

Declaration of
Covenants, Conditions
and
Restrictions
of
Village Charmant
Condominium Association, Inc.

A COMMUNITY FOR PEOPLE AT LEAST 55 YEARS OLD

Adopted June 30, 2003

Amended August 30, 2016

Amended January 9, 2020

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STATE OF MISSISSIPPI
COUNTY OF MADISON

2016 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR VILLAGE CHARMANT

WITNESSETH

The 2020 Declaration of Covenants, Conditions and Restrictions for the Village Charmant in Ridgeland, Mississippi ("Charmant"). It is intended that this Declaration supersede and replace the original Declaration of Covenants, Conditions and Restrictions for Village Charmant approved June 30, 2003 and on file at the office of the Chancery Clerk of Madison County, Mississippi in Condominium Book 1 at Page 154 and in Book 1562 at page 495, as well as any subsequent amendments thereto. This Declaration is not intended to affect or change the Plan for Condominium contained in the same document approved June 30, 2003 or any subsequent amendments to the Plan for Condominium. These Covenants are not intended to supersede or negate any provisions of the original Plan for Condominium and/or Declaration of Covenants and Amendments thereto, if any, for Village Charmant regarding the rights of Mortgagees.

This Declaration of Covenants, Conditions and Restrictions was approved by 67% of the Board of Governors of Village Charmant Condominium on January 9, 2020 and 67% of the entire membership of Village Charmant Condominium on January 9, 2020.

This Declarant hereby declares that all of the Village Charmant Condominiums shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Land and be binding on all parties having right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, to-wit:

SUPPLEMENT

FIRST SUPPLEMENT TO 2016
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR VILLAGE CHARMANT

WHEREAS, on August 30, 2016, Village Charmant, voted to supersede and replace its original covenants, with the 2016 Declaration of Covenants, Condition and Restrictions being filed in Book 3365, Page 578, in the office of the Chancery Clerk of Madison County, Mississippi (“the Declaration”), and reference to which is hereby made for all purposes;

WHEREAS, the Declaration provides in Section 14.3 that the Declaration may be amended in the following manner:

- a) Notice: Notice of such matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

- b) Resolutions: Resolutions for the adoption of a proposed amendment may be proposed by either the Board of Governors of the Association or by the members of the Association. Governors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the secretary at or prior to the meeting. Except as otherwise provided, such approval must be either by:
 - 1) No less than 67% of the entire membership of the Board of Governors and no less than 67% of the votes of the entire membership of the Association; or
 - 2) No less than 80% of the entire membership of the Association.

WHEREAS, the Board of Governors of the Association and the membership of the Association considered establishing the condominiums as a retirement community and marketing the same to persons/owners being age fifty-five (55) years or older.

NOW THEREFORE, in consideration of the Premises, the Unit Owners, subject to this Declaration, do hereby amend the 2016 Declaration of Covenants, Conditions and Restrictions for Village Charmant, as recorded in Book 3385, Page 575, in the office of the Chancery Clerk of Madison County, Mississippi, as follows, to wit:

At a special meeting duly and properly noticed and called, held on January 9, 2020, 84.5% of the membership of the Association voted to establish the Condominiums as a "Senior Adult Community" pursuant to the Housing for Older Persons Act of 1995 (HOPA), for those owners/persons being age fifty-five (55) years or older and indicate this designation when marketing to future purchasers. HOPA rules would allow restrictions on occupancy in Village Charmant based on age, requiring that 80% of the units be occupied by one person over the age of 55 years and no one under the age of 18 years may reside in the units.

All other provisions of the Declaration are hereby unchanged and ratified as of the date hereof.

Witness the signature and consent of the Declarant, this the 13th day of March, 2020.

VILLAGE CHARMANT HOMEOWNERS ASSOCIATION

By: Theresia Dyess, President

1.0 DEFINITIONS ¹

- (a) "**Act**" shall mean the Mississippi Condominium Law of the State of Mississippi, as found in Title 89, Chapter 9, Section 1, et seq. of the West's Annotated Mississippi Code.
- (b) "**Assessment**" shall mean the share allocated to a Unit and the Unit Owners of such Unit of all Assessments levied by the Association pursuant to the provisions of 6.0 Covenant For Maintenance Assessments and any and all expenses, costs, charge and other amounts incurred with respect to either Unit or the satisfaction, discharge or compliance with any obligations or duties of the Unit Owners of any Unit as specified in this Declaration.
- (c) "**Association**" shall mean Village Charmant Condominium Association, a Mississippi nonprofit corporation, its successors and assigns.
- (d) "**Board of Governors**" shall mean the Board of Governors of the Association.
- (e) "**Buildings**" shall mean the buildings depicted as a numbered building on the Plat.
- (f) "**Bylaws**" shall mean the Bylaws of the Association as amended from time to time.
- (g) "**Charter**" means the Articles of Incorporation of the Association, as amended from time to time.
- (h) "**Common Area**" or "Common Elements" shall mean and include all parts of the Property not located within the boundaries of a Unit. Pursuant to Section 89-9-13 of the Act, each Unit is allocated an undivided percentage interest in the Common Area equal to each other Unit.
- (i) "**Common Expense**" shall mean all expenditures lawfully made or incurred by or on behalf of, the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves.

¹ The terms used herein shall have the same meaning as set forth in 89-9-1, et seq. of the Miss. Code of 1972, as amended, unless the context requires otherwise.

- (j) "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions for Village Charmant Condominium, as supplemented from time to time.
- (k) "**Eligible Mortgage Holder**" shall mean those holders of a First Mortgage on a Unit who have requested, in writing, the Association to notify them on any proposed action that requires the consent of a specified percentage of eligible mortgage holders or of any assessment or installment thereof, which shall become and remain delinquent for a period in excess of sixty (60) days.
- (l) "**First Mortgage**" shall mean a mortgage, deed of trust or similar encumbrance creating a lien against a Unit which has priority over all other mortgages, deeds of trust or similar circumstances creating liens against such Unit.
- (m) "**Invitees**" shall mean a Unit Owner's guests, patrons, employees or other invitees.
- (n) "**Limited Common Area**" shall mean and include the exclusive use of that portion or portions of the Common Area reserved for and granted to a specific Unit or Unit Owner to the exclusion of the other Units and their respective Unit Owners. See also: 2.4 Special Limited Common Area pertaining to driveways.
- (o) "**Facilities Maintenance Services**" means the entity retained under contract by the Board of Governors for the purpose of conducting and managing the daily operations of the Association.
- (p) "**Member**" shall mean each Person who owns a condominium in the Association as provided by 3.0 Membership and Voting Rights in the Association.
- (q) "**Mortgagee**" shall mean any Person who owns, holds, or is the beneficiary of a mortgage, deed of trust, or similar encumbrance creating a lien or encumbrance against any Unit, including, but not limited to (1) a bank, (2) a savings and loan association, (3) a trust company, (4) an insurance company, (5) a mortgage company, (6) a trust, (7) a mortgage insurance company, (8) a mutual savings bank, (9) a real estate investment trust, (10) a credit union, (11) a pension fund, (12) the Federal National Mortgage Association, (13) the Federal Home Loan Mortgage Corporation, (14) a recognized institutional type lender or loan correspondent, (15) any agency or a department of the United States of America or any state, county, or municipal government, (16) a corporation, or (17) an individual.
- (r) "**Plan**" shall mean this Plan of Condominium for Village Charmant Condominium.

- (s) "**Person**" shall mean an individual, a corporation, a general or limited partnership, an association, a trust, an estate, or any other legal entity.
- (t) "**Plat**" shall mean the plat of the Property which is filed for record in the office of the Chancery Clerk of Madison County, Mississippi in Plat Cabinet D at slide 127 through 128.
- (u) "**Properties**," "**Condominium**," "**Project**," or "**Property**" shall mean the entire parcel of real Property divided into condominiums, including the land, all improvements and structures thereon and all easements, rights and appurtenances belonging and including any additions as may hereafter be brought within the control of the Association.
- (v) "**Special Limited Common Area**" shall mean that portion of the driveways (not shaded), as depicted on the Plan, which is shared by more than one Unit Owner, which driveway will be used exclusively by the Unit Owners for which the driveway was constructed and designed to serve their heirs, assigns and guests, which shall not be used in common by other Unit Owners.
- (w) "**Supplement**" means any amendment, modification, change or restatement to this Declaration.
- (x) "**Unit Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of any Unit which is a part of the Condominium, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.
- (y) "**Unit**" shall mean a portion of the Condominium within the boundaries which is not owned in common as defined in 1.0 (h) Common Area or Common Elements, with all other owners of other Units in the condominium project. All Units, exclusive of the Common Areas, are one story and constructed according to the floor plans depicted on the recorded Plat for each selected Unit.²

a ² Each Unit includes that part of the structure which lies within the following:

b Horizontal (upper and lower): the horizontal boundaries being the interior surfaces of the Unit are as follows:

The lower boundary is the top of the unfinished concrete floor and the upper boundary is the bottom surface of the unfinished ceiling and extended upward to include all space in the attic above the first floor ceiling, but does not include the sheetrock ceiling, the ceiling joist, the rafters, and all bracing and decking.

c Vertical (perimetric): The vertical boundaries of each Unit, and all portions of the Units having exterior walls, is the inner unfinished surface of all such exterior walls,

2.0 PROPERTY RIGHTS

2.1 Ownership and Unit Owner's Easements of Enjoyment

The above described land, buildings and all improvements located in the project are and shall be constituted as a condominium project as defined by the Act and shall continue as such forever unless terminated in the manner provided herein or in said Act. Every Unit Owner shall have and be entitled to all the rights and privileges granted under said Act subject to the provisions as herein set forth:

- A. Each Unit shall be individually transferred, conveyed and encumbered and shall be subject to ownership, possession, mortgage or sale and all other acts common to the ownership of real Property as if it were solely and entirely independent of the other Units in the project.

provided that where there are windows or doors, the boundary is the interior surface of such doors and windows when closed. As to the wall between a Unit and the adjacent Unit, the boundary is the center line of such wall. Where a patio is shown on the attached plans as part of an individual unit, such patio shall be and constitute a part of the Unit.

- d* All attachments to the exterior wall or Unit which are a part thereof, which protrude beyond the boundaries of a Unit as specified above, and which were constructed in accordance with the original design of the Unit, even though located beyond the boundaries thereof, shall be and are deemed to be included within the boundaries of the Unit so served.
- e* Any and all conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services which serve only one Unit or part of that Unit, when located within the boundaries thereof, shall be and are deemed to be included within the boundaries of the Unit so served.
- f* Each Unit Owner shall not be deemed to own separately the basic structural and supporting portions of the perimeter walls, floors, and ceilings surrounding his respective Unit, nor shall the Unit Owner be deemed to own separately pipes, wire, conduits or other public utility lines, running through said respective Units which are utilized for or serve more than one Unit, but the same shall be owned as tenants in common as part of the Common Area; however, each Unit Owner shall have an easement in the interest of the other owners in and to the aforesaid Common Areas and facilities as shall be necessary for the support, maintenance, use and enjoyment of his Unit; such Unit Owner shall also be deemed to own and have the exclusive right to use all air and airspace within such Unit including, but not limited to, the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings and the facilities, fixtures and equipment built or placed in and outside said Unit and used for the exclusive service and convenience of such Unit, however for insurance purposes all fixtures and equipment shall be considered as a part of the Common Area.

- B. Every Unit Owner shall have an exclusive ownership of his Unit and shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:
1. The right of the Association, acting by and through its Board of Governors, to suspend the voting rights and right to use of the said facilities by a Unit Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published Rules and Regulations.
 2. The right of the Association, acting by and through its Board of Governors, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility as provided in 4.7 Easements for Utilities and Related Purposes and for such other purposes and subject to such other conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an agreement signed by sixty-seven percent (67%) of the Members agreeing to such dedication or transfer has been recorded.
 3. The right of the Association, acting by and through its Board of Governors, to manage, control and adopt rules and regulations governing the management and use of the Common Area in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association.

2.2 Delegation of Use

Any Unit Owner may delegate, in conformance with the Bylaws of the Association, his right of enjoyment of the Common Area and facilities to the members of his family, or contract purchasers who reside on the Property and not otherwise.

2.3 Limited Common Area

The patio which is constructed as a part of each Unit and that portion of the concrete driveway extending out from the garage of each Unit and the sidewalk for such Unit as shaded and depicted on the Plat, are constructed to serve each Unit and will be considered as a part of the Unit, is hereby designated as Limited Common Area to which the Unit Owner is given the exclusive use and control thereof, as if it was an extended part of such Unit.

2.4 Special Limited Common Area

The remaining portion of the driveway (not shaded) not designated in 2.3 Limited Common Area, which lies between the private street and the Limited Common

Area driveway as shown on the Plat, is hereby designated Special Limited Common Area for the exclusive use of the Unit Owners for which such driveway was constructed to serve, their heirs, assigns, guests and invitees and shall not be considered as Common Area to be used in common with all Unit Owners.

3.0 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership

The Members of the Association consists of every person who is, or who hereafter becomes a Unit Owner.

3.2 Voting Rights

The number of votes for each Unit is one vote. Each Unit shall have one vote in the election of each Member of the Board of Governors of the Association and one vote on each matter before the Membership of the Association.

4.0 MANAGEMENT AND CONTROL OF COMMON AREAS

4.1 Right to Control

The Association shall have the exclusive right to control all of the Common Area. Each Unit Owner's ownership of an undivided interest in the Common Area is expressly made subservient to the rights of the Association to manage and control the Common Area. It is the intention of the Declaration that the Association be free and uninhibited in the exercise of its rights and duties hereunder, and the words "management and control" shall be given their broadest possible meaning. In addition, the Association shall have the following powers and duties.

4.2 Management, Control and Common Expenses

- A. The cost of providing water, sewer, garbage and trash collection, electrical, gas and other necessary utility services for the Common Area and to the extent that the same are not separately metered or billed to each Unit.
- B. The cost of the services of a person or firm to manage the project to the extent deemed advisable by the Association, together with the services of such other personnel as the Board of Governors shall consider necessary for the operation of the condominium project.
- C. The cost of providing such legal and accounting services as may be considered necessary to the operation of the condominium project.
- D. The cost of painting, maintaining, replacing, repairing and landscaping the Common Area and such furnishings and equipment for the Common Area as the Board of Governors shall determine are necessary and proper; including, but not limited to:
 - 1. All portions of a Unit, except interior surfaces, contributing to the support of the building, which portions shall include but not be limited to the outside walls of the building and all fixtures on the exterior thereof; boundary walls of Units, floor and ceiling slabs; and load-bearing columns and load-bearing walls, all exterior walls and doors of any storage or closet located on a terrace or patio forming a part of any Unit.
 - 2. All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of a Unit maintained by the Association, and all such facilities contained within a Unit which service part or parts of a condominium other than the Unit within which they are contained.
 - 3. All incidental damage caused to a Unit by such work shall be promptly repaired at the expense of the Association.
- E. The cost of any and all other materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association is required to secure or pay for by law, or which in the discretion of the Board of Governors, shall be necessary or proper for the operation of the Common Areas; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular Unit or Units, the cost thereof shall be specifically assessed to the Owner or Owners thereof in the manner provided for 6.5 Special Assessments, except that no vote of Unit Owners shall be required.

- F. When the cost of any maintenance or repair to a Condominium Unit is needed to protect the appearance or value of the Common Area, or is otherwise in the interest of the general welfare of all Unit Owners, it shall be undertaken only when deemed necessary by the Board of Governors passing a resolution. Reasonable written notice stating the needed maintenance or repair is given to the Unit Owner. After the work is performed, the cost shall be assessed against the Condominium Unit. A statement shall be rendered promptly to the Unit Owner at which time the assessment shall become due, payable, and a continuing lien and obligation of the said Unit Owner in all respects as other liens provided for herein.
- G. Any amount necessary to discharge any lien levied against the condominium project or any portion thereof, which may, in the opinion of the Board of Governors, constitute a lien against any of the Common Area rather than the interest of the Owner of any individual Unit. Payment of this expense is discretionary with the Board of Governors.

4.3 Association as Attorney-in-Fact

- A. The Association, acting by and through its Board of Governors, is hereby irrevocably appointed as Attorney-in-Fact for the Owners of all of the Units in the project.
- B. The Association will manage, control and deal with the interests of such Unit Owners in the Common Areas of the project to permit it to fulfill all its powers, functions and duties under the provisions of this Declaration, the Charter and the Bylaws.
- C. The foregoing shall be deemed to be a Power of Attorney coupled with an interest of acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as Attorney-in-Fact.

4.4 Facility Maintenance Services

- A. The Association, acting by and through its Board of Governors, may delegate specific duties and responsibilities to the Facility Maintenance Services provider in a written contract.
- B. The Association and Board of Governors shall not be liable for any omission or improper exercise by the contractor.
- C. The contract entered into by the Association shall provide, among other things, that the contract may be terminated for cause by either party upon thirty (30) days written notice to the other party.

- D. The terms of any such contract shall not exceed one year and may be renewed by mutual agreement of the parties for successive one-year periods.

4.5 Unit Owner's Duty to Maintain

- A. Equipment, Appliances, Fixtures, and Appurtenances: The Unit Owner shall maintain the interior and all equipment, appliances or fixtures therein, and its other appurtenances (including any patio to such Unit and designed or reserved for exclusive use by the Unit Owner), in good order, condition and repair. However, all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of any patio appurtenant to such Unit shall be performed by the Association and not the Unit Owner. In addition, the Unit Owner shall, at such their expense, maintain, repair and replace any plumbing and electrical fixtures, water heaters, plenum, heating and air-conditioning equipment (including air conditioning compressors located outside the Unit, which shall be maintained at the Owner's expense), lighting fixtures, refrigerators, freezers, trash compactors, dishwashers, clothes washers, clothes dryers, disposals, ranges, range hoods, and/or other equipment that may be in or appurtenant to such Unit.
- B. Windows, Doors and Patios: The Unit Owner shall, at his expense, clean and maintain the patio appurtenant to the Unit, the interior and exterior surface of all windows, and both the interior and exterior glass surfaces of all entry doors leading into such Unit or to the patio appurtenant to the Unit. Maintenance of exterior surfaces required by this subsection shall not include painting. All exterior painting shall be done by the Homeowner's Association unless otherwise herein specifically provided.

Failure to Maintain: If the Unit Owner fails to maintain the equipment, appliances, fixtures and other appurtenances that might cause or result in damage to the Property or other Units, the Association has the right to intervene. The Association, after approval by two-thirds of the Board of Governors, shall have the right to enter said Unit to repair, maintain or restore such Unit. The cost of such repair and maintenance shall be assessed to the Unit Owner as provided in 6.5 Special Assessments.

4.6 Access at Reasonable Times

For the purpose solely of performing any of the repairs or maintenance required or authorized by this Declaration, or in the event of a bona fide emergency involving illness or potential danger to life or Property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to

give notice to the Unit Owner or occupant, to enter any Unit at any hour considered to be reasonable under the circumstances.

4.7 Easements for Utilities and Related Purposes

The Association is authorized and empowered to grant such licenses, easements and/or right-of-ways for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to the condominium project as may be considered necessary and appropriate by the Board of Governors for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and/or welfare of the Unit Owners, the Declarant.

4.8 Limitation of Liability

The Association shall not be liable for any failure of water supply or other services obtained by the Association or paid out of the Common Expense funds. This includes injury or damage to person or Property caused by the elements or by the Unit Owner or other person, resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Areas, another Unit, or from any wire, pipe, drain, conduit, appliance, or equipment. The Association shall not be liable to the Unit Owner for loss or damage, by theft or otherwise, of articles which may be stored in any Unit or upon any of the Common Areas.

5.0 USE RESTRICTIONS

5.1 Leasing or Renting

Leasing or renting of a Unit by an Owner is prohibited.

5.2 Time Sharing

No Unit Owner shall be permitted to sell time share interest in and to his Unit. No Unit Owner shall be entitled to sell, transfer or convey less than an undivided interest in the Unit.

5.3 Prohibited Uses and Nuisances:

- A. No noxious or offensive trade or activity shall be carried on within the Project or within any Unit situation thereon that may be or become an annoyance to the neighborhood or the other Unit Owners.

- B. No nuisances shall be permitted within the condominium project, nor shall any use or practice be permitted which is an annoyance to the Members or which interferes with the peaceful use and possession by the Members.
- C. There shall be no obstruction of any Common Area or any Special Limited Common Areas serving only the Units for which such driveways were designated to serve. Nothing shall be stored upon any Common Area or Limited Common Area, or within or upon any parking space (except for motor vehicles).
- D. Nothing shall be done or maintained in any Unit or upon the Common Area which will increase the rate of insurance, or result in the cancellation thereof, without the prior written approval of the Board of Governors. Nothing shall be done or maintained in any Unit or upon the Common Area which would be in violation of any law. No waste shall be allowed upon the Common Area.
- E. No structural alteration, construction, addition or removal of any portion of the Common Area or Common Elements shall be made without the written approval of the Architectural Review Committee as required by 12.0 Architectural Control hereof.
- F. No pet shall be allowed in the Clubhouse or outside a Unit under any circumstances unless accompanied by and under the control of the Unit Owners. The keeping or harboring pets in Units shall be governed by such rules and regulations as may from time to time be adopted by the Board of Governors.
- G. No signs of any type, including "For Sale" signs, shall be displayed at any Unit, including any window of a Unit. The Board of Governors, at its sole discretion, may place any such signage at any location.
- H. No junk vehicle or other vehicle on which current registration plates are not displayed, trailer, truck, camper, camper truck, house trailer, boat or the like shall be kept upon any Common Areas, nor shall the repair or extraordinary maintenance of boats, automobiles or other vehicles be carried out on any of the Common Areas or any parking area.
- I. No part of the Common Areas shall be used for commercial activities of any type.
- J. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted within any Unit or upon any Common Areas. Trash and garbage containers shall not be permitted to remain in public view, except in designated areas immediately before or after a scheduled trash pickup

time. All refuse shall be placed in plastic bags and deposited in trash containers designated for such purpose at such locations as may from time to time be designated by the Board of Governors. All cardboard boxes must be disassembled and deposited in a trash container.

- K. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be maintained upon any Common Elements at any time. Outdoor clothes dryers or clothes lines shall not be maintained upon any of the Common Areas at any time. No clothing, laundry or the like shall be hung outside the Unit.
- L. No outside television dish or any other antenna for reception or transmission shall be maintained upon any Unit or upon any of the Common Areas without the prior written consent of the Board of Governors.
- M. Nothing shall be stored upon any of the Common Areas. Cooking or preparation of food will not be permitted upon any portion of the Common Areas. Such cooking and food preparation by the Unit Owner on the Limited Common Area patio for such Unit or areas designated for such purposes may be designated by the Board of Governors.
- N. No Member shall engage or direct any employee or contractor of the Association on any private business of the membership during the hours such employee or contractor is employed by the Association or shall any Member direct, supervise or in any manner attempt to assert control over any employee or contractor of the Association.
- O. There shall be no violation of any rules for the use of the Common Areas, or other Rules and Regulations which may from time to time be adopted by the Board of Governors pursuant to 13.0 Rules and Regulations.
- P. That portion of all window coverings and all covering used in connection with windows or glass enclosing any terrace, including but not limited to shades, curtains, sheers, drapes, blinds, etc., which are visible when looking at the exterior of the building, must be off-white in color.
- Q. No child care service or related activities shall be conducted or carried on within a Unit.
- R. The installation of gutters over the garage area or front doorways must be approved by the Board of Governors. Gutters over the garage must be jointly agreed on by the Owners of the two Units affected and the affected Unit Owners will be responsible for the maintenance of the gutters and for any damage to the building the gutters may cause.

5.4 Age Restrictions

At least 80 percent of the occupied units are to be occupied by at least one person 55 years old and older.

- A. Adult children aged 19 years old and older may live with their parents temporarily.
- B. Once units are vacated, their occupancy is reserved for buyers who will have at least one person who is 55 years old or older permanently residing in the Unit.
- C. Verification of the ages of new occupants will be acknowledged in the purchase documents and certified to the Board of Governors by supplying a copy of one of the following forms of identification, which must include specific information about current age or date of birth:
 - driver licenses,
 - passports,
 - immigration cards,
 - military identification cards,
 - birth certificates,
 - other government documents that show a date of birth, and
 - a certification in an affidavit or other document signed by any member of the household age 18 or older asserting that at least one person in the Unit is 55 years of age or older.
- D. A summary of the occupancy surveys shall be available for inspection upon reasonable notice and request by any person.
- E. Temporarily vacant units are considered occupied by persons 55 years of age or older if:
 - (1) The primary occupant has resided in the unit during the past year; and
 - (2) The occupant intends to return on a periodic basis.
- F. Any owner or realtor who sells property in the Association must disclose in the advertisements that the Association is an age-restricted community. All new purchase agreements must contain a provision directly above the signatory line asserting that at least one occupant of the Unit will be 55 years of age or older.
- G. Statements will be posted in the Common Areas describing the Association as a “Community for Persons 55 Years Old or Older”.
- H. The Board will attempt to remove any language in deeds or other community or facility documents or signage which is inconsistent with the intent to provide housing for persons who are 55 years of age or older.

I. Age Verification Survey

1. A Board appointed officer will organize a survey team of volunteers to conduct a survey every two years to ascertain compliance with the Housing for Older People Act of 1995.
2. The survey team will visit each household to identify changes since the last survey, and to collect affidavits or other forms of identification.
3. Acceptable proof of age includes:
 - driver licenses,
 - passports,
 - immigration cards,
 - military identification cards,
 - birth certificates and other government documents that show a date of birth.

J. If the occupants of a Unit refuse to comply with the age verification procedures, the Unit will be considered to be occupied by at least one person 55 years of age or older if there is sufficient evidence based on the following documentation:

- government records or documents, such as a local household census;
- prior forms or applications;
- a statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

K. The appointed officer will present a summary of the survey at the next Board meeting. The report will not include sensitive personal information, but only the overall summary.

L. The summary report will be made available for inspection by any person making a request with reasonable notice.

6.0 COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each Unit within the Property, hereby covenants, and each purchaser of a Unit, whether or not it shall be so expressed in such Unit Owner's deed, is deemed to covenant and agree to pay to the Association annual assessments of charges on a per Unit basis and special assessments for capital improvements. Such assessments are to be established and collected as

hereinafter provided. The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is due. The personal obligation for delinquent assessments shall not pass to the Unit Owner's successors in title unless expressly assumed by them, but the passing of title shall not affect the validity of the lien upon the Unit.

6.2 Purpose of Assessments

The assessment levied by the Association shall be used exclusively for the protection, improvement and maintenance of the Common Area. Such assessments shall include, but shall not be limited to, funds for the actual cost of the Association of all administration, insurance, repair, replacements and maintenance of the Common Areas as may be required by the Declaration, including water, sewer, electrical and other utility services provided for common use, and as may from time to time be authorized by the Association or its Board of Governors, and shall include the establishment and maintenance of an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and the Limited Common Area which the Association, by the terms of this Declaration, may be obligated to maintain.

6.3 Annual Maintenance Assessment

Prior to the first day of January in each year the Board of Governors shall adopt a budget estimated by the Board of Governors to be sufficient to meet the cost and expense described in 6.2 Purpose of Assessments and shall fix and levy the annual maintenance assessment at an amount sufficient to meet the budget adopted by the Board of Governors. The Board of Governors may fix the annual assessment at any amount not in excess of the maximum.

6.4 Additional Capital Improvement Assessments

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a capital improvement assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of fifty-one percent (51%) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.5 Special Assessments

The Association may levy special assessments against Units for reimbursement of repairs, corrections or other actions performed by the Association pursuant to this Declaration or the Bylaws together with interest and other reasonable charge thereon resulting from the following circumstances:

- A. Insurance Proceeds Insufficient: If the proceeds of insurance obtained by the Association are not sufficient to reconstruct improvements located on the Property or otherwise affect any repair or restoration of any damage or destruction to all or any portion of the Property, then all the Unit Owners shall be assessed, as a special assessment, for the necessary funds to restore the damaged improvements. Said special assessment shall be made by written notification from the Board of Governors to the Unit Owners of the Property which is to be repaired or restored as provided in 4.0 Management and Control of Common Areas, and shall be payable in full to the Association, as Trustee, within sixty (60) days following such notice or as otherwise may be specified in said notice.
- B. Unit Owners Failure to Maintain Improvements: If any Unit Owner fails to perform the maintenance or make the repairs required by 4.5 Unit Owner's Duty to Maintain of this Declaration and the Board of Governors causes such maintenance or repair to be performed in accordance with the provisions of this Declaration, all costs and expenses incurred in connection with such work, maintenance or repairs shall be immediately assessed and charged solely to and against such Unit as a special assessment. Said special assessment shall be made by written notification by the Board of Governors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.
- C. Damaged Common Areas: If any damage or destruction to any portion of the Common Area or Limited Common Area is caused by any negligent or malicious act or omission of any Unit Owner or his invitee, the Board of Governors shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not covered or reduced by insurance proceeds paid to or received by the Association) shall be assessed and charged solely to and against said Unit Owner and his Unit as a special assessment. Said special assessment shall be made by written notification from the Board of Governors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.
- D. Act Increasing Insurance Premiums: If any act or omission of any Unit Owner or any of his invitees shall increase the premiums for any insurance policy maintained by the Association for the benefit of the Property and the

Unit Owners, the amount of such increase shall be assessed and charged solely to and against such Unit Owner and his Unit as a special assessment. Said special assessment shall be made by written notification from the Board of Governors to the Unit Owner and shall be payable in full to the Association within ten (10) days in advance of the date or dates for the payment of such increased insurance premiums or within ten (10) days following such notice, whichever is later. The making of such payment by said Unit Owner shall in no way violate, authorize, sanction, or permit the particular act or omission and shall not limit any of the rights of the Association provided by law or granted herein, including without limitation the right to enjoin the particular activity.

- E. Excessive Use Damaging Property: In the event any portion of the Property is damaged as a result of excessive usage by any Unit Owner or his invitees, the cost of such maintenance and repairs shall be assessed against such Unit Owner as a special assessment. Such special assessment shall be made by written notification from the Board of Governors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.
- F. Other Special Assessments Authorized by this Declaration: In addition to the special assessments specifically authorized by the provisions of this 6.5 Special Assessments, whenever this Declaration provides that the Association shall have the right to assess a cost or expense against a Unit Owner and his Unit as a special assessment, such special assessment shall be made by written notification from the Board of Governors to the Unit Owner and shall be payable in full to the Association within thirty (30) days from such notice or within such extended period as the Association shall determine shall be applicable to any such special assessment.
- G. Delinquent Payments: Any special assessment made in accordance with this Declaration shall be a separate debt of each Unit Owner against whom the same is specially assessed and against his Unit and shall bear interest upon any unpaid portion thereof after the due date at the maximum rate permitted by law or at the rate of eighteen percent (18%) per annum, whichever is less.

6.6 Notice and Quorum for any Action Authorized Under 6.3 Annual Maintenance Assessment or 6.4 Additional Capital Improvements Assessments

Written notice of any meeting called for the purpose of taking any action authorized under 6.3 Annual Maintenance Assessments or 6.4 Additional Capital Improvement Assessments, shall be sent to all Members not less than thirty (30)

days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall not be necessary, and the assessment may be approved by the assent of sixty-seven percent (67%) of the votes of the Members who are voting in person or by proxy.

6.7 Uniform Rate of Assessment

Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly, quarterly or annual basis, at the discretion of the Board of Governors.

6.8 Date of Commencement of Annual Assessments, Due Dates

The annual assessments provided for herein shall commence as to all assessable Units on the first day of the month. The Board of Governors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. The annual assessment period shall be January 1 thru December 31. Written notice of the annual assessment shall be sent to every Unit Owner subject thereto. The due dates shall be established by the Board of Governors, provided, however, at Unit Owners request, said assessment may be paid quarterly.

6.9 Effect of Nonpayment of Assessments, Remedies of the Association

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring a lawful action against the Unit Owner, who is personally obligated to pay the same, or foreclose the lien against the Property or both. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by a nonuser of the Common Area or abandonment of his Unit and no Unit Owner may voluntarily resign from membership.

6.10 Subordination of the Lien to Mortgages:

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Property, or upon any individual Unit. Sale or transfer of any Unit shall not affect the assessment lien, provided the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall only extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, and no such sale or transfer shall relieve such Unit from

liability for any assessments thereafter becoming due or from the lien thereof, and the grantee of any such Unit shall become a Unit Owner thereof subject to this Declaration.

7.0 RESTRICTIONS ON TRANSFER

The Unit Owner shall have the right and privilege to sell, convey and transfer said Unit on such terms and conditions as he may desire with the exceptions of the provisions of 5.0 Use Restrictions, provided such terms and conditions are not in conflict with the provisions of this Declaration.

8.0 EASEMENTS

8.1 Enjoyment of Common Area

Every Unit Owner shall have a right and easement of enjoyment in and to the unlimited Common Area (as distinguished from limited Common Area) and such easement shall pass with the title to every Unit, subject to the following provisions:

- A. The right of the Association's Board of Governors to limit the number of guests that may use the Common Area.
- B. The right of the Association's Board of Governors to charge reasonable admission and other fees for the use of any recreational facilities situation upon the Common Area.
- C. The right of the Association's Board of Governors to suspend the voting rights and right to use of the recreational facilities by a Unit Owner for any period during which any assessment against his Unit remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations. Any Unit Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family.

8.2 Utilities, Etc.:

An easement in each Unit shall exist for the benefit of all Units for pipes, wires, conduits, or utility lines which are utilized by or serve more than one Unit.

There is hereby granted a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining a master television antenna system, television cable, and all

utilities include, but not limited to, water, sewers, telephones and electricity. By virtue of this easement, it shall be expressly permissible for providing the utility company to erect and maintain the necessary poles and other necessary equipment on said Property and to affix and maintain utility wires, circuits and conduits on, above, across and under the roofs and exterior and interior walls of the Units. No sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or the Association's Board of Governors. Should any utility furnishing a service covered by the general easement hereinafter request a specific easement by separate recordable document, the Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this 10.0 Condemnation, shall in no way affect any other recorded easement of said Property.

8.3 Other

There is hereby granted a blanket easement to the Association, its Board of Governors, officers, agents and employees, to any contractor employed by the Association and to all policemen, firemen, ambulance personnel and all similar persons to enter upon the Property or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights accompanying the easements shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice and with the permission of the Unit Owner or Unit Owners directly affected thereby.

9.0 INSURANCE AND CASUALTY LOSSES

9.1 Insurance

- A. The Association must obtain, maintain and pay the premiums upon, as a Common Expense, the Property insurance in the amount determined by the Board of Governors.
- B. The Association's Board of Governors shall have the authority to obtain insurance for all of the improvements on the Property (with the exception of improvements and betterments made by the respective Unit Owners at their expense) against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

- C. The type of policy shall be a "master" or "blanket" type policy of Property insurance covering all of the Common Elements (except land, foundation, excavation, and other items usually excluded from coverage) including fixtures, building service equipment and supplies, and other personal property belonging to the Association. All references herein to a "master" or "blanket" type of policy of Property insurance are intended to denote single entity condominium insurance coverage. In addition, the insurance obtained herein shall include coverage of the Units themselves. Fixtures or equipment located within a Unit (regardless of whether or not such Property is a part of the Common Elements) must be covered by such "master" or "blanket" policy, but the coverage need not include improvements and betterments installed by Unit Owners.
- D. If reasonably available, the insurance policy shall include an "All In" endorsement which shall include coverage of appliances (including stoves, cooking ranges, microwave ovens, refrigerators, dishwashers, washers and dryers, hot water heaters and all other appliances that comprised a part of the Unit on the date such Unit was completed and sold to a third party Unit Owner or were replaced items for such original appliances, air conditioners, and all fixtures contained within the Units are included).
- E. The policy shall be in an amount deemed appropriate by the Association but not less than the greater of eighty percent (80%) of the actual cash value of the insured Property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from Property policies. The policy shall include an "Agreed Amount Endorsement" or its equivalent and, if available, an "Inflation Guard Endorsement." If there shall be a construction code provision that requires changes to undamaged portions of the condominium property even when only part of the project is destroyed by an insured hazard, the policies shall include construction code endorsements.
- F. The Board of Governors shall also obtain a public liability policy covering all Common Areas and all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall be at least \$1,000,000.00 single limit for bodily injury and Property damage.
- G. Premiums for all such insurance coverage shall be Common Expenses. All such insurance coverage obtained by the Board of Governors shall be written in the name of the Association as Trustee for each of the Unit Owners in the percentages of undivided interest in and to the Common

Area as provided for in 4.0 Management and Control of Common Areas hereof. Such insurance shall be governed by the provisions hereinafter set forth:

1. All policies shall be written with a company, admitted or non-admitted, holding a Best's Rating Classification of "A" or better and a Financial Size Category of "X" or better as reflected from time to time in the current edition of "Best's Key Rating Guide, Property-Casualty."
2. All policies shall be for the benefit of the Unit Owners and their Mortgagees as their interests may appear.
3. Provision shall be made for the issuance of a Certificate of Insurance to each Unit Owner and his Mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular Unit.
4. The original of all policies and endorsement thereto shall be deposited with the Insurance Trustee who shall hold them subject to the provisions of 9.3 Insurance Trustees.
5. Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Association's Board of Governors; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
6. In no event shall the insurance coverage obtained and maintained by the Association's Board of Governors hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees.
7. Each Unit Owner may obtain additional insurance at his own expense, provided, however, that no Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Unit Owners and their Mortgagees, may realize under any insurance policy which the Association's Board of Governors may have in force on the Property at any particular time.
8. Any Unit Owner who obtains an individual insurance policy covering a portion of the Property, other than improvements and betterments made by such Unit Owner, shall be required to file a copy of each individual policy with the Association's Board of Governors within 30 days after purchase of such insurance.

9. It shall be the individual responsibility of each Unit Owner at his own expense to provide, as he sees fit, Unit Owner's title insurance on his individual Unit, Unit Owner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and losses.
10. The Association's Board of Governors shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on the Property, including the fixtures or equipment located within a Unit (regardless of whether or not such Property is a part of the Common Elements) must be (with the exception of improvements and betterments made by the respective Unit Owners at their expense) by one or more qualified persons at least one of whom should be a qualified building cost estimator.
11. The Association's Board of Governors shall be required to make every reasonable effort to secure insurable policies that will provide for the following:
 - a) A waiver of subornation by the insurer as to any claims against the Association's Board of Governors, the contractors, the Unit Owners and their respective servants, agents and guests,
 - b) A waiver by the insurer of its right to repair and reconstruct instead of paying cash,
 - c) The master policy on the Property cannot be canceled, invalidated or suspended on account of any one or more individual Unit Owners,
 - d) The master policy on the Property cannot be canceled, invalidated or suspended on account of the conduct of any Director, Officer, Employee or Contractor of the Association without a prior demand in writing delivered to the Association of the defect and the allowance of a reasonable time thereafter within which the defect may be handled by the Association, the Contractor, any Unit Owner or Mortgagee,
 - e) Any "other insurance" clause in the master policy exclude individual Unit Owner's policies from consideration.

9.2 No Partition

There shall be no judicial partition of the Property or any part thereof, or any person acquiring any interest in the Property or any part thereof seek any such judicial partition except:

- A. As set forth in 9.4 Damage and Destruction.
- B. As provided in Section 89-9-35 of the Miss. Code of 1972, as the same may be hereafter amended or modified any other application laws of the State of Mississippi.

9.3 Insurance Trustee

- A. All insurance policies purchased by and in the name of the Association shall provide that proceeds covering Property losses shall be paid to the Association. The Board of Governors may serve as the Insurance Trustee or may, at its discretion, select another to serve as Insurance Trustee. Immediately upon the receipt by the Association of such proceeds, the Association shall endorse the instrument by means of which such proceeds are paid and delivered to the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums, renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor shall the Insurance Trustee have any obligation to inspect the Property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.
- B. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and delivered to it and to hold such proceeds in trust for the benefit of the Unit Owners and their Mortgagees in the following shares, which need not be set forth in the records of the Insurance Trustee. An undivided share of such proceeds on account of damage or destruction to the Common Area shall be held in trust for the Unit Owners in accordance with their respective percentages of undivided interest in and to the Common Area. Proceeds on account of damage or destruction to Units shall be held in trust for the Unit Owners in proportion to the cost of repairing or reconstructing the damage or destruction suffered by each such Unit Owner. In the event that a Mortgagee endorsement has been issued to any particular Unit, the share of each Unit Owner shall be held in trust for such Unit Owner and his Mortgagee.
- C. Proceeds of Insurance policies received by the Insurance Trustee shall be disbursed as follows:
 - 1. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, it shall be disbursed in payment of repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying cost of repairs or reconstruction shall be disbursed to the beneficial Unit Owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the

benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

2. If it is determined as provided for in 9.4 Damages and Destruction, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.
 3. Any and all disbursements of funds, whether such funds consist of insurance proceeds, special assessments, sales proceeds or any combination thereof, to be made by the Insurance Trustee for any purpose whatsoever shall be made pursuant to and in accordance with a Certificate of the Association signed by the President or Vice President and attested by the Secretary setting forth whether or not the damage or destruction is to be repaired or reconstructed and whether the damage or destruction was to the Common Area or one or more Units or both. If the damage or destruction is not to be repaired or reconstructed, said certificate shall direct that disbursements be made by the Insurance Trustee as by law provided in accordance with the terms of herein.
- D. If the damage or destruction is to the Common Area and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the Mortgagee known by the Insurance Trustee to have the largest interest in or lien upon such Common Area and may direct that disbursement be made by the Insurance Trustee to those persons and in such amounts as may be specified or, said certificate may authorize the Insurance Trustee to make disbursements upon such written authorizations as may be submitted to it by an architect or other person named as having been employed by the Association to supervise such repairs or reconstruction.
- E. If the damage or destruction is to one or more Units and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the Mortgagee or Mortgagees known by the Insurance Trustee to have an interest in or lien upon such Unit or Units. They may direct that disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorization as submitted to it by an architect or other person named therein employed by the Association to supervise such repairs or reconstruction.

- F. The Insurance Trustee shall not incur any liability to any Unit Owner, Mortgagee or other person for any disbursements made by it pursuant to and in accordance with any such certificates or written authorizations.

9.4 Damage and Destruction:

- A. Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Governors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty with each Unit and the Common Area having the same vertical and horizontal boundaries as before.
- B. In the event more than 75% of the project has been destroyed or substantially damaged, any such damage or destruction shall be repaired or reconstructed unless at least 50% of the total vote of the Association shall decide within 60 days after the casualty, not to repair or reconstruct. If, for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction are not made available to the Association within 60 days after the casualty, then such period shall be extended until such information shall be made available to the Association. That period of time shall in no event exceed 90 days after the casualty.
- C. In the event that it should be determined by the Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then:
 - 1. The Property shall be deemed to be owned in common by the Unit Owners.
 - 2. The undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such Unit Owner in the Common Area.
 - 3. Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the Unit Owner in the Property.
- D. The Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale shall be paid to the Insurance Trustee. The net proceeds of sale together with the net

proceeds of the insurance on the Property, shall be considered as one fund which, after paying all expenses of the Insurance Trustee, shall be divided among all of the Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the Property, after first paying out of the respective share of the Unit Owners, all liens of the undivided interest in the Property owned by each Unit Owner.

- E. Disbursements to such Unit Owners shall be made as provided for in 9.3 Insurance Trustee. The foregoing provisions shall apply only as long as may be necessary to comply with the applicable provisions of the Act and shall apply only as long as said provisions are not in conflict with Section 89-9-35 of the Miss. Code of 1972 or any other applicable laws of the State of Mississippi. In the event that the laws of the State of Mississippi should be amended to eliminate the right of action for partition upon determining that the damage or destruction shall not be repaired or reconstructed, then this and such other provisions hereof as may be necessary to its implementation, shall be deemed amended accordingly.

9.5 Repair and Reconstruction:

- A. If the damage or destruction for which the insurance proceeds are paid to the Insurance Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Governors shall, subject to 6.0 Covenant for Maintenance Assessments, hereof and without a vote of the Members, levy a special assessment against all Unit Owners of the damaged Units, and against all Unit Owners in the case of damage to the Common Area, in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional assessments may be made at any time during or following the completion of any repair or reconstruction. Such assessments shall be in proportion to the Unit Owner's share in the Common Area.
- B. Any and all sums paid to the Association under and by virtue of those special assessments provided for above to defray the estimated excess cost of repair or reconstruction shall be deposited by the Association with the Insurance Trustee. The proceeds from insurance and assessments, if any, received by the Insurance Trustee, when damage or destruction is to be repaired or reconstructed, shall be disbursed as provided for in 9.3 Insurance Trustee of this Article.

9.6 Minor Repairs:

- A. Notwithstanding the foregoing provisions, in the event of damage by fire or other casualty to either the Common Area or a single Unit covered by

insurance written in the name of the Association and if the insurance proceeds initially offered or paid therefor are less than \$2,000.00 and the estimated cost of repairing such damage is less than twice the amount of such proceeds, then the instrument by means of which such proceeds are paid shall be endorsed by the Insurance Trustee and delivered to the Association and the damage shall be repaired in accordance with the following provisions.

- B. If the damage is confined to the Common Area, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Area. If the cost of such repairs exceed the amount of such insurance proceeds, such excess may be provided subject to 6.0 Covenant for Maintenance Assessments hereof either by means of a special assessment levied by the Board of Governors, without a vote of the Members, against all Unit Owners in proportion to each Unit Owner's share in the Common Area or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Area as the Board of Governors in the exercise of its sole discretion may determine.
- C. If the damage is confined to a single Unit, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be paid jointly, to the Unit Owner and his Mortgagee, if any, who may use proceeds as they alone may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess shall be provided by means of a special assessment levied by the Board of Governors, subject to 6.0 Covenant for Maintenance Assessments hereof and without a vote of the Members, against the Unit Owner of the damaged Unit. Payment for repairs provided for in this subparagraph shall be made only after all such repairs have been completed and approved by the Association, the Unit Owner and his Mortgagee, if any, which approval shall not be unreasonably withheld.

9.7 Expenses of Insurance Trustee

Any expenses incurred by the Insurance Trustee shall be paid from the general assessments, if the same are sufficient for the purpose; otherwise from the

proceeds of special assessments levied in accordance with 6.0 Covenant for Maintenance Assessments.

10.0 CONDEMNATION

In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the award made for such taking may be payable to the Board of Governors if such award amounts to \$50,000 or less, and to the Insurance Trustee if such award amounts to more than \$50,000. If 75% or more of the Unit Owners duly and promptly approve the repair and restoration of such Common Elements, and the Board of Governors or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that 75% or more of the Unit Owners do not duly and promptly approve the repair and restoration of such Common Elements, the Board of Governors or the Insurance Trustee, as the case may be, shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of damages, as provided in 9.4 Damage and Destruction of this Declaration.

11.0 ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION

No additional lands may be annexed to or become subject to this Declaration.

12.0 ARCHITECTURAL CONTROL

12.1 Architectural Review

- A. Except for the original construction and except for the purpose of proper maintenance and repair or as otherwise provided in this Declaration, no change or alteration in any manner whatsoever shall be made to the exterior of any Unit, including any terrace or patio, window or exterior door (including any alteration or change in color) until the proposed plans and specifications showing the nature, kind, shape, height, materials, exterior color or finish, shall have been submitted to and approved in writing by the Architectural Review Committee, which Committee shall be composed of five (5) or more representatives. No alteration in the exterior

appearance of the building shall be made without approval from the Architectural Review Committee and the Board of Governors. Also, any approval for changes and alterations are subject to the City of Ridgeland architectural ordinances.

- B. Two (2) copies of all plans and related data shall be furnished the Architectural Review Committee. One (1) copy shall be retained by the Committee and the other copy shall be returned to the Unit Owner marked approved or disapproved. Approval shall be dated and shall be effective for construction commenced more than six (6) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event the Architectural Review Committee fails to approve or disapprove such plans within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this 12.0 Architectural Control will be deemed to have been fully complied with.
- C. Refusal of approval of the plans, specification or related data may be based by the Architectural Review Committee upon any grounds, including purely aesthetic considerations, so long as they are not arbitrary and capricious. Neither the Board nor the Architectural Review Committee shall be liable to a Unit Owner or to any other person on account of any claim, liability or expense suffered or incurred by or threatened against a Unit Owner or such other person arising out of or in any way related to the subject matter or any review, acceptances, inspections, permissions, consents or required approvals which must be obtained from the Architectural Review Committee or public authorities whether given, granted or withheld.

12.2 Rules and Regulations, etc.

The Architectural Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted to it for approval, and may publish and record such statements of policy, standards, guidelines and may establish certain criteria relative to architectural styles, details, colors, materials or other matters relative to architectural review and the promotion of the building and Property, as it may consider necessary or appropriate. No such rules, regulation, statements, criteria or the like shall be considered as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The decision of the Architectural Review Committee shall be final except that any Member who is aggrieved by an action or forbearance from action by the Committee (or any policy, standard to guidelines established by the Committee) may appeal the

decision by the Architectural Review Committee to the Board of Governors, and upon written request, such member shall be entitled to a hearing before the Board of Governors.

13.0 CHARMANT RULES AND REGULATIONS

Subject to the provisions hereof, the Board of Governors may establish reasonable rules and regulations concerning the use of the Common Areas, Common Elements, Limited Common Area and facilities as said Board, from time to time, may determine necessary or prudent for the protection, use and enjoyment of all of the Unit Owners.

14.0 GENERAL PROVISIONS

14.1 Enforcement

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

14.2 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.3 Amendment

Except as elsewhere provided otherwise, this declaration may be amended in the following manner.

- A. Notice: Notice of such matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
- B. Resolutions: Resolutions for the adoption of a proposed amendment may be proposed by either the Board of Governors of the Association or by the Members of the Association. Governors and Members not present in person or by proxy at the meeting considering the amendment may

express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. Except as otherwise provided, such approval must be either by:

1. Not less than 67% of the entire Membership of the Board of Governors and not less than 67% of the votes of the entire Membership of the Association.
2. Not less than 80% of the votes of the entire Membership of the Association.

14.4 Restrictions

No amendment shall discriminate against any Unit Owner or against any Unit or class or group of Units unless the Unit Owners so affected shall consent. No amendment shall change any Unit or the share of Common Elements appurtenant to it, or increase the Unit Owner's share of Common Expenses, unless the record Unit Owner of the Unit and all recorded Unit Owners of liens thereon shall join in the execution of the amendment. Neither shall an amendment make any change in 9.0 Insurance and Casualty Losses unless the record Unit Owners of all mortgages upon the Unit or any part thereof shall join in the execution of the amendment.

WITNESS THE SIGNATURE of the Declarant, this the _____ day of _____, 2020.

VILLAGE CHARMANT HOMEOWNERS ASSOCIATION

By: _____

Theresa Dyess, President

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named Theresa Dyess, who acknowledges she is President of Village Charmant Homeowners Association and for and on behalf of the Association, and as its act and deed, she executed the foregoing instrument for the purpose mentioned, on the day and year mentioned, after being duly authorized to do so.

SWORN TO AND SUBSCIBED BEFORE ME, this the ____ day of _____,
2020.