.

Section 3.2. Membership in the Community Association. Each Owner of a Residential Lot within the Stablewood Subdivision shall be a Member of the Community Association. There shall be one membership in the Community Association for each Residential Lot within the Stablewood Subdivision. The person or persons who constitute the Owner of a Residential Lot shall automatically be the holder or holders of the membership in the Community Association appurtenant to that Residential Lot, and such membership shall automatically pass with fee simple title to the Residential Lot. No Owner, whether one or more persons, shall have more than one membership per Site owned, and in the event the Owner of a Site is more than one person, votes and rights of use and enjoyment shall be as provided hereinafter and in the Code of Regulations. The membership rights of a Site owned by a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Community Association, subject to the provisions of this Declaration and the Code of Regulations. Declarant shall hold a separate membership in the Community Association for each Residential Lot owned by Declarant. Membership in the Community Association shall not be assignable separate and apart from fee simple title to a Residential Lot.

Section 3.3. Voting Rights of Members. Each Member shall have the right to cast votes for the election of the Board of Trustees of the Community Association and on any issue to be voted by the Members under the terms of this Declaration. There shall be only one membership per Residential Lot and one vote per membership. The Code of Regulations shall provide for the manner, time, place, conduct and voting procedures for meetings of Members.

Section 3.4. Board of Trustees. The affairs of the Community Association shall be managed by a Board of Trustees. Subject to the provisions of Section 3.5 hereof, the number, term, election and qualifications of the Board of Trustees shall be fixed in the Articles of Incorporation and/or Code of Regulations. The Board of Trustees may, by resolution, delegate portions of its authority to an executive committee or to other committees, to tribunals, to Managers, to officers of the Community Association, or to agents and employees of the Community Association, but such delegation of authority shall not relieve the Board of Trustees of the ultimate responsibility for management of the affairs of the Community Association. Action by or on behalf of the Community Association may be taken by the Board of Trustees or any duly authorized

executive committee, officer, Manager, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

Section 3.5. Membership of Board of Trustees. The Board of Trustees shall consist of three trustees, and Declarant shall have and hereby reserves the continuing right to appoint each of such trustees until the Turnover Date. After the Turnover Date, the Board of Trustees shall be elected by the Members in accordance with the Code of Regulations. Notwithstanding the foregoing, until the closing of 40 Residential Lots to Members other than Declarant, Declarant shall have the right to elect all three of such trustees. The trustees appointed by the Declarant shall have a fiduciary duty solely to the Declarant and will act solely on behalf of the Declarant. The trustees elected by the Members shall have a fiduciary duty to all Members. The "Turnover Date" shall mean the earliest of the following dates: (a) the date that the last Residential Lot within the Stablewood Subdivision has been sold and conveyed by Declarant to a nonDeclarant Owner; or (b) the date that Declarant has voluntarily relinquished its right to elect two of the Trustees and its right to appoint the Members of the Architectural Review Committee in accordance with Section 10.1 hereof. The document by which Declarant voluntarily relinquishes its right to appoint trustees and its right to appoint the members of the Architectural Review Committee, as described in subsection (b) in the immediately preceding sentence, may allow Declarant to reserve the right to require Declarant's prior written approval of certain actions by the Board of Trustees including, by way of illustration but not limitation, the following: (i) any action that increases the Base Assessment only on Declarant's property or imposes a Special Assessment only on Declarant's property, and (ii) any action that, in Declarant's opinion, impairs or restricts Declarant's ability to develop and market its property within the Stablewood Subdivision.

## ARTICLE IV

### DUTIES AND POWERS OF THE COMMUNITY ASSOCIATION

Section 4.1. General Duties and Powers of the Community Association. The Community Association has been formed to further the common interests of the Owners. The Community Association, acting through the Board or through persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Owners, to maintain, improve and enhance the Community Association Properties and to improve and enhance the attractiveness, desirability and safety of the Stablewood Subdivision.

Section 4.2. Duty to Accept Properties and Facilities Transferred by Declarant. The Declarant may hereafter convey certain areas of land to the Community Association as Common Area intended for common use or enjoyment by the Owners in the Stablewood Subdivision **but not as a residential lot**. The areas so designated by Declarant are dedicated hereby to the common use and enjoyment of the Owners, and their families, tenants, employees, guests and invitees, and not to the use of the general public. The Declarant may hereafter convey other real or personal property, or interests therein to the Community Association for the use and enjoyment of all or certain of the Owners for the purposes as may be permitted by this Declaration. The Community Association shall accept title to any interest in any real or personal property transferred to it by Declarant. After any such transfer, the Community Association shall have the sole responsibility to perform any and all duties associated therewith, provided that such property and duties are not inconsistent with the provisions contained in this Declaration. Property interests transferred to the Community Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use. Any property or interest in property transferred to the Community Association by Declarant shall be appurtenant to or associated with property located within the boundaries of the area comprised of the Properties and any expansion of Stablewood Subdivision. Any fee simple interest in property transferred to the Community Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Trustees, be transferred to the Community Association by good and sufficient deed of transfer and shall be subject to the

terms of this Declaration and any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitudes and other encumbrances granted or reserved by Declarant. The property or interest in property transferred to the Community Association by Declarant may impose special restrictions governing the uses of such property and special obligations on the Community Association with respect to the maintenance of such property.

THE COMMUNITY ASSOCIATION SHALL ACCEPT "AS IS" THE CONVEYANCE OF SUCH PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW. THE COMMUNITY ASSOCIATION AND ALL OWNERS RELEASE DECLARANT FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY MEMBER OR OWNER RELATING TO THE CONDITION, CONSTRUCTION, DESIGN, CAPACITY, OPERATION, USE, ACCURACY, ADEQUACY OR COMPLETENESS OF SUCH PROPERTY OR MAINTENANCE OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM. All COSTS AND EXPENSES OF ANY CONVEYANCE OF ANY PROPERTY BY DECLARANT TO THE COMMUNITY ASSOCIATION SHALL BE PAID FOR BY THE COMMUNITY ASSOCIATION.

Section 4.2a Prohibited Transfers. Common areas conveyed to the Community Association shall not be converted to residential lots and sold for the purpose of constructing a dwelling.

Section 4.4. Duty to Manage, Control and Maintain Community Association Properties. The Community Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Community Association Properties and shall maintain and keep the Community Association Properties in good repair, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and Improvements situated upon the Common Areas.

4.5.2. Such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to the Community.

Section 4.6. Duty to Maintain Liability Insurance. The Community Association shall obtain a comprehensive policy of public liability insurance insuring the Community Association and its Members, trustees, officers, employees and agents for all liability for property damage, bodily injury, or death in connection with the operation, maintenance, or use of the Community Association Properties or streets and roads within the Stablewood Subdivision, and legal liability arising out of lawsuits related to employment contracts of the Community Association. Such comprehensive policy of public liability insurance shall include a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurance company from denying the claim of any Owner because of the negligent acts of the Community Association or any other Owner, with a limit of not less than \$1,000,000 covering all claims for personal injury, including death, or property damage arising out of a single occurrence. Such comprehensive policy of public liability insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, host liquor liability, contractual and all-written contract insurance, employers' liability insurance, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to the Community.

4.10.1. The named insured under any such policies shall be the Community Association.

4.10.2. In no event shall the insurance coverage obtained and maintained pursuant to such Sections be brought into contribution with insurance purchased by the Owners, occupants, or Mortgagees;

4.10.3. The policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Community

Association, or (b) failure of the Community Association to comply with any warranty or condition with regard to any portion of the Community over which the Community Association has no control;

4.10.4. The policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days prior written notice.

4.10.5. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Community Association and its trustees, officers, agents and employees and any Owner and the Owner's respective guests, agents, employees, or tenants, and of any defenses based upon coinsurance or upon invalidity arising from the acts of the insured;

4.10.7. All policies shall be written with a company legally licensed to do business in the state and holding a rating of A or better in the financial category as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;

Section 4.12. Duty to Maintain Workers' Compensation Insurance. The Community Association shall obtain workers' compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 4.13. Other Insurance. The Community Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Community Association's responsibilities and duties.

Section 4.14. Power to Adopt Rules and Regulations. The Community Association, from time to time, may adopt, amend and repeal rules and regulations, to be known as the "Community Association Rules," governing, among other things and without limitation:

4.14.1. The use of the Community Association Properties;

4.14.3. The burning of open fires;

4.14.4. The maintenance of animals within the Community;

4.14.5. Parking restrictions and limitations;

4.14.7. Establishment of times or other restrictions as to when commercial vehicles may be permitted to use any or all of the roads;

4.14.8. The type or types of vehicles (other than conventionally equipped passenger automobiles) and the times when any vehicle or motorized vehicle or device may be permitted to use the roads or any other area of the Community Association Properties;

4.14.9. Fines for the infraction of the Community Association Rules;

4.14.10. Additional use restrictions;

4.14.11. Maintenance performance standards; and

4.14.12 Any other rule or regulation deemed necessary, desirable or advisable by the Community Association to promote the health, safety or welfare of the Owners and residents of property within the Community.

Notice of the adoption, amendment or repeal of any Community Association Rules shall be given in writing to each Owner at the address for notices to the Owners as elsewhere provided in this Declaration or the Code of Regulations, and copies of the currently effective Community

Association Rules shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with the Community Association Rules and shall see that the Related Users of such Owners shall comply with the Community Association Rules. In the event of any conflict between the Community Association Rules and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 4.15. Assist Architectural Review Committee. The Community Association shall in all respects cooperate with and assist the Architectural Review Committee in the complete fulfillment of the Architectural Review Committee's functions, and shall in all respects assist the Architectural Review Committee in the enforcement of its Design Guidelines, rules, regulations and decisions.

Section 4.17. Ownership of Other Property. The Community Association, through action of its Board of Trustees, may acquire, hold, and dispose of tangible and intangible personal property and real property in addition to any such property that may be conveyed to the Community Association by Declarant.

Section 4.19. Books and Records. The Community Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Community Association Documents, and the books, records, and financial statements of the Community Association prepared pursuant to the Code of Regulations. The Community Association may charge a reasonable fee for copying such materials. Notwithstanding the foregoing, records concerning the status of the accounts payable with respect to a Residential Lot shall only be made available to the Owner or a Mortgagee of that Residential Lot.

Section 4.20. Successor of Declarant. The Community Association shall succeed to all of the duties and responsibilities of Declarant hereunder after the Turnover Date. The Community Association shall not, after the Turnover Date, succeed to the rights and easements reserved to Declarant hereunder unless such rights and easements are expressly conveyed to the Community Association by recorded written instrument.

Section 4.21. Implied Rights and Obligations. The Community Association may exercise any other right or privilege given to it expressly by the Community Association Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The Community Association shall perform all of the duties and obligations imposed on it expressly by the Community Association Documents or reasonably necessary to perform the duties and obligations contained in the Community Association Documents.

Section 4.23. Rights Deemed Created. All conveyances of Residential Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the rights and powers contained under this Article IV, even though no specific reference to such rights and powers appears in the instrument for such conveyance.

## **ARTICLE V**

### **COMMUNITY ASSOCIATION PROPERTIES**

Section 5.1. Owners' Easements of Enjoyments. Every Owner shall have a non-exclusive easement for the use and enjoyment of the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Residential Lot, subject to the provisions of this Declaration including, but not limited to, the easements set forth in this Article and all conditions, restrictions, easements, rights-of-way, covenants, equitable servitudes and other encumbrances granted or



reserved by Declarant. Except as specifically provided herein, the Common Area shall be for the exclusive use of the Owners.

Section 5.2. Delegation of Use. Any Owner may, subject to the Community Association Rules adopted from time to time by the Board, delegate, in accordance with the Community Association Documents, his right of enjoyment in the Common Area and facilities to his tenants, employees, family, guests or invitees.

Section 5.3. Owners Negligence. In the event that the need for maintenance, repair, or replacement of the Community Association Properties, or any Improvements thereon or portion thereof, is caused through or by the negligent or willful act or omission of any Owner, or by any member of an Owner's family, or by an Owner's guests, tenants or invitees, then the expenses, costs and fees incurred by the Community Association for such maintenance, repair, or replacement, in the amount for which the Owner or the Owner's family members, guests, or invitees are liable under applicable law, shall be a personal obligation of such Owner; and, if not repaid to the Community Association within seven days after the Community Association gives notice to the Owner of the total amount, or of amounts due from time to time, then the sums due shall become a Default Assessment against the Owner's Residential Lot and may be enforced in accordance with Section 7.7.

Section 5.4. Title to Community Association Properties. The Community Association Properties shall be owned by the Community Association and no Owner shall bring any action for partition or division of the Community Association Properties. By acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain a partition action or any other action designed to cause a division of the Community Association Properties, and this Section may be pleaded as a bar to any such action. In the event of the dissolution of the Community Association, other than incident to a merger or consolidation, the Community Association Properties shall, to the extent reasonably possible, be conveyed to a successor association or other association to be used, in any such event, for the common benefit of Owners for similar purposes for which the Community Association Properties were held by the Community Association. In the event such conveyance is refused by the successor association or other association, the Members shall immediately thereupon hold title to the Community Association Properties as tenants in common and shall collectively provide for the continued maintenance and upkeep in accordance with the terms of this Declaration.

Section 5.5. Community Association as Attorney-in-Fact. Each and every Owner hereby irrevocably constitutes and appoints the Community Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Community Association Properties, or any part thereof, upon their damage or destruction as provided in this Article or a complete or partial taking as provided in this Article. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Community Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Community Association as attorney-in-fact.

Section 5.7. Repair and Reconstruction. As soon as practical after obtaining estimates, the Community Association shall, subject to the provisions of Section 5.10, diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Community Association may take any and all necessary or appropriate action to effect repair and reconstruction and no consent or other action by any Owner shall be necessary in connection therewith. Assessments of the Community Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 5.8. Funds for Repair and Reconstruction. The Community Association may, pursuant to Section 7.6 hereof, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners except as provided herein, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair, replacement and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement and reconstruction.

Section 5.10. Decision Not to Rebuild. If Declarant and at least 70% of the Owners (other than Declarant) agree in writing not to repair and reconstruct and no alternative Improvements are authorized, then and in that event such damaged or destroyed Community Association Properties shall be restored to its natural state and maintained as an undeveloped portion of the Community Association Properties.

Section 5.11. Rights of Owners. Whenever all or any part of the Community Association Properties shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof but the Community Association shall act as attorney-in-fact for all Owners in the proceedings incident thereto, unless otherwise prohibited by law.

Section 5.12. Partial Condemnation; Distribution of Award; Reconstruction. The award or payment made for any taking or conveyance described in Section 5.11 shall be payable to the Community Association as Trustee for all Owners. If there are net funds remaining after any restoration or replacement is completed, then such award or net funds may be held as surplus in accordance with Section 8.3.

## **ARTICLE VI**

### **DECLARANT'S RIGHTS AND RESERVATIONS**

Section 6.1. General. Declarant shall have, and hereby retains and reserves, certain rights as described in this Declaration with respect to the Community Association, the Community Association Properties, and the Stablewood Subdivision. The rights and reservations of Declarant set forth in this Declaration shall be deemed excepted and reserved in each recorded Supplemental Declaration, in each conveyance of property by Declarant to the Community Association and in each deed or other instrument by which any property within the Stablewood Subdivision is conveyed by Declarant, or otherwise, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Declaration shall survive the Turnover Date and shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration, including any amendment of this Section. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment. Any or all of the special rights of Declarant hereunder may be transferred to other persons or entities, provided that the transfer shall not enlarge a right beyond that described herein and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the appropriate public records of the jurisdiction in which the Community is located. Declarant further reserves the right to create reservations, exceptions, exclusions and easements convenient or necessary for the use and operation of other property of the Declarant whether located in the Stablewood Subdivision or otherwise.

Section 6.2. Declarant's Approval of Conveyances or Changes in Use of the Community Association Properties. The Community Association shall not, without first obtaining the prior written consent of Declarant, convey, change or alter the use of the Community Association Properties, use the Community Association Properties other than solely for the benefit of Owners, or mortgage the Community Association Properties.

Section 6.3. Maintenance Easement. An easement is hereby reserved to the Declarant, and granted to the Community Association, and any trustee or Manager, and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Stablewood Subdivision and a right to make such use of the Stablewood Subdivision as may be necessary or appropriate to make emergency Maintenance or to perform the duties and functions which the Community Association is obligated or permitted to perform pursuant to the Community Association Documents, including the right to enter upon any Residential Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements on such Residential Lot as required by the Community Association Documents. The Community Association shall not unreasonably interfere with the rights of the Owners in the use of this easement.

Section 6.4. Fencing Easement. It is anticipated that fencing will be constructed over portions of the Stablewood Subdivision. An easement is hereby reserved to Declarant and to the Community Association upon, across, over, in, and under the Stablewood Subdivision for the purpose of constructing, maintaining and operating fencing, gating, entrance features and similar Improvements, including the right to enter upon any Residential Lot in connection therewith; provided, however, that Declarant\_s and the Community Association\_s exercise of the rights granted hereunder shall not unreasonably interfere with the use of any Site for a single family residence. All fencing, gating, entrance features and similar Improvements constructed by Declarant or the Community Association and intended for the common use and enjoyment of all Owners shall be deemed Community Association Properties and be maintained by the Community Association in accordance with this Declaration.

Section 6.5.2 Any common area easement designated as such on a Plat or Plats which shall be developed as part of the common areas for purposes of landscaping or the placement of any Improvements. No Improvement shall be placed in an easement area.

Section 6.7. Declarant\_s Rights to Use the Community Association Properties in Promotion and Marketing. Declarant shall have and hereby reserves for itself the right to the reasonable use of the Community Association Properties and of services offered by the Community Association in connection with the development, construction, promotion, marketing, sales, resales and leasing of properties within the Community. Without limiting the generality of the foregoing, Declarant may: (a) erect and maintain on any part of the Community Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the development, construction, promotion, marketing, sale and leasing of real properties within such boundaries

Section 6.8. Declarant's Rights to complete Development. No provision of this Declaration shall be construed to prevent or limit Declarant\_s rights to and Declarant shall have the right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties within the Community; (b) construct or alter Improvements on any property owned by Declarant; (c) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Declarant or the Community Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Community. Further, Declarant shall have the right of ingress and egress through the streets, paths and walkways located in the Community for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of improvements located outside of the Community including, but not limited to, offices and shopping centers and for the purpose of installation and maintenance of utilities to serve such improvements. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (i) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or replace any Improvements on any Community Association Properties or any property owned by Declarant; or (ii) use any structure on any Community Association Properties or any property owned by Declarant as a construction office, model home or real estate sales or leasing office in connection with the sale of any property within such boundaries; or require Declarant to seek or obtain the approval of the Community

Association for any such activity or Improvement to property by Declarant on any Community Association Properties or any property owned by Declarant. Declarant hereby reserves the right to change or amend any Plat (including any lot or street boundary) with respect to, or which affects, any Community Association Properties or property owned by the Declarant, and each Owner, by acceptance of a deed to a Site, hereby waives the right to object to, and hereby approves, any such change or amendment. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

Section 6.9. Recorded Easements and Building Lines. The Community, and all portions thereof, shall be subject to all easements, building set back lines and build-to- lines, if applicable, shown on any recorded Plat affecting the Community, or any portion thereof, and to any other easements of record.

Section 6.13. Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Community Association Properties for the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements to the Community Association Properties, or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to its Residential Lot by any Owner or such Owner's family, tenants, employees, guests, or invitees.

Section 6.14. Easements Deemed Created. All conveyances of property within the Stablewood Subdivision, including Residential Lots, hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the rights, powers and easements contained in this Article VI, even though no specific reference to such rights, powers and easements or to this Article VI appears in the instrument for such conveyance.

## **ARTICLE VII**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 7.1. Creation of the Lien and Personal. The Declarant, for each Residential Lot owned by it, hereby covenants, and each Owner for each Residential Lot owned by such Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, covenants and agrees and shall be deemed to have covenanted and agreed to pay to the Community Association: (a) Base Assessments; (b) Special Assessments for capital Improvements and other purposes; and (c) Default Assessments which may be assessed against an Owner's Residential Lot pursuant to the Community Association Documents for failure to perform an obligation under the Community Association Documents or because the Community Association has incurred an expense on behalf of the Owner under the Community Association Documents. The Base, Special, and Default Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Residential Lot against which each such Assessment is made until paid. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Residential Lot at the time when the Assessment fell due. No Owner may waive or otherwise exempt himself from liability for Assessments for any reason including, by way of illustration and not limitation, non-use of the Community Association Properties or abandonment of a Residential Lot. No diminution or abatement of Assessment or set-off shall be claimed or allowed for any reason whatsoever, including, by way of illustration and not limitation, any alleged failure of the Community Association or Board of Trustees to take some action or perform some function required to be taken or performed by the Community Association or Board of Trustees under the Community Association Documents or for inconvenience or discomfort arising from the making of Maintenance or Improvements which are the responsibility of the Community Association, or from

any action taken to comply with any law, ordinance or any order or directive of any municipal or other governmental authority.

Section 7.2. Purpose of Assessments. The Assessments levied by the Community Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Community and for the acquisition, improvement and maintenance of the Community Association Properties, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement, and additions thereto, reserve accounts, the cost of labor, equipment, materials, management, and supervision, the salary or fee of the Manager, administrative costs and the payment of interest and principal on funds borrowed by the Community Association.

Section 7.3. Annual Budget. The Board shall prepare a budget prior to the beginning of each fiscal year estimating its net cash flow requirements for the next year and an estimate of the total Assessments to be charged at least 30 days prior to the annual meeting of the Board. On or before December 15 of each year, the Board shall approve the budget in final form, and shall determine, levy, and assess the Community Association's Base Assessments for the following year. Each budget shall include funds for establishing and maintaining reserves for periodic Maintenance, replacement, and maintenance of those Improvements on the Community Association Properties which must be replaced on a periodic basis, and for taxes, capital Improvements, deficiencies from the prior year's Maintenance Fund, and other purposes and shall include any expected income and surplus from the prior year's Maintenance Fund.

Section 7.4. Calculation and Apportionment of Base Assessments. For the purpose of providing funds for the items specified in subsections 8.1.1, 8.1.2 and 8.1.3, the Board shall for each year, commencing with the year that this Declaration is recorded, fix and assess the Base Assessment against each Residential Lot. Base assessments shall be levied against Residential Lots in a fair and reasonable manner as determined by the Board.

7.4.1. As soon as shall be practicable in each year, the Community Association shall send to each Owner requesting same in writing, a written statement providing the amount of the Base Assessment with respect to such Residential Lot for the year in question.

7.4.2. Prior to the Turnover Date, the Declarant may elect to pay the Base Assessments on Residential Lots owned by Declarant or in lieu thereof, not pay such Base Assessments and pay any deficit incurred in operating the Community Association and the Community Association Properties. In the event the Declarant pays Base Assessments and the Base Assessments are insufficient to pay the costs of operating the Community Association and the Community Association Properties, the Board shall levy an additional Base Assessment to cover such deficiency which will be allocated among and charged to all Residential Lots in the same manner as the Base Assessment for that year.

Section 7.5. Date of Commencement of Base Assessments: Due Dates. The Base Assessments provided herein shall commence as to a Residential Lot on the day of the closing of the conveyance of the Residential Lot to an Owner. The first Base Assessment shall be prorated according to the number of days remaining in the calendar year. Assessments shall be collected on a periodic basis as the Board may determine from time to time, but until the Board directs otherwise, Assessments shall be payable quarterly in advance on the first day of each calendar quarter.

Section 7.6. Special Assessments. In addition to the Base Assessments authorized herein, the Board of Trustees may levy, in any Assessment year, a Special Assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital Improvement. Any such Special Assessment that exceeds 30% of the gross annual budget of the Board for that year shall require the assent of at least 70% of the votes of the Owners who are voting in person or by proxy at a special meeting of the Owners duly

called as provided in the Code of Regulations for that purpose attended by at least 60% of the Owners in person or by proxy, written notice of which shall be sent to all Owners at least 10 days in advance and which shall set forth the purpose of the meeting. Notice in writing of the amount of any Special Assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than 30 days after such notice shall have been given. Special Assessments pursuant to this Section shall be payable by Owners in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the Assessment year in which the Special Assessment is approved, if the Board so determines. Special Assessments shall be segregated into a separate account and may only be used for the purpose collected.

Section 7.7. Default Assessments. All monetary fines assessed against an Owner pursuant to the Community Association Documents, or any expense of the Community Association which is the obligation of an Owner or which its incurred by the Community Association on behalf of the Owner pursuant to the Community Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Residential Lot which may be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Default Assessments shall be sent to the Owners subject to such Assessment at least 30 days prior to their due date.

Section 7.8. Effect of Non-Payment of Assessment Lien: Remedies of the Community Association. Any Assessment installment, whether of a Base, Special, or Default Assessment, which is not paid within 30 days of its due date shall be delinquent. In the event that an Assessment installment becomes delinquent, the Community Association, in its sole discretion, may take any or all of the following actions:

7.8.1. Assess a late charge of not less than 5% of the delinquent amount;

7.8.2. Assess an interest charge from the date of delinquency at 1-1/2% per month or the maximum rate allowed by law;

7.8.3. Suspend the voting rights of the Owner during any period of delinquency;

7.8.4. Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

7.8.5. Bring an action at law against any Owner personally obligated to pay the delinquent installments;

7.8.6. File a statement of lien with respect to the Residential Lot, and foreclose on the Residential Lot as set forth in more detail below; and

7.8.7. Suspend the rights of the Owner to use the Community Association Properties and the Common Areas during any period of delinquency. The Community Association may file a statement of lien by recording with the appropriate public records of the jurisdiction in which the Community is located, a written statement with respect to the Residential Lot, setting forth the name of the Owner, the legal description of the Residential Lot, the name of the Community Association, and the amount of delinquent Assessments then owing, which statement shall be duly signed and acknowledged by the President or a Vice President of the Community Association or by the Manager, and which shall be served upon the Owner of the Residential Lot by mail to the address of the Residential Lot or at such other address as the Community Association may have in its records for the Owner of the Residential Lot. Thirty days following the mailing of such notice, the Community Association may proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages under the applicable statutes. Such lien shall be in favor of the Community Association and shall be for the benefit of all other Owners. In either a

personal or foreclosure action, the Community Association shall be entitled to recover as a part of the action, the interest, costs, and reasonable attorneys' fees with respect to the action. The Community Association shall have the power to bid for the Site at the foreclosure sale and to purchase, hold, lease, Mortgage and sell the same. During the period in which a site is owned by the Community Association following foreclosure, no Assessments shall be levied against it and each other Site shall be charged, in addition to its usual Assessments, its prorated share of the Assessment that would have been levied against such Site had it not been acquired by the Community Association as a result of foreclosure. The remedies herein provided shall not be exclusive and the Community Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

Section 7.9. Successor's Liability for Assessments: In addition to the personal obligation of each Owner of a Residential Lot to pay all Assessments thereon and the Community Association's perpetual lien on a Residential Lot for such Assessments, all successors to the fee simple title of a Residential Lot, except as provided in this Section, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Residential Lot, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. This liability of a successor for such amounts due before the successor's acquiring title to the Site shall not be personal, but shall be a lien against the Residential Lot. In addition, such successor shall be entitled to rely on the statement of liens shown on any certificate issued by or on behalf of the Community Association under Section 7.12 hereof.

Section 7.10. Subordination of the Lien: The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a recorded First Mortgage and to any refinancing loan to refinance any such purchase money loan, provided that any such refinancing is evidenced by a First Mortgage of record. However, the lien of the Assessments shall be superior to and prior to any homestead or similar exemption, and acceptance of a deed to any part of the Stablewood Subdivision shall constitute a waiver of the homestead exemption by the grantee in the deed, to the extent permitted by law. No sale or transfer shall relieve a Residential Lot from liability for any Assessments or from the lien thereof. However, sale or transfer of any Residential Lot pursuant to a decree of foreclosure or by a public trustee's foreclosure, or any other proceeding or deed in lieu of foreclosure, for the purpose of enforcing a First Mortgage, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Residential Lots as a common expense at the direction of the Board. No sale or transfer shall relieve the purchaser or transferee of a Residential Lot from liability for, nor the Residential Lot from the lien of, any Assessments made thereafter.

Section 7.11. Exempt Properties. The following portions of the Stablewood Subdivision shall be exempt from the Assessments, charges, and liens created herein:

7.11.1. All properties dedicated to and accepted by any governmental body or agency or any other governmental entity, and devoted to public use;

7.11.2. All utility lines and easements;

7.11.3. The Community Association Properties or easements

Section 7.12. Statement of Status of Assessments. Upon 10 days written notice to the Treasurer of the Community Association or the Manager and payment of a processing fee set by the Community Association from time to time, not to exceed \$50, any Owner or Mortgagee of a Residential Lot shall be furnished a statement of the account for such Residential Lot setting forth:

7.12.1. The amount of any unpaid Assessments (whether Base, Special, or Default Assessments), interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Residential Lot;

7.12.2. The amount of the current periodic installments of the Base Assessment and the date through which they are paid; and

7.12.3. Any other information deemed proper by the Community Association. The information contained in such statement, when signed by the Treasurer or Manager, shall be conclusive upon the Community Association as to the person or persons to whom such statement is issued and who rely on it in good faith.

Section 7.13. Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made at which time any shortfalls in collections may be assessed retroactively by the Community Association.

## **ARTICLE VIII**

### **USE OF MAINTENANCE FUNDS**

Section 8.1. Application of Assessments. The Community Association shall apply all funds received by pursuant to this Declaration, and all other funds and property received by it from any source, including, without limitation, the proceeds of loans referred to in Section 8.2 and the surplus of funds referred to in Section 8.3, to the following, in the order stated:

8.1.1. The payment of all principal and interest, when due, on all sums borrowed by or loaned to the Community Association, to the extent required under any agreement with holders or Owners of debt obligations referred to in Section 8.2 hereof

8.1.2. Administrative costs and expenses incurred by the Community Association in the exercise of its powers, authority, and duties described in the Community Association Documents; and

8.1.3. The promotion of the recreation, health, safety, and welfare of the Owners and occupants of the Stablewood Subdivision and for the improvement and maintenance of the Community Association Properties, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, reserve accounts, the cost of labor, equipment, materials, management and supervision and the salary of the Manager, if any.

Section 8.2. Authority to Borrow Funds. For the purpose of providing funds for uses specified in Section 7.2, the Community Association is hereby granted the right to borrow funds from time to time upon such terms and conditions deemed appropriate by the Board. In order to secure the repayment of any and all sums borrowed by or loaned to it from time to time, the Community Association is hereby granted the right and power:

8.2.1. To assign and pledge all revenues received and to be received by it under any provision of the Community Association Documents, including, but not limited to, the proceeds of the Base Assessments payable hereunder.

8.2.2. To enter into agreements with holders and Owners of any debt obligations with respect to the collection and disbursement of funds.



8.2.3. Subject to the provisions of Sections 6.2, to grant and convey mortgages and security interests in the Community Association Properties.

The amounts, terms and rates of borrowing and the provisions of all agreements with holders or Owners of any such debt obligation shall be subject solely to the decision of the Board acting in its absolute discretion.

Section 8.3. Authority to Maintain Surplus. The Community Association shall not be obligated to spend in any particular time period all the sums collected or received by it in such time period or in any other time period and may carry forward, as surplus, any balances remaining; nor shall the Community Association be obligated to apply any such surplus to the reduction of the amount of the Base Assessment in any year, but may carry forward from year to year and time to time such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of the Community Association and the effectiveness of its purposes as set forth in the Community Association Documents.

## **ARTICLE IX**

### **STABLEWOOD SUBDIVISION USE RESTRICTIONS**

Section 9.1. General Restriction. All property located in the Stablewood Subdivision shall be used only for the purposes set forth herein, as permitted by all applicable laws and ordinances, and as set forth in the Community Association Documents and specific recorded covenants affecting all or any part of the Stablewood Subdivision, and any amendments thereto. No Improvements may be constructed in the Stablewood Subdivision without full compliance with this Declaration, which sets forth the design review responsibilities of the Architectural Review Committee.

Section 9.2. Maintenance of Residential Lots. Except as provided otherwise in the Community Association Documents, or by written agreement with the Community Association, all maintenance of the Residential Lots and all structures, landscaping, parking areas, and other Improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain said Residential Lot in accordance with the Community Association Documents. The Community Association may, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance responsibility provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action, within three days in the case of maintenance to the exterior of a Building or landscape maintenance, or within 10 days in the case of other maintenance, after mailing of such written notice, then the Community Association may proceed with such remedial action. The notice requirements set forth in this Section 9.2 will not be required if an emergency exists in the reasonable judgment of the Community Association. The expenses of such maintenance shall be reimbursed to the Community Association by the Owner. Such charges shall be a Default Assessment and lien on the Residential Lot of the Owner as provided in Section 7.7 hereof. The rights of the Community Association set forth in this Section 9.2 shall be in addition to all other rights of the Community Association set forth in the Community Association Documents and may be performed by the Community Association and their respective agents, employees, successors or assigns. By acceptance of a deed to a Site, each Owner releases the Community Association and its officers, trustees, agents and employees and agrees that no claim may be brought against any party authorized to act under this Section for damages caused in the performance of these rights. Each Owner shall indemnify and hold the Community Association and its officers, trustees, agents and employees harmless from and against any and all claims arising out of any action undertaken by them pursuant to this Section.

Section 9.3. Compliance With Insurance Requirements. It shall be the responsibility of the individual Owners, and at their expense, to make arrangements in regard to title insurance on their Residential Lots upon any resale, for hazard insurance on the Improvements, personal property and furnishings located on their Residential Lots, and for public liability insurance covering their Residential Lots; provided, however, that none of the above-described insurance coverages shall violate insurance requirements of the Community Association. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Residential Lot as such Owner concludes to be desirable; provided, however, that none of such insurance coverages obtained by an Owner shall affect any insurance coverages obtained by the Community Association nor cause the diminution or termination thereof. Any such insurance obtained by an Owner shall waive the particular insurance company's right of subrogation against the Community Association and other Owners.

Section 9.4. Motorized Vehicles. No commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, motorcycles, trail bikes, recreational vehicles, motor homes, motor coaches, campers, trailers, boats or boat trailers, or any other motorized vehicles other than non-commercial passenger vehicles shall be parked, stored, or in any manner kept or placed on any portion of the Stablewood Subdivision or the roads therein, except in an enclosed garage or totally screened from view from any angle from the street. However, non-commercial passenger vehicles only may be parked in areas designated by the Board and on the paved portion of a Residential Lot. This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Stablewood Subdivision or for the initial construction by Declarant or other Owners. No work on automobiles or other vehicle repair shall be performed in any portion of the Community Association Properties or in the Common Areas except in emergencies.

Section 9.5. Abandoned, Inoperable or Oversized Vehicles. Abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any portion of the Stablewood Subdivision. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posed on the unused vehicle; and if such vehicle has not been removed within 72 hours thereafter, the Community Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner. "Oversized" vehicles, for purposes of this Section, shall be vehicles that are too high to clear the entrance to a residential garage. All unsightly or oversized vehicles, garden maintenance equipment, tractors and related implements and all other unsightly equipment and machinery is required to be stored in a barn, garage or locations so designated by Declarant, the Committee or the Board

Section 9.6. Partition or Combination of Residential Lots. No part of a Residential Lot may be partitioned or separated from any other part thereof except as provided herein. Whether partitioned, combined, or unchanged, each Residential Lot shall be conveyed, transferred, gifted, devised, bequeathed, encumbered, or otherwise disposed of, as the case may be, with all appurtenant rights, obligations and interests created by law or by this Declaration, including the Owner's membership in the Community Association and the right to use the Common Area, and liability for all Assessments as established for such Residential Lot by the Board. No Residential Lot may be subdivided into two or more Sites and no Residential Lot may be combined with one or more additional Sites to form one or more Residential Lots without the written consent of Declarant (or of the Community Association after the Turnover Date) and compliance with all subdivision regulations. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses thereof, including legal and accounting fees. Any recorded instrument for partition or combination of Residential Lots shall make adequate provision for the adjustment of

voting rights and liability for payment of Assessments appurtenant to or imposed on such Residential Lots.

Section 9.7. Damage or Destruction on Residential Lots. In the event of damage or destruction to the Improvements located on any of the Residential Lots, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 90 days from the date of such damage or destruction, then the Community Association may, after notice and hearing as provided in the Code of Regulations, impose a fine of not less than \$500 per day on the Owner of the Residential Lot until repair and reconstruction is commenced. Each Owner shall diligently proceed with all repair and reconstruction and if repair and reconstruction is commenced but then abandoned for a period of more than 30 days, then unless the Owner can prove to the satisfaction of the Community Association that such failure is due to circumstances beyond the Owner's control, the Community Association may, after notice and hearing as provided in the Code of Regulations, impose a fine of not less than \$500 per day on the Owner of such Site until repair and reconstruction is commenced. Such fine shall be a Default Assessment and a lien against the Residential Lot as provided in Section 7.7 hereof.

Section 9.8. Excavation and Tree Removal. No excavation shall be made except in connection with Improvements approved as herein provided. For purposes of this Section, "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting), which results in a removal of earth, rock, or other substance to a depth of more than 18 inches below the natural surface of the land. No trees shall be removed except in accordance with the Design Guidelines.

Section 9.9. Electrical and Telephone Service. All electrical, cable, gas, and telephone service will be placed underground on the Residential Lots.

Section 9.9.1. Signs. No signs of any kind shall be displayed to the public view on or from any portion of Stablewood Subdivision except those signs approved by the Committee, or signs of Declarant or its affiliates or assigns, or except as may be required by law.

Section 9.10 Animals and Pets. No animals, livestock, or poultry of any kind shall be kept, raised, or bred on any portion of the Stablewood Subdivision, except horses (subject to rules and limitations set forth in section 9.10.1), dogs, cats, or other household pets, but then only to the extent and in conformity with the kind and number regulated, permitted or prohibited from time to time by the Community Association Rules.

Section 9.10.1 Horses. The number of horses allowed upon any one contiguous residential lot at any time is based upon the size of the lot. The smallest size lot upon which any horse(s) will be allowed is three (3) acres. After the minimum three (3) acres has been established, there shall not be allowed more than one horse for each one and one half (1.5) acres contained within the lot up to a maximum of 4 horses. The Owner shall be responsible for controlling odor, insects, animal waste and runoff as it relates to the keeping of horses or other species on said Lot and the Owner is responsible for providing adequate pasture area for the horses or other species. No stallions that have reached 2 years of age may be kept on any property. Should the Owner fail to comply with these strict standards, complaints may be issued to the Developer or the Association, if it has been formed, and the Developer or Association shall have the right to enter said property and bring it up to suitable standards at the Owner's expense. Should said Owner have more than three complaints lodged against him at different times, during a one year period, the Developer or Association reserves the right to determine whether said Owner shall lose his right to keep horses or other species upon his property. Horse stables, paddocks or facilities located on individual Lots shall not be used or maintained for any commercial purpose. The Owners of all Lots will be subject to the laws, ordinances, health codes and rules and regulations of the State of Mississippi, Harrison County, Mississippi. Stablewood is and shall remain a multi-purpose subdivision intended for the use and enjoyment of horsemen including the non-commercial raising of horses. All animals,

including dogs, must be kept within a fenced area, encaged or otherwise controlled, and not be allowed to wander off or fly about. There shall be no commercial breeding, raising and/or boarding of any animals. The care of all animals shall be performed by the Owner in a clean, neat and orderly fashion in accordance with the prevailing customs and methods; the physical facilities for the same shall also be maintained by the Owner in a clean, neat and orderly fashion in accordance with the prevailing custom and usage so that such facilities shall not become a nuisance to the remaining Owners and shall comply with all requirements of the Harrison County Health Department and the Board. At no time will swine, guinea hens, peacocks, or geese be allowed.

Section 9.11 Household pets, such as dogs and cats, must be contained upon Owner's Residential Lot and such pets may not be permitted to run at large at any time.

Section 9.11.1. Pedestrians within the Stablewood Subdivision who are accompanied by dogs must have the dogs under the pedestrians' direct control by use of a leash not to exceed 25 feet in length. All animal waste shall be promptly cleaned up by the pedestrian.

Section 9.12. Drainage. No Owner shall do or permit any work, construct any Improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Stablewood Subdivision or any Common Area therein, except to the extent such alteration and drainage pattern is approved in writing by the Committee and except for rights reserved to Declarant to alter or change drainage patterns.

Section 9.13. Trash. No trash, ashes, garbage or other refuse shall be thrown or dumped on any land or area within the Stablewood Subdivision. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbance.

Section 9.14. Construction Regulations of the Design Guidelines. All Owners and their contractors shall comply with the construction regulations of the Design Guidelines, and with any construction regulations adopted, from time to time, by Declarant, the Committee or the Board. Such regulations may affect, without limitation, the following: trash and debris removal, sanitary facilities, parking areas, permissible times of access and construction; outside storage, restoration of damaged property; conduct and behavior of builders, subcontractors, Owners and their representatives in the Stablewood Subdivision, the conservation of landscape materials, and fire protection. In order to ensure compliance with such construction regulations, the Declarant, the Committee or the Board may collect security deposits from any Owner or person or entity involved in construction or remodeling and use such security deposits to correct violations of the construction regulations. Such security deposits and charges against them shall be in addition to any other remedy provided by this Declaration. Copies of the Design Guidelines (and construction regulations) will be available upon written request to Declarant (or its successors or assigns).

Section 9.15. Landscaping. All Residential Lots must be landscaped according to a landscaping plan approved by the Committee. The Declarant or the Committee may require a Site to be landscaped according to an approved plan to the start of construction on any other Improvements. All landscaping, including pre-construction landscaping, must be maintained according to the standards set forth in the Design Guidelines and the rules and regulations of the Community Association.

Section 9.16. Temporary Structures. No temporary structures shall be permitted except as may be determined to be necessary during construction and as specifically authorized by the Committee.

Section 9.17. Compliance With Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasigovernmental regulations with respect to all or any portion of the Stablewood Subdivision.

Section 9.18. No Outside clotheslines. No laundry or wash shall be dried or hung outside any Building.

Section 9.19. Antennas. Except as otherwise required by applicable law or ordinance, no exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without appropriate screening and without the prior written consent of the Committee.

Section 9.20. Outside Burning. No Owner shall permit any condition upon its portion of the Stablewood Subdivision which creates a fire hazard or is in violation of fire prevention regulations. No fires will be permitted which may produce noxious fumes or objectionable odors.

Section 9.21. Annoying Lights, Sounds or Odors. No light, sound or odor shall be emitted from any property within the Stablewood Subdivision that is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices or lights, other than devices used exclusively for security, fire prevention or fire control purposes, shall be located or used on any property except with the prior written approval of the Architectural Review Committee.

Section 9.22. Garage. All dwellings on any lot type are required to have an enclosed garage for a minimum of two cars, constructed on and opening on the side or rear of the dwelling, unless approved otherwise in writing by the Developer (i.e. 90' from Road). All garages shall be constructed in substantial architectural conformity with the construction of the dwelling.

Section 9.23. Public Assemblages. The Board, in its discretion, may ban or permit public assemblages and rallies within the Stablewood Subdivision.

Section 9.24. House Numbers and Mail Boxes. Each dwelling unit shall have a house number affixed to a mailbox conforming to a design and location established by the Committee.

Section 9.25. Continuity of Construction. It is Declarant's intention that all construction be completed promptly. All Improvements commenced in the Stablewood Subdivision shall be prosecuted diligently to completion and the exterior of any Building shall be completed within 12 months of commencement, unless the Committee grants an exception in writing. If an improvement is commenced and construction is then abandoned for more than 30 days or construction of the exterior of any Building is not completed within the required 12-month period, after notice and hearing as provided in the Code of Regulations, the Community Association may impose a fine of not less than \$500 per day on the Owner of the Residential Lot until construction is resumed, or the improvement is completed, whichever is earlier, unless the Owner can prove to the satisfaction of the Board that such abandonment or delayed construction is for circumstances beyond the Owner's control. Such charges shall be a Default Assessment and a lien as provided in Section 7.7 hereof.

Section 9.26. Pools. Spas and pools will be permitted subject to prior written approval from the Architectural Review Committee. There shall be no above ground pools.

Section 9.27. Fences. No fence, gate, wall, bulkhead or pier shall be erected until after the plans and specifications showing the nature, shape, height, materials, construction, and location of said fence, gate, wall, bulkhead or pier shall have been approved in writing by the Architectural Review Board. Fencing should blend with theme of Stablewood with low visual impact. Entry (driveway) monuments, pillars, posts, or columns and gates may be constructed of brick, ornamental wrought iron (or equivalent) or combination of both. No chain link fences allowed. All fences must be constructed of wood or ornamental iron. Wood fences are encouraged to be of the Kentucky "horse fence" style. Solid wood fencing is discouraged except for "screens." No fencing is allowed in the front yard except for ornamental iron.

Section 9.28. Nuisance. No obnoxious or offensive activity or nuisance shall be carried on or be permitted to exist within the Stablewood Subdivision, nor shall anything be done or permitted which is or may become offensive or detrimental or cause a disturbance or annoyance to any other part of the Stablewood Subdivision or its occupants.

Section 9.30. Hazardous Materials. Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other 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 or his tenants, guests, invitees, or permittees shall knowingly use, generate, manufacture, store, release, dispose of or knowingly use, permit to exist in, on, under or about his or her Residential Lot, the Common Area or any portion of the Stablewood Subdivision, or transport to or from any portion of the Stablewood Subdivision any Hazardous Materials except in compliance with the Environmental Laws.

Section 9.31. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person or entity other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself a perpetual easement across all property located in the Stablewood Subdivision for the purpose of altering drainage and water flow. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, stream, pond or lake within the Stablewood Subdivision. All septic systems must be designed and constructed based upon the maximum effluent that may be generated by the property's current or future use.

Section 9.32. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed in the Stablewood Subdivision unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Committee. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any site.

Section 9.33. Fuel Storage. No above ground storage of gasoline, diesel, propane or other fuels shall be permitted in the Stablewood Subdivision except that fuel may be stored on each Site for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Community Association shall be permitted to store fuel for the operation of maintenance vehicles, generators and similar equipment.

Section 9.34. Removal of Trees: No trees may be removed from any Lot without the written consent of Developer until the Owner is ready to begin construction. Unless approved by the Developer or the Property Owners Association, there shall be no more than sixty percent (60%) of the trees cut and removed from the Lot. "Trees" in this section refer to those trees six (6) inches or more in diameter as measured six (6) inches above ground level.

Section 9.35. Subdivision: No Lot shall be subdivided, or its boundary lines changed, unless each part of the subdivided Lot becomes a part of an adjacent whole Lot, and the total number of Lots is not increased or decreased without the written consent of the Developer or Property Owners Association. Each resulting modified Lot shall thereafter constitute one Lot. The restrictions and covenants herein shall apply to the modified Lots resulting from said subdivision and addition. However, the Developer hereby expressly reserves to itself the right to re-plat or re-sub divide any Lots shown on the Plats.

Section 9.36. Mail Boxes and Paper Boxes: Any mail box or paper box shall be erected only after the plans and specifications showing the nature, shape, height, materials and location of

said mail boxes and paper boxes shall have been approved in writing by the Architectural Review Board.

Section 9.37. Divided Ownership: No Lot, or dwelling thereon, shall be leased, purchased, sold, conveyed, owned, used or operated so as to constitute or create a time-share estate.

Section 9.38. Dwelling: No home will be allowed an overall height of more than 35' (Thirty-Five feet) measured in accordance with the Harrison County Building Code. The size of the house must be at least 2800 square foot (Twenty-Eight Hundred) of heating living space not including overhangs, porches and garages.

Section 9.39. Driveways and Walkways: Driveways must conform to a 14' (Fourteen Foot) minimum width. Homeowners are encouraged to design some off-street parking at their site. Driveway minimum width should be 16' to 20' (Sixteen to Twenty Feet) at the junction with roadway. The initial (i.e. beginning from the street) 150' of driveway shall be constructed of stone, brick or exposed aggregate (V2' screen) concrete, or a combination. Other materials, except tar, may be used, but only if more than 150' (One Hundred Fifty Feet) from the street. No driveway should be constructed within 10' (Ten Feet) of any side property line.

Section 9.40. Lighting: A natural gas light shall be purchased and installed at either the front door or on a pole in the front yard and be a type approved by the Review Committee. All natural gas lights shall be lit from sunset to sunrise. All security and landscape lighting must be directed downward, diffused or of low wattage so as not to infringe on adjacent neighbors. It must be compatible with the residence's structure, design, and style

## **ARTICLE X**

### **ARCHITECTURAL REVIEW COMMITTEE**

Section 10.1. Membership. There is hereby established an Architectural Review Committee which shall be responsible for the establishment and administration of Design Guidelines to carry out the purposes and intent of this Declaration. The Committee shall be composed of a minimum of three persons, who need not be Members. All of the members of the Committee shall be appointed, removed, and replaced by the Declarant in its sole discretion, until the Turnover Date, at which time the Board shall succeed to the Declarant's right to appoint, remove or replace the members of the Committee.

Section 10.2. Purpose. The Committee shall review, study and either approve or reject proposed Improvements and proposed alterations to Improvements in the Stablewood Subdivision, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines as shall be adopted and established and may be amended from time to time by the Committee. The Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing Buildings as to external design, quality and type of construction, materials, color, location on the Site, height, grade and finished ground elevation, and all aesthetic considerations herein set forth. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

Section 10.3. Organization and Operation of Committee.

10.3.1. The term of office of each member of the Committee, subject to Section 10.1, shall be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in

the event of a temporary absence of a member, a successor may be appointed as provided in Section 10.1.

10.3.2. So long as the Declarant appoints the Committee, the Declarant shall appoint the chairman. At such time as the Committee is appointed by the Board, the chairman shall be elected annually from among the members of the Committee by majority vote of said members.

10.3.3. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. Such notice shall set forth the time and place of said meeting, which notice may be waived by any member. In the absence of a chairman, the parties appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

10.3.4. The affirmative vote of a majority of the members of the Committee present at a meeting at which a quorum is present shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

10.3.5. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

Section 10.4. Expenses. Except as hereinafter provided, all expenses of the Committee shall be paid by the Community Association. The Committee shall have the right to charge a filing fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such filing fees shall be collected by the Committee and remitted to the Community Association to help defray the expenses of the Committee's operation.

Section 10.5. Design Guidelines and Rules. The Committee shall adopt, establish and publish, from time to time, Design Guidelines, which shall be a Community Association Document. The Design Guidelines shall not be inconsistent with the Declaration but shall more specifically define and describe the design standards for the Community and the various uses within the Community. Subject to the foregoing, the Design Guidelines may be modified or amended from time to time by the Committee in its sole and absolute discretion. All prospective Owners and builders are advised to contact the Committee to obtain the most current copy of the Design Guidelines.

Section 10.6. Variances. The Committee may authorize variances from compliance with any of the Design Guidelines and their procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the denial of any permit, or disapproval of the terms of any financing shall not necessarily be considered a hardship warranting a variance.

Section 10.7. Limitation of Liability. The Committee may act in its sole discretion in approving or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual member thereof, shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual member thereof acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval or



failure to approve. Neither the Board, the Architectural Review Committee or any agent thereof, nor Declarant or any of its partners, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Community Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events, the Committee shall be defended and indemnified by the Community Association in any such suit or proceeding.

Section 10.8. Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Architectural Review Committee, and upon written request of any Owner or his agent, an existing or prospective Mortgagee or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether or not, to the best of the Committee's knowledge, the Improvements constructed on the Site are in compliance with the Design Guidelines. Unless such request shall be complied with within 30 days after receipt thereof, it shall be conclusively presumed that the Owner and the affected Residential Lot is in conformance with all the terms and conditions under the control of the Committee.

Section 10.9. General. The right of an Owner, developer, person or other entity to construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any of the Stablewood Subdivision or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface contour or drainage thereof, or install any utility line or conduit thereon or thereover, shall be subject to the Design Guidelines and to the general restrictions set forth herein.

Section 10.10. Approval Required. No Building or other structure shall be placed, erected or installed in the Stablewood Subdivision, no construction (which term shall include within its definition staking, clearing, excavation, grading and other site work), no exterior alteration or modification of existing Improvements, and no plantings or removal of plants, trees or shrubs shall be permitted without, until and unless the Owner first obtains the written approval thereof from the Committee and otherwise complies with the provisions thereof. Any excavation, construction, reconstruction, or the refinishing or alteration of any part of the exterior of any Building or other Improvement in the Stablewood Subdivision is absolutely prohibited until and unless the Owner or developer first obtains approval thereof from the Architectural Review Committee and otherwise complies with the provisions hereof. All Improvements shall be constructed only in accordance with approved plans.

Section 10.11. Removal of Non-Conforming Improvements. The Community Association, upon request of the Committee and after reasonable notice to the offender and to the Owner, may remove any Improvements constructed, reconstructed, refinished, altered, or maintained in violation of these covenants, and the Owner thereof shall forthwith reimburse the Community Association, as the context requires, for all expenses incurred in connection therewith.

Section 10.12. Compliance. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Design Guidelines and any procedures promulgated by the Committee may be excluded by the Board from the Stablewood Subdivision without liability to any person, subject to the notice and hearing procedures contained in the Code of Regulations.

Section 10.13. Development by Declarant. Notwithstanding any other provisions of this Article X or of this Declaration which may be to the contrary, the provisions of this Article X shall not apply to any improvement to property proposed or made by Declarant or its successors and assigns in connection with its development, construction, promotion, marketing, sale or leasing of properties within the boundaries of the area comprised of the Stablewood Subdivision and the Expansion Stablewood Subdivision.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.1. Term. The covenants and restrictions of this Declaration shall run with the land and bind the Stablewood Subdivision for a term of 50 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of time of 10 years each, unless otherwise terminated or modified as hereinafter provided.

Section 11.2. Amendment. Subject to the provisions of Article XII of this Declaration, until the Turnover Date, Declarant may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Residential Lots, (c) required to conform to the requirements of FNMA or FHLMC, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Residential Lot unless the Owner thereof has consented to such amendment in writing. Any amendment not initiated by Declarant may be made only with the consent of Declarant and the affirmative vote or written consent, or any combination thereof, of at least 67% of the Members; provided, however, that the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 11.3. Effective on Recording. Any amendment, to be effective, must be recorded in the appropriate public records of the jurisdiction in which the Community is located, as hereinafter provided. Any amendment shall be effective immediately upon such recondition.

Section 11.4. Revocation. This Declaration shall not be revoked without the consent of all of the Owners in a written instrument duly recorded.

Section 11.5. Compliance with Documents. Each Owner shall abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Community Association Documents.

Section 11.6. Violations Deemed a Nuisance. Every violation hereof or of any other of the Community Association Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof. In addition, all public and private remedies allowed at law or equity against anyone in violation of these covenants shall be available.

Section 11.7. Compliance. Each Member, Owner, or other occupant of any part of the Stablewood Subdivision shall comply with the provisions of the Community Association Documents as the same may be amended from time to time.

Section 11.8. Failure to Comply. Failure to comply herewith shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Code of Regulations shall be given to the non-complying Owner prior to commencing any legal proceedings.

Section 11.9. Enforcement. The Community Association or any Owner shall have the right to enforce against any Owner, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Community Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.10. Remedies. In addition to the remedies set forth above in this Article XI, any violation of the Community Association Documents shall give to the Board, the Manager, the Community Association or the Declarant, on behalf of the Owners, the right to enter upon the offending Site or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner any Building, thing or condition that may exist thereon contrary to the interest and meaning of the Community Association Documents. If the offense occurs on any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition. The Board, the Manager, the Community Association and their respective trustees, officers, agents and employees shall have no liability to any Owner or such Owner\_s occupants, guests or tenants for any actions taken pursuant to this Declaration.

Section 11.11. Non-Exclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

Section 11.12. No Liability. No member of the Board, the Declarant, the Manager nor any Owner shall be liable to any other Owner for the failure to enforce any of the Community Association Documents at any time.

Section 11.13. Recovery of Costs. If legal assistance is obtained to enforce any of the provisions hereof, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of or to restrain the violation of the Community Association Documents, the prevailing party shall be entitled to recover all costs incurred by it in such. including reasonable attorneys\_ fees.

Section 11.14. Resolution of Disputes. If any dispute or question arises between Owners or between Owners and the Community Association relating to the interpretation, performance or non-performance, violation, or enforcement of the Community Association Documents, such matter may be subject to a hearing and determination by the Board in accordance with the procedures which may be set forth in the Code of Regulations.

Section 11.15. Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of the provisions hereof. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 11.16. Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 11.17. Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

Section 11.18. Registration of Mailing Address. Each Owner and Member shall register his mailing address with the Secretary of the Community Association from time to time. If an Owner or Member fails to register his mailing address, such address shall be deemed to be the address of the Owner\_s Residential Lot.

Section 11.19. Notice. All notices or requests required hereunder shall be in writing. Notice to any Owner or Member shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by first class mail, to the address of such Owner or Member on file in the records of the Community Association at the time of such mailing. Notice to the Board or to the Community Association shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by first class mail, to the Community

Association, the Board, the Committee or the Manager, at such address as shall be established by the Community Association from time to time by notice to the Owners and Members.

Section 11.20. Waiver. No failure on the part of the Community Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy hereunder shall operate as a waiver, except as herein specifically provided. No waiver shall be effective unless it is in writing, signed by the president or vice president of the Board on behalf of the Community Association.

Section 11.21. Conflicts Between Documents. In case of conflict between the Declaration and the Articles of Incorporation or the Code of Regulations, the Declaration shall control. In case of conflict between the Articles of Incorporation and the Code of Regulations, the Articles of Incorporation shall control. Any conflict between the terms of this Declaration and the terms of the Design Guidelines shall be resolved by Declarant in its sole and absolute discretion.

Section 11.22. Assignment. Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Stablewood Subdivision. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the appropriate public records of the jurisdiction in which the Community is located.

Section 11.23. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Community Association unless approved by Declarant or by a vote of 70% of the Members. This Section shall not apply, however, to (a) actions brought by the Community Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens or the enforcement of actions taken by the Architectural Review Committee), (b) the imposition and collection of Assessments as provided in Article VII hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Community Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage vote, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 11.24. Limitation of Liability and Indemnification. The Community Association shall indemnify every officer, trustee, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, trustee, 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 of Trustees) to which he or she may be a party by reason of being or having been an officer, trustee, or committee member. The officers, trustees, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and trustees shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Community Association, and the Community Association shall indemnify and forever hold each such officer and trustee 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, trustee, or committee member, or former officer, trustee, or committee member may be entitled. The Community Association shall, at its expense, maintain adequate general liability and officers\_ and trustees\_ liability insurance as required in Article IV to fund this obligation, if such insurance is reasonably available.

Section 11.26. Security. The Community Association may maintain or support certain activities within the Stablewood Subdivision designed to make the Stablewood Subdivision safer than it otherwise might be including, but not limited to, providing or entering into agreements with others to provide security services to the Stablewood Subdivision. The Community Association shall have the right to charge a fee to Owners for such services. Neither the Community

Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security within the Stablewood Subdivision, however, and neither the Community Association, Declarant, nor any successor of Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of security measures undertaken. All Owners and occupants of any Residential Lot, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Community Association and its Board of Trustees, Declarant, or any successor of Declarant do not represent or warrant that any fire protection system, burglar alarm system or other security system installed in any Residential Lot may not be compromised or circumvented, or that any fire protection or burglar alarm systems or other security systems will prevent loss, injury or death by fire or otherwise. Each Owner, by acceptance of a deed to a Site, releases and indemnifies Declarant and the Community Association from all claims arising out of any security measures undertaken or provided by or through Declarant or the Community Association.

Section 11.27. Waiver of Common Area Facilities Liability. Each Owner, by taking title to a Site and the Community Association by its joinder in this Declaration and each person using any such facility agrees that neither Declarant nor any entity designing, constructing, owning, operating or managing the Common Area Facilities shall be liable to the Owner or the Community Association or any invitee of the Owner or the Community Association for any loss or damage for personal injury, damage to property, trespass or any other alleged wrong attributable to the Common Area Facilities or 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 Declarant or any other entity or person designing, constructing, managing, operating or owning the Common Area Facilities. Each Owner and the Community Association agree to indemnify and hold harmless Declarant and any other entity designing, constructing, managing, operating or owning the Common Area Facilities 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 Common Area Facilities as originally designed and constructed and as same may be altered in design, layout and construction from time to time.

Section 11.28. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

## **ARTICLE XII**

### **MORTGAGEE RIGHTS**

Section 12.1. General. The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Residential Lots in the Community. To the extent applicable, necessary, or proper, the provisions of this Article XII apply to this Declaration, the Articles and the Code of Regulations.

Section 12.2. Notices of Action. A holder, insurer, or guarantor of a First Mortgage, who provides written request to the Community Association (such request to state the name and address of such holder, insurer, or guarantor and identification of the Residential Lot), shall be an "eligible holder" (hereinafter "Eligible Holder") and shall be entitled to timely written notice of:

12.2.1 Any condemnation loss or casualty loss which affects a material portion of the Community Association Properties or which affects any Residential Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

12.2.1 Any condemnation loss or casualty loss which affects a material portion of the Community Association Properties or which affects any Residential Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

12.2.2. Any default in the performance of any obligation under the Community Association Documents, including any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible Holder (or any First Mortgagee) which continues for a period of 60 days;

Section 12.3. Other Provisions for the Benefit of Eligible Holders. To the extent permitted under applicable law, the approval of 51% of the Eligible Holders of Mortgages on Residential Lots subject to Eligible Holder Mortgages shall be obtained before taking the following actions:

12.3.1. Any election to terminate the legal status of the Community Association after substantial destruction or a substantial taking in condemnation of the Community Association Properties.

Section 12.4. Eligible Holders Approval of Amendments to Documents. To the extent permitted by applicable law, and except for amendments or terminations made after substantial destruction or a substantial taking in condemnation of the Community Association Properties, the following approvals shall be required:

12.4.1. The approval of 70% of the Eligible Holders of Mortgages on Residential Lots subject to Eligible Holder Mortgages shall be required to terminate the legal status of the Community Association; and

Section 12.5. Other Approval Requirements. Unless at least 70% of the First Mortgagees (based on one vote for each First Mortgage owned) have given their prior written approval, the Community Association shall not be entitled to:

12.5.1. Amend this Declaration to change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner;

12.5.2. Fail to maintain fire and extended coverage insurance on insurable Improvements to the Common Area in an amount equal to 100% of current replacement cost; or

12.5.3. Use hazard insurance proceeds for losses to the Improvements to the Common Area for other than the repair, replacement, or reconstruction of such Improvements.

Section 12.6. Approval Deemed Given. If approval of an Eligible Holder or First Mortgagee is requested in writing pursuant to this Article XII and a negative response is not received by the Community Association within 30 days after such Eligible Holder\_s or First Mortgagee\_s receipt thereof, then such Eligible Holder or First Mortgagee shall be deemed to have given its approval.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day first above written.

STABLE WOOD, LLC

By: \_\_\_\_\_

**STATE OF MISSISSIPPI**

**COUNTY OF MARION**

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, Michael A. Webb, Managing Partner of Stablewood, L.L.C., a Mississippi Limited Liability Company, on behalf of the company, who acknowledged that he signed, executed and delivered the within and foregoing instrument on the day and year therein written as his own free and voluntary act and deed.

GIVEN under my hand and seal of office this the \_\_\_\_ day of August, 2005.

\_\_\_\_\_

NOTARY PUBLIC

(SEAL)

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

**DESIGN GUIDELINES  
STABLEWOOD SUBDIVISION**

**ADOPTED: 8/02/05**

## **INTRODUCTION**

Pursuant to Article X of the Declaration of Covenants, Conditions, Restrictions and Easements of Stablewood Subdivision, the written approval of the Architectural Review Committee must be obtained before lot clearing or construction may begin on any lot. An applicant seeking such a permit is required to submit to the Declarant/Stablewood Architectural Review Committee (SAC) a complete set of final plans and specifications. The submittal should conform to the specifications detailed below and must include: (1) house plans including elevations and floor plans, clearly indicating height; (2) site plan including house footprint, layout of any fencing, type of driveway and location of sidewalk; (3) roof type and color; (4) siding type and color as well as trim/accent colors; (5) landscape plan; (6) fencing detail, if fence is to be constructed; (7) swimming pool detail, if pool is to be constructed; and (8) construction damage deposit in the amount of \$500.00, payable to the Stablewood Home Owners Association, Inc.

### **Architecture**

Stablewood is influenced by several architectural styles as are experienced throughout Coastal Louisiana and Mississippi. You may choose to design a contemporary or traditional style home from modern to older periods. Traditional styles of the South are encouraged but not solely accepted. We encourage you to design a home which blends into the natural surroundings as well as blending with other homes in this community. The design review process requires that you make a timely submission to the committee so that they can make an adequate study of your proposal.

### **Height, Bulk & Mass**

No home will be allowed an overall height of more than 40\_ (forty feet) measured in accordance with the Harrison County Building Code. The size of the house must be at least 2800 square feet (Twenty-Eight Hundred) of heated living space not including overhangs, porches and garages.

### **Exterior Sides and Walls**

#### **A) Materials**

Stone, stucco, clapboard, and brick are the only materials allowed. No aluminum or vinyl fascia is allowed. A correct blending of these materials insures uniformity yet allows for individuality.

#### **B) Colors**

The exterior color(s) should be chosen to compliment the surrounding environment. A secondary trim color for windows doors, fascia, and porches is encouraged.

### **Details**

The details of construction allow you to input your personal tastes. Quality detailing around doors and windows adds a great amount of beauty to your home.

#### **A) Doors**



Consider sidelights, top-lights and transoms. Size of doors and windows should be in proportion to the elevation of the home.

B) Windows

Windows should be vinyl or aluminum extrusions outside.

C) Shutters

Shutters are an important appearance detail. Applied shutters constructed from wood are an acceptable detail and should be designed in proper proportion to their windows.

D) Fascia, Eaves and Soffits

Properly sized molding should be used to afford a feeling of strength and solidarity.

E) Gutters

All guttering and down-spouts must be of copper.

### **Porches**

Front porches are encouraged. A front porch should have a minimum of 8\_ (eight foot) depth so that they appear functional.

### **Columns**

Columns may be made of a stone, stucco, wood, fiberglass, or brick.

### **Roofs**

All roofs must have a minimum pitch of 7:12. Rooftop decks and balconies may be permitted by the approval of the S.A.R.C..

A) Materials

Materials chosen for roofs must be slate, tile, wood shake, or composition. All composition roofing material shall be 240 pounds per square. Architectural shingles are better. Metal valleys and peak line vents are required. Sheet metal roofs are not allowed.

B) Dormers

Dormers serve as a strong design element.

C) Skylights

Skylights may be located on the rear elevation of the home, but not in the front.

D) Solar Collectors

Collectors must be properly integrated into the overall design. If roof mounted, they should be mounted parallel to the roof pitch and made as unobtrusive as possible. They should be screened as much as possible from adjacent views.

### **Chimney and Stack Vents**

All metal flume chimneys must be permanently encased with brick, stone or stucco. All stack vents and ventilators must be on the rear roof slope.

### **Ancillary Structures**

A) Garages

All garages should be of a size to accommodate two or three vehicles. They must conform to all set back requirements. They may be attached or detached to the residence, but must be at an angle to the road of not less than 90°. No carports allowed.

B) Gazebos

Gazebos should be related to the size and color of the home. They should be similar in form and material.

C) A/C Compressors, Water Wells and Meter Boxes

All air conditioning compressors, water wells, meter boxes and similar equipment should be adequately visually screened from street and neighbors by fencing or landscaping.

D) Decks and Patios

All decks and patios should be placed within the building area of the lot and at the rear of the home. Building materials, size and colors should be in harmony with the house.

E) Arbors and Trellis

Arbors and trellises where they can be seen from the street should be designed so that they are an important architectural feature of the home.

Prior to construction of any on-site structure (including but not limited to those mentioned) approval must be received from the Architectural Review Board. If you are unsure as to whether your project will require approval, please check with the Architectural Review Board first.

### **Grading and Drainage**

No grading, filling, cutting of trees or construction may take place until architectural approval has been issued by the S.A.R.C.. Drainage structures have been kept to a minimum. Storm water runoff from each site must be designed to take advantage of the natural swales, ditches, and culverts. Runoffs should be directed to lot margins and front and rear. It will be each landowner's responsibility for maintaining swales and ditches on his property. In no case is the natural flow of storm water to be changed or re-routed so that it might damage a neighbor's property. Some swales may exist in the utility easement of some lots and those will be maintained by the Homeowners Association

### **Driveways and Walkways**

Driveways must conform to a 14' (Fourteen Foot) minimum width. Homeowners are encouraged to design some off-street parking at their site. Driveway minimum width should

be 16\_ to 20\_ (Sixteen to Twenty Feet) at the junction with roadway. The first 150' of driveways shall be constructed of stone, brick, or exposed aggregate (V<sub>2</sub>\_ screen) concrete, or a combination. Other materials, except tar, may be used, but only if more than 150\_ (One Hundred Fifty Feet) from the street. No driveway should be constructed within 10\_ (Ten Feet) of any side property line.

### **Fences**

Entry (driveway) monuments, pillars, posts, or columns and gates may be constructed of brick, ornamental wrought iron (or equivalent) or combination of both. No chain link fences allowed. All fences must be constructed of wood or ornamental iron. Wood fences are encouraged to be of the Kentucky "horse fence" style. Solid wood fencing is discouraged except for "screens." No fencing is allowed in the front yard except for ornamental iron.

### **Landscaping**

No clearing and/or cutting of trees may be done without approval from the S.A.R.C. Each lot is required to have a landscape plan approved prior to construction. Each homeowner must plan to landscape at least the front 50% of the lot. This should be a mixture of plant material and sod. Trees are encouraged. No trees may be removed from any Lot without the written consent of Developer until the Owner is ready to begin construction. Unless approved by the Developer or the Property Owners Association, there shall be no more than sixty percent (60%) of the trees cut and removed from the Lot. "Trees" in this section refer to those trees seven (7) inches or more in diameter as measured six (6) inches above ground level.

### **Street**

Address numbers must be displayed on the mailbox. The mailbox will be of a type chosen by the Review Committee. They must be paid for by the homeowner. Permanently installed flag poles must be approved by the Review Committee and be no closer than 50\_ (Fifty Feet) from the street.

### **Amenities**

Any amenities must be located in the side yard or rear of the home. They should not be readily visible from the street. All pools must be in-ground and protected with a fence that meets Harrison County code.

### **Water and Septic System**

Each homeowner must be responsible for providing his or her own well, pump, and pressure system. The location must comply with Harrison County code. In like manner, each homeowner is responsible for the purchase and installation of their septic system. A permit must be obtained and location approved for a septic system for each residence.

### **Set Backs**

Front yard minimum 70\_ (Seventy Feet) maximum 150\_ (One Hundred Fifty Feet), Side yard - 25\_ (Twenty-Five Feet) or as required by Harrison County code, whichever is larger. Rear yard 50\_ (Fifty Feet) or as required by Harrison County Code, whichever is larger.

### **Construction Maintenance**

Vacant lots shall not be used as a dumping ground for construction material and rubbish. Lot upkeep is the responsibility of the owner.

- Vacant lots must be kept neat and clean as well as regularly mowed.
- Construction sites should be kept as neat and clean as possible.
- Active builders and realtor\_s signs are allowed. 'For Sale\_ signs may be no more than 24"X30" and approved by the committee.
- No washing of concrete trucks in street or adjacent lots.
- Speed limit is 25 MPH.

### **Driveway Culvert**

If a culvert is to be used at the street to protect the swale at the roadside, it must be made of concrete with flared end sections used. This will be the homeowners responsibility to install and maintain.