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DECLARATION
of
Covenants, Conditions and Restrictions
for
JOHNSON SQUARE

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DECLARATION
of
Covenants, Conditions and Restrictions
for
JOHNSON SQUARE

JOHNSON SQUARE HOLDINGS, LLC, an Arkansas limited liability company to be known as the *"Declarant,"* makes this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this *"Declaration"*), effective as of the 24th day of October, 2017.

DECLARATION:

The Declarant, who is the owner of all of the property in Washington County, Arkansas, described on Exhibit A (*"Phase I"*), hereby submits Phase I to this Declaration of Covenants, Conditions and Restrictions. The Declarant hereby declares that Phase I, and any other property made subject to this Declaration by a Supplemental Declaration (together, the *"Property"*) shall be held, sold and conveyed subject to the covenants, restrictions and easements of this Declaration, which shall run with the land and be binding upon all owners of property within the Property, their heirs, successors and assigns, and upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of the Property.

Declarant also hereby provides notice of certain restrictions, as further described in Section 2.2.4, for the remainder of the property described on Exhibit B (the *"JS Master Plan Area"*), but does not submit the entire JS Master Plan Area to all the terms of this Declaration at this time.

The following are attachments to this Declaration and are fully incorporated by reference:

- Exhibit A, Legal Description, Phase I,
- Exhibit B, Legal Description; JS Master Plan Area, and
- Exhibit C, Landscaping and Tree Preservation

Part I:
Definitions

The following definitions apply wherever the capitalized terms appear in this Declaration. Additional terms that apply only to one article are defined the first time they appear.

1.1 Allocated Interests. As further described in Section 3.1, each Parcel shall be assigned an Allocated Interest for assessment and voting purposes.

1.2 Architectural Review Committee. The *"Architectural Review Committee"* or *"ARC"* is the panel established by Section 5.4 to administer the TND Plan for modifications to buildings and improvements. Separate provisions, as provided in Section 5.2, apply to new construction.

1.3 Articles. *"Articles"* are the Articles of Incorporation of the Assembly.

1.4 Assembly. The *"Assembly"* is Johnson Square Assembly, Inc., an Arkansas nonprofit corporation, its successors and assigns. The Assembly, whose members are the Owners, is responsible for maintaining the Commons and enforcing the Declaration.

1.5 Assessments. *"Assessments"* is the collective term for the following charges:

(a) General Assessment. The *"General Assessment"* is the amount allocated among and charged to all Owners to meet the Assembly's general expenses, as described in Section 4.2.2.

(b) Special Assessment. A *"Special Assessment"* may be charged to each Parcel for Capital Improvements or emergency expenses, in accordance with the provisions of Section 4.2.3.

(c) Maintenance Zone Assessments. *"Maintenance Zone Assessments"* are assessed to Owners within a particular Maintenance Zone for annual budgeted Maintenance Zone expenses.

(d) Individual Parcel Assessment. An *"Individual Parcel Assessment"* is a charge made to a particular Parcel Owner for charges relating only to that Parcel, as provided in Section 4.2.4.

1.6 Bill of Assurance. The Declarant may file one or more *"Bills of Assurance"* platting any part of the Property into streets, alleys, private pedestrian walkways, Parcels, and other land subdivisions consistent with the TND Plan and the Ordinance. A Bill of Assurance may also dedicate streets or alleys to the City of Johnson and may grant easements burdening some or all of the Property as may be set forth in such Bill of Assurance.

1.7 Bylaws. *"Bylaws"* are the Bylaws of the Assembly.

1.8 Capital Improvement. A Capital Improvement is a material alteration or substantial addition or improvement to the Commons, or the purchase of additional property to be added to the Commons. Any reasonably necessary repair or replacement of existing improvements with materials of similar utility shall not be considered a Capital Improvement.

1.9 Commons. *"Commons"* comprises real property or easement rights owned by the Assembly for the benefit of its members. *"Commons"* also includes any improvements on that real property and any other property of any type specifically designated as Commons. The Commons are not dedicated for use by the general public.

1.10 Declarant. The *"Declarant"* is Johnson Square, LLC, an Arkansas limited liability company, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of the Property unless the instrument conveying such interests provides otherwise. The Declarant may also be an Owner for so long as the Declarant is record owner of any Parcel.

1.11 Declaration. *"Declaration"* is this Declaration of Covenants, Conditions and Restrictions for the Property.

1.12 Design Review Board. *"Design Review Board"* shall mean the board established by the Declarant, comprised of between one (1) and three (3) members, who shall be appointed by the Declarant and who shall serve at its pleasure. The Design Review Board shall review all building plans prior to construction in order to determine the compliance of such plans with the provisions of any architecture and landscape patternbook or regulating plan adopted by the Declarant, the TND Plan and the Ordinance.

1.13 Development Period. The *"Development Period"* begins with the recording of this Declaration and continues for six months after the Declarant neither owns at least five Parcels in the JS Master Plan Area nor holds any Parcels for sale in the JS Master Plan Area in the normal course of business. For the purposes of this definition, the term *"Parcel"* shall include all planned Parcels, whether or not platted. The Declarant may terminate the Development Period sooner by filing a notice of such termination in the office of the Circuit Clerk and Recorder of Washington County, Arkansas.

1.14 Executive Board. *"Executive Board"* is the board of directors of the Assembly.

1.15 Hotel. Unless circumstances indicate otherwise, a property shall be considered a Hotel if it has at least four units, has the word *"hotel," "inn," "lodge,"* or other indicative term in its name and manages units under a common promotional plan for rentals on a daily, weekly or similar short-term plan. The Assembly may, acting reasonably, determine whether a particular Parcel is a Hotel and may make rules as to whether to classify bed and breakfast businesses or a Parcel being used for nightly rental or occupancy accepting reservations through an internet or other listing service as Residential Units or Hotels. A condominium unit may be considered to be part of a Hotel and not a Residential Unit if the condominium as a whole appears to the public as a Hotel.

1.16 Johnson Square. Johnson Square is the name by which the Property shall be known to the public and may include all of the property within the JS Master Plan Area, whether or not submitted to this Declaration.

1.17 JS Master Plan Area. The initial JS Master Plan Area is all that property described on Exhibit B comprising approximately 68.4 acres.

1.18 Live/Work Unit. A *"Live/Work Unit"* is a Parcel that is intended under the TND Plan to be flexible in use and that may be used as a residence, a business, or a combination of both. A mixed-use parcel that has been divided into separately conveyable airspace or condominium units is not a Live/Work Unit but instead comprises two or more separate Parcels.

1.19 Maintenance Zone. *"Maintenance Zones"* are smaller areas within the Property of distinct building type or character, as further described in Section 3.4. Owners of Parcels within a Maintenance Zone may be assessed for maintenance of Commons primarily serving that Maintenance Zone or for providing special services to that Maintenance Zone, as further provided in Section 4.1.2. Special provisions concerning maintenance of Townhouse Parcels as a Maintenance Zone are provided in Part VI.

1.20 Maintenance Zone Advisory Council. Committees established at the discretion of the Executive Board to advise the Executive Board concerning a Maintenance Zone as provided in Section 3.4.2.

1.21 Maintenance Zone Association. Some Maintenance Zones may form an incorporated association, to be known as a Maintenance Zone Association, as further provided in Section 3.4.6. Where such as association has been formed, it will also serve as the Maintenance Zone Advisory Council.

1.22 Ordinances. *"Ordinances"* shall mean, collectively, the Planned Unit Development Ordinance adopted by the Johnson City Council as Ordinance No. 2015-07 and the Ordinance to Adopt an Overlay District adopted by the Johnson City Council as Ordinance No. 2015-08 both adopted on September 8, 2015, as hereafter amended.

1.23 Owner. *"Owner"* is the record owner, whether one or more persons or entities, of the fee simple title to any Parcel.

1.24 Parcel. A *"Parcel"* is the smallest piece of real property that may be separately conveyed and that has been made subject to this Declaration. A Parcel may be a platted lot improved with, or intended to be improved with, an attached or detached single-family home, Live/Work Unit, commercial building or multi-family building that is owned by a single entity. If the building is subdivided under a condominium form of ownership, each condominium unit shall be considered a Parcel.

1.25 Property. The Property is that real property made subject to this Declaration. The *"Property"* comprises Phase I, as described on Exhibit A, plus any additional property added by Supplemental Declaration.

1.26 Regulating Plan. A "*Regulating Plan*" is a plan prepared by Declarant that, in combination with the TND Plan, regulates the development of some or all of the Property through detailed requirements for construction of buildings and improvements, as described in Section 5.1.2.

1.27 Residential Unit. A *"Residential Unit"* is an individual, separately heated and air-conditioned dwelling unit and shall include a single-family detached home, a Townhouse or other attached dwelling (such as each half of a duplex unit), an apartment or condominium unit, a residential dwelling within a Live/Work Unit or other mixed-use building, or an assisted living facility unit (but not a nursing home). A Hotel shall be considered a commercial use and not Residential Units.

1.28 Supplemental Declaration. *"Supplemental Declaration"* is any instrument that may be recorded by the Declarant or the Assembly in accordance with Section 2.2.2 to add additional property to this Declaration.

1.29 TND Plan. The *"TND Plan"* means the Johnson Square PUD Zoning Standards prepared by the Declarant and approved by the Johnson City Council by Resolution No. 2015-08 on September 8, 2015, as the same may be amended from time to time, which establishes the plan for the development of Johnson Square through its regulation of land use, architecture, landscaping and environment.

1.30 Town Architect. The *"Town Architect"* is a professional architect, planner or designer appointed in accordance with Section 5.1.3.

1.31 Town Center. The *"Town Center"* is the primarily commercial portion of the JS Master Plan Area. The Town Center is intended to be subject to a Town Center Declaration and is intended to have a separate association or maintenance entity to maintain its common areas and regulate commercial uses.

1.32 Town Center Manager. The *"Town Center Manager"*, as further described in Section 2.2.3, may be either a separate association or management entity formed to regulate and manage Town Center.

1.33 Townhouse. A Townhouse is an attached single-family residential building or Live/Work Unit that shares a roof structure with the building on the adjacent Parcel and is not submitted to a condominium form of ownership. If so provided in the applicable Supplemental Declaration or if approved by a majority of the applicable Parcel Owners, attached buildings that are structurally independent but that are designed in such a way that the units are to present a uniform appearance can also be considered to be Townhouses. The Townhouse also includes any outbuilding such as a garage. Townhouses are regulated, maintained and insured under the special provisions of Part VI.

1.34 Townhouse Administrator. The term *"Townhouse Administrator"* shall refer to the Assembly if the Assembly is maintaining the Townhouses, or to the Townhouse Maintenance Association if one has been formed.

1.35 Townhouse Maintenance Association. A *"Townhouse Maintenance Association"* is a separate association that may be formed in accordance with Section 6.1.2 to maintain a Townhouse Maintenance Zone.

1.36 Townhouse Parcel. A *"Townhouse Parcel"* is a Parcel upon which is constructed a Townhouse.

Part II:
Development Plan

2.1 The TND Plan.

2.1.1 Design. Johnson Square is intended to be a mixed-use community, with shops, restaurants, service establishments and other businesses, including general office. As residential areas may be developed first, the design of the commercial areas may change to respond to the market.

2.1.2 JS Master Plan Area.

(a) Generally. The JS Master Plan Area includes the residential neighborhoods of the intended community of Johnson Square as well as the Town Center. The plan for the JS Master Plan Area is general in nature and subject to change. At the time of the recording of this Declaration, no final determination has been made (other than for that portion submitted to this Declaration) regarding the street design for the JS Master Plan Area, the location, shape, size or nature of Commons, or the building types or uses that may be permitted.

(b) Modification of JS Master Plan Area. The Declarant may, at any time during the Development Period, modify the JS Master Plan Area by adding or removing property. The Declarant may record a supplement to this Declaration providing notice of such change, which shall not require the consent of any party other than the Declarant and the owner of the property being added or removed, if different from the Declarant.

(c) Limitation. No assurances are made as to what portions of the JS Master Plan Area, if any, will be made part of the Property, the boundaries of those portions or order in which the portions will be added. Exercising any development right in any portion of the JS Master Plan Area does not necessarily mean the right will be exercised in the remainder of the JS Master Plan Area.

2.1.3 Conversion of Street Ends. Johnson Square is intended to follow design principles that allow interconnectivity of streets with neighboring communities. Certain streets on the TND Plan may end at the boundary of Johnson Square so that communities that are developed later may connect with those streets. If the neighboring property is developed in a way that interconnectivity is not possible, or if the Declarant deems interconnectivity to be undesirable under the circumstances as they then exist, then the Declarant reserves the right to convert the street ends to additional lots or other uses. Declarant may limit connectivity to pedestrian rather than vehicular access. Declarant intends to hold title to such street ends until development of the adjoining property but if Declarant has inadvertently conveyed such street ends to the Assembly, the Assembly shall, upon request from Declarant, convey the street ends to Declarant or as directed by Declarant.

2.2 Property Subject to this Declaration.

2.2.1 Effect. The land that shall be subject to this Declaration, known as the *"Property"*, comprises Phase I described on the first page of this Declaration, plus any land that is submitted later in accordance with Section 2.2.2. The provisions of this Declaration run with the land, which means that once land has been made subject to this Declaration, the land is still bound by the Declaration even if the land is sold to a new Owner (unless the land is withdrawn as provided in Section 2.2.6). Certain portions of this Declaration apply only to certain types of Parcels as follows:

(a) Part VI of this Declaration applies only to Townhouses.

(b) Part VII of this Declaration applies only to Residential Units.

2.2.2 Additional Property.

(a) By the Declarant. The Declarant shall have the right, but not the obligation, for a period of thirty (30) years from this date, from time to time in its sole discretion, to add to the Property any or all of the following:

(i) any part of the JS Master Plan Area,

(ii) any contiguous property,

(iii) property any portion of which is within one-half mile of any portion of the Property (including any property separated from the Property by a public street, body of water or other property), or

(iv) any other property with a reasonable relationship to the Property.

Such action shall not require the consent of the Assembly.

(b) By the Assembly. Property of any type may be added to the Property by a majority vote of the Executive Board and consent of the property's owner. Such right shall begin after the Development Period has ended and shall extend indefinitely. During the Development Period, such action shall be taken only at the discretion of the Declarant.

(c) Supplemental Declaration. A Supplemental Declaration adding the additional property shall become effective upon being recorded in the county's public records. The Supplemental Declaration shall require the consent and joinder of the owner of the additional property.

(d) Special Provisions. The Supplemental Declaration may establish a new Maintenance Zone and may modify or add to the provisions of this Declaration as to the additional property if needed to reflect the different character of the additional property.

2.2.3 Town Center. Some or all of the Town Center may be submitted to this Declaration. It is anticipated that a separate declaration (the *"Town Center Declaration"*) will be recorded for regulation of commercial properties and maintenance of common areas within the Town Center. The Town Center Declaration will provide for either a separate commercial property owners' association or other management entity (either of which shall be known here as the *"Town Center Manager"*). Notwithstanding any other provision of this Declaration, upon recording of the Town Center Declaration, the following shall apply to any portion of Town Center that is subject to this Declaration unless specifically provided otherwise or the Town Center Manager and the Assembly agree otherwise:

(a) Commons. Except for those properties specifically deeded to the Assembly, all Commons within Town Center shall be regulated and maintained solely by the Town Center Manager and shall be known as *"Commercial Commons"*. For instance, Commercial Commons may include parking lots, plazas and other common areas that are designed primarily for commercial use and that are not dedicated to the public. Where specifically deeded to the Assembly, the Assembly may own and maintain some Commons within Town Center, particularly drainage facilities, or streets that are not dedicated but are intended for general circulation, and these shall not be considered Commercial Commons.

(b) Architectural Review. For all property within Town Center, whether commercial or residential, the Town Center Design Review Board established under the Town Center Declaration shall assume and be solely responsible for all architectural review functions that would otherwise be assumed by the Design Review Board under this Declaration.

(c) Regulation of Commercial Uses. Commercial uses and automobile parking within the Town Center shall be regulated under the Town Center Declaration, and the Assembly shall not have any authority to regulate such uses.

(d) Maintenance Zones. Until the formation of the Town Center Declaration, the Commercial Commons may have been maintained under this Declaration as a Maintenance Zone, as defined in this instrument. The Town Center Manager shall assume all such Maintenance Zone functions within Town Center. However, the Assembly shall continue to maintain Townhouses as a Maintenance Zone under the provisions of this Declaration.

2.2.4 JS Master Plan Area; Notice of Intent. The Declarant intends that any property within the JS Master Plan Area, whether residential or commercial, that is conveyed to a party other than the Declarant (other than dedications to a governmental entity) be made subject to this Declaration unless the instrument of conveyance clearly indicates otherwise. If an instrument submitting the property to the declaration is not recorded prior to, or at the time of, such conveyance to a party other than the Declarant, the Declarant shall have the right to record a corrective instrument submitting such property to this Declaration.

2.2.5 Withdrawal of Property. To the extent permitted by Arkansas law, the Declarant reserves the right to withdraw property from the Property so long as all Owners within the boundary of the area to be withdrawn consent, and appropriate access to the remaining portions of the Property is preserved. The consent of the Assembly or any other Owner without the boundary of

the area to be withdrawn shall not be required in order for any withdrawal of property from the Property by the Declarant to be effective.

2.2.6 Additional Commons. The Declarant may convey to the Assembly additional Commons, which shall be conveyed free and clear of any liens, excepting taxes on real property prorated to the date of transfer. The Assembly shall accept title to, and maintenance responsibility for, any Commons conveyed to it by the Declarant.

Part III:
The Assembly

3.1 Allocated Interests.

Each Parcel is assigned an Allocated Interest, which is used both for voting purposes and for allocating Assessments.

3.1.1 Residential Units. Except as otherwise set forth in this Section 3.1.1, each Residential Unit with 3,000 square feet or less of net leasable square footage shall be assigned one (1) Allocated Interest. Heated and air-conditioned Residential Units smaller than 1,000 net leasable square feet that are outbuildings of Residential Units shall be assigned three tenths (0.3) Allocated Interest. Residential Units that are larger than 3,000 net leasable square feet shall be assigned one and one-half (1.5) Allocated Interest. For instance, a 2,000 square foot house with an 800 square foot garage apartment shall be assigned an Allocated Interest of 1.3. Each Residential Unit located within a building that includes three or more Residential Units and is used for third party lease or rental shall be assigned three tenths (0.3) Allocated Interest, without regard to the net leasable square footage of the Residential Unit. For instance, a 1,100 square foot Residential Unit used for third party rental located in a building including a total of four Residential Units shall be assigned an Allocated Interest of 0.3.

3.1.2 Town Center Commercial Space. Commercial space in the Town Center shall be assigned one Allocated Interest per 2,000 square feet of net leasable commercial square footage, as defined in Section 3.1.7. Commercial space may be assigned fractional interests and shall be rounded to the nearest 200 square feet, or one-tenth of an Allocated Interest. For instance, 850 square feet of commercial space shall be assigned an Allocated Interest of 0.4, and 2,950 square feet shall be assigned an Allocated Interest of 1.5.

3.1.3 Hotels. Hotels shall be assigned one Allocated Interests per 4,000 square feet of net leasable commercial square footage. Hotel space may be assigned fractional interests and shall be rounded to the nearest 400 square feet, or one-tenth of an Allocated Interest.

3.1.4 Unimproved Lots. Parcels that do not have a building that is substantially complete shall pay a reasonable amount as determined by the Assembly, but not to exceed one-half (0.5) Allocated Interest per year.

3.1.5 Commons. The Commons are not subject to assessment.

3.1.6 Live/Work Units. Parcels that include both residential and commercial uses shall have an Allocated Interest that is equal to the sum of the residential and commercial uses. For instance, a Live/Work Unit with one Residential Unit of less than 3,000 square feet and 1,000 square feet of commercial space shall be assigned an Allocated Interest of 1.5.

3.1.7 Definition of Net Leasable Square Footage. For purposes of calculating Allocated Interests, net leasable square footage shall include all heated and air-conditioned space, measured to the center of the wall for interior walls and to the outside of the wall for exterior walls. Commercial square footage shall include all such space that may be used for commerce, office, storage and other support areas for the commercial use but shall not include any Residential Unit, or any lobbies, stairwells or walkways used primarily to access residential space. At the discretion of the Assembly, decks and other space that is not heated and air-conditioned that are used on a regular basis for commerce may also be considered as part of the square footage and assessed at a reduced rate, depending on use. The Assembly in its reasonable discretion may determine the amount of assessed square footage for a particular Parcel and may make rules for calculating and rounding square footage. The Assembly may adjust or revise Allocated Interests if uses for the Parcel change.

3.2 Formation of the Assembly.

All Owners are members of the Assembly.

3.2.1 Establishment; Membership. The Assembly shall be established under Arkansas law as a not-for-profit corporation responsible for the operation of a community that includes both residential and commercial property. Every Owner shall be a mandatory member of the Assembly. Membership shall be appurtenant to and may not be separated from title to any Parcel.

3.2.2 Voting.

(a) Voting Interests. Each Owner shall have a vote in the Assembly, with votes to be weighted in accordance with Allocated Interests. As further provided in this Declaration and the Bylaws, certain votes will be conducted by Maintenance Zone, while other votes will involve the entire membership.

(b) Exercise of Vote. When more than one person holds an interest in a Parcel, all such persons shall be members. However, the number of votes for that Parcel shall not be increased, and the Owners must determine among themselves how the Parcel's vote may be exercised. Corporations, partnerships and other entities shall notify the Assembly of the natural person who shall exercise its vote. To the greatest extent permitted by law, the Assembly may institute voting by electronic or other means.

(c) Methods. Wherever used in this Declaration, approval by a majority or other proportion of the Owners refers to a vote in accordance with this Article, either at a properly called membership meeting or through a voting procedure established under Section 3.2.2(d). However, where the Declaration specifies consent in writing, or request in writing, then the necessary number is based on the total Allocated Interests within the Assembly or Maintenance Zone as applicable, and signatures may be collected without a membership meeting or other voting procedure.

(d) Action without Meeting. If permitted by the Executive Board, the membership may approve any matter (specifically including the election of directors) by a written ballot procedure, which may be conducted by mail, or by written consent without a meeting, without prior notice and without a vote. To the extent allowed by law, such ballots or consents may also be approved by electronic means. Voting or consents shall be in accordance with the Bylaws and statute.

3.2.3 Executive Board.

(a) Election. The Executive Board shall consist of at least three people and shall be elected as provided in the Bylaws, subject to the Declarant's rights under Part VIII. The Bylaws may provide for election at large, by Maintenance Zone, by neighborhood or by a combination of these methods.

(b) Executive Board's Responsibility. Except as specifically provided in this Declaration or statute, the Executive Board has been delegated the power, and shall have the authority to act on behalf of the Assembly and to make all decisions necessary for the operation of the Assembly, the enforcement of this Declaration and the care of the Commons. Wherever this Declaration provides that the Association may or shall take a particular action, such action is determined by majority vote of the Executive Board, without the necessity of consent of the Owners, unless this Declaration or applicable law provides otherwise.

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

3.2.5 Additional Provisions. Additional provisions concerning the operation of the Assembly and the Executive Board and voting procedure are contained in the Articles and Bylaws.

3.3 The Commons.

3.3.1 Ownership. The Assembly may own open space, recreational facilities, streets, parking lots and other commonly used portions of the community. Those common areas for which the Assembly is responsible are called the Commons. In most cases, the Assembly will hold title to the Commons in fee simple. In other cases, the Assembly's interest may be in the form of easements, leases or other rights. As development progresses and improvements are completed, the Declarant intends to convey certain property to the Assembly as Commons, and the Assembly shall be required to accept the conveyance. Unless prohibited by the Declarant, the Assembly may maintain as Commons, and expend Assembly funds for maintenance of, such improved property that is intended to become Commons and is used as Commons but has not yet been conveyed to the Assembly.

3.3.2 Maintenance and Capital Improvements.

(a) Responsibility. The Assembly is responsible for the management, control and improvement of the Commons. At a minimum, it must keep the Commons clean and in good repair. The Assembly may also make capital improvements to the Commons and may modify the uses of the Commons. Any changes to the Commons must be approved in accordance with the architectural review standards of Part IV.

(b) Easements. To the extent reasonably necessary, the Assembly has, and is hereby granted, an easement over each Parcel for maintenance of the Commons. The Assembly also has, and is hereby granted, an easement with respect to any improvements constructed on the Commons that encroach on a Parcel, whether due to any minor deviation from the subdivision plat or the settling or shifting of any land or improvements.

3.3.3 Use of the Commons. Every Owner has, and is hereby granted, an easement for appropriate use and enjoyment of the Commons. This easement passes with title to the Owner's Parcel and is automatically extended to the family members, tenants or guests who reside on the Parcel or are accompanied by the Owner. The easement is subject to the Assembly's right to impose reasonable rules and regulations regarding the use of the Commons in accordance with this Declaration and is also subject to any limitations that may be contained in the conveyance of that portion of the Commons to the Assembly.

3.3.4 Events and Festivals. Johnson Square is intended to be a vibrant community with activity that brings people together. The Declarant hereby reserves to itself the right to use of the Commons for various events at its discretion. The following are examples:

(a) Music, performance, arts or crafts festivals.

(b) Parades, block parties or other events intended to enrich and enliven the community.

(c) Private parties and events.

As part of these events, the Declarant may rent or assign space for pushcarts, kiosks, stands or temporary sales structures and may permit the erection of tents and banners. Such uses may be only for special events or on a recurring basis. However, other than where specified in this Declaration, no contract shall be for a period of longer than a year, including all renewal options. The Declarant may at any time assign all or some of its rights under this section to the Town Center Manager, the Assembly or to any other successor or assigns.

3.3.5 Streets and Alleys; Regulation. To the extent permitted by the City of Johnson, the Assembly may make rules and regulations concerning driving and parking within the Property, post speed limit or other traffic signs, install traffic-calming devices and take any other reasonable measures to discourage excessive speed and encourage safe driving within Johnson Square.

3.3.6 Common Landscaping. The Assembly shall maintain any landscaping or signage which is part of the Commons, and may maintain as Commons the street trees and any landscaping between the sidewalk and the street, even if located within the public right-of-way or on a Parcel.

3.3.7 Lighting. The Assembly may purchase or lease, or lease to purchase, lighting or additional lighting for the streets and Commons from the local utility. Alternatively, the Assembly may enter into such agreements with the Declarant or other entity if the lighting equipment to be provided meets the requirements of the TND Plan and the terms are reasonable. In any event, exterior lighting or additional lighting not otherwise provided or installed by Declarant, the City of Johnson, the City of Springdale, or the utility company shall be an expense of the Assembly.

3.3.8 Surface Water Management. The Declarant shall have a blanket easement and right on, over, under and through the ground within the Property to inspect, maintain and correct drainage of surface water and other erosion controls. This easement includes the right to cut or remove any vegetation, grade soil or take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Declarant shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practical. The Declarant may at any time assign all or some of its rights and obligations under this section to the Assembly or to any other successor or assigns. If so requested by the Declarant, the Assembly shall assume responsibility for surface water management.

3.3.9 Limitation of Liability. The Assembly shall use reasonable judgment in maintaining and regulating the Commons, but neither the Assembly nor the Declarant makes any representation or assumes any liability for any loss or injury. The Declarant and the Assembly make no representations concerning security and shall not be liable in any way for failure to provide services or quality of such services.

3.3.10 Damage or Destruction of Commons by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family damages any of the Commons as a result of negligence or misuse, the Owner hereby authorizes the Assembly to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Parcel Assessment payable by the responsible Owner. The Assembly may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable.

3.4 Maintenance Zones.

Maintenance Zones are smaller areas within the Property that have special maintenance requirements, either for certain Commons used primarily by the Owners within the Zone such as a shared courtyard or parking court, or for unified maintenance of Parcels within the Zone.

3.4.1 Designation. Individual Maintenance Zones may be created by supplemental declaration or designated by the Executive Board in its reasonable discretion. A Parcel may be in more than one Maintenance Zone. For instance, a Parcel could be in one Maintenance Zone for alley maintenance and another for front yard landscaping.

3.4.2 Maintenance Zone Advisory Councils. For each Maintenance Zone that has become established, the Executive Board may form an advisory council from each Maintenance Zone of at least three Owners from that Maintenance Zone. Unless otherwise stated in this Declaration, a Maintenance Zone shall be considered established when at least 90% of the Parcels anticipated for the Maintenance Zone have received certificates of occupancy and been conveyed to Owners other than the Declarant or a builder. An advisory council shall review and give suggestions for the annual Maintenance Zone budget, proposed services and any modifications to the Maintenance Zone. If an advisory council is formed, the first members shall be appointed by the Executive Board, and thereafter Owners from each Maintenance Zone shall elect subsequent councils as part of the regular Executive Board election process. For those portions of the Property that have a condominium association or other incorporated association, that entity shall serve as the advisory council.

3.4.3 Maintenance Responsibilities and Expenses. Each Maintenance Zone has separate maintenance requirements and a separate budget. The Maintenance Zone budget will include the following as applicable:

(a) Commons. To the extent designated as Commons, alleys and parking lots shall be a Maintenance Zone Expense. If more than one Maintenance Zone shares an alley or parking lot, the cost shall be apportioned. Other Commons such as a courtyard intended primarily for the use of the surrounding Parcels may be designated a Maintenance Zone Expense.

(b) Parcel Maintenance. Any Parcel maintenance that this Declaration, Supplemental Declaration or Amendment to this Declaration requires to be provided to a particular Maintenance Zone shall be included in the Maintenance Zone budget. For the Townhouse Maintenance Zone, all expenses relating to Townhouse maintenance and insurance shall be included in the Maintenance Zone budget.

(c) Capital Improvements. Any Maintenance Zone may, by sixty percent (60%) vote of the Owners within that Maintenance Zone and approval of the Executive Board, vote to assess all Owners within the Maintenance Zone for capital improvements to Commons within that Maintenance Zone.

(d) Additional Services. Any Maintenance Zone may, by majority vote of the Owners within that Maintenance Zone and approval of the Executive Board, vote to assess all Owners within the Maintenance Zone for maintenance or services in addition to those normally provided by the Assembly, including yard maintenance or other maintenance to the Parcel or Maintenance Zone Commons. Any service thus approved shall continue until revoked by majority vote of the Owners within that Maintenance Zone.

3.4.4 Allocation of Maintenance Zone Expenses. Unless provided otherwise in this Declaration or in a Supplemental Declaration creating the Maintenance Zone, the Maintenance Zone budget will be assessed to and allocated to Owners within that Maintenance Zone according to Allocated Interests.

3.4.5 Special Types of Maintenance Zones.

(a) Townhouses. A Townhouse Maintenance Zone may be designated in a Supplemental Declaration at the time of submitting the property to this Declaration or with the consent of the Owners of all of the Townhouses and of the Declarant. If not so designated, the Executive Board may determine in its reasonable discretion whether a building shall be considered a Townhouse that requires unified maintenance, may designate a group of Townhouses of similar design, materials and time of construction as a Townhouse Maintenance Zone and determine its boundaries, and may record an instrument providing notice of such designation. Townhouses are subject to special provisions in Part VI. A Townhouse Maintenance Association may be formed in accordance with Section 6.1.

(b) Condominiums. If a condominium regime is established within the Property, the condominium shall be considered a Maintenance Zone. Unless otherwise agreed between the Assembly and the condominium association, the condominium association shall assume any Maintenance Zone responsibilities and expenses.

(c) Town Center. Commercial property within Town Center shall be considered a Maintenance Zone unless the Town Center is submitted to a separate declaration, as further provided in Section 2.2.3 of this Declaration. If such a declaration is recorded, residential property within Town Center may remain part of one or more Maintenance Zones under this Section 3.4.

3.4.6 Other Maintenance Zone Associations.

(a) Intent. The system of Maintenance Zones is intended to permit efficient delivery of services based on property type without the formation of multiple incorporated sub-associations, other than the Town Center and condominium associations, if any. However, Owners within a Maintenance Zone may determine in the future that they wish to seek the benefit of a separate incorporated association to provide services to that Maintenance Zone.

(b) Formation by Single Entity. During the Development Period, if all of the Allocated Interests within that Maintenance Zone are owned by a single entity, then formation of the Maintenance Zone association shall require approval of the Declarant and the owner of the Allocated Interests, if different. Association documents shall be recorded as a supplement to this Declaration and shall not require any other approvals.

(c) Formation by Vote of Owners. Any Maintenance Zone may form an owners' association and adopt articles of incorporation and bylaws, if approved by written consent of sixty percent (60%) of the Allocated Interests within that Maintenance Zone, by the Executive Board of the Assembly and, if during the Development Period, by the Declarant. The documents so adopted shall be recorded in the public records as a supplement to this Declaration.

(d) Termination. Any association so created may be terminated, and the responsibilities resumed by the Assembly, by consent in writing of a majority of the Allocated Interests within that Maintenance Zone and approval of the Executive Board of the Assembly.

(e) Operation. Upon creation, the new association shall assume the Maintenance Zone maintenance responsibilities and shall have the same rights to assess, collect and lien for assessments for Maintenance Zone expenses as provided to the Assembly under this Section 3.4. If the documents so provide, the new association may also assume responsibility for covenant enforcement under Part VII. All Owners within that Maintenance Zone shall continue to be members of the Assembly, to pay Assessments for Assembly expenses, and to be subject to the terms of this Declaration.

3.5 Other Assembly Powers and Responsibilities.

3.5.1 Landscape Maintenance, Irrigation for Parcels.

(a) Irrigation Systems. Unless otherwise agreed to by the Executive Board, all Parcels are required to have a professionally-installed subterranean irrigation system for landscaping. The Assembly may, but is not obligated to, provide irrigation water to some or all of the Parcels. If the Assembly provides irrigation water, the Parcels shall be required to use the Assembly's irrigation water.

(b) Required Maintenance. Landscaping in Townhouse Maintenance Zones is to be maintained as provided in Section 6.1.4. As provided in Section 3.4.3, the Assembly may require that Owners in any other particular Maintenance Zone contract for certain routine yard maintenance, or a Maintenance Zone may choose to contract for yard maintenance for all Owners within that Maintenance Zone. The cost of such service shall be assessed to the individual Parcel Owner as an Individual Parcel Assessment.

(c) Optional Service. The Assembly also may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Assembly, the cost of which would be assessed to that Owner as an Individual Parcel Assessment. The terms and conditions of all such contracts shall be at the discretion of the Executive Board.

3.5.2 Additional Powers. In addition to the specific powers provided in this Declaration, and to the extent permitted by governmental authorities, the Assembly may, but is not obligated to, provide the following services or engage in the following activities:

(a) water, sewer, electrical, telephone, cable television or other utility services, garbage and trash collection and disposal;

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

(c) emergency rescue, evacuation or safety equipment, fire protection and prevention, roving patrols within the Property;

(d) newsletters, electronic communication or other information services;

(e) maintenance of easement areas, public rights-of-way and other public or private properties located within reasonable proximity to the Property if its deterioration would affect the appearance of or access to the Property; and

(f) any other service allowed by law to be provided by a community association organized as a not-for-profit corporation.

The Executive Board may, by majority vote, initiate, modify or terminate any of the above services. If requested by petitions signed by at least 10% of the Owners, a membership meeting may be called and, if a quorum is present, the offering of the additional service shall be repealed by majority vote of the Owners. For three years after such a repeal, the Executive Board may not reinstitute the service unless also approved by majority vote of the Owners.

3.5.3 Contracts. The Assembly may contract with any party, including the Declarant, for the performance of all or any portion of the management of the Assembly and its maintenance and repair obligations. The cost of the contract shall be included within the General Assessment, Special Assessment or Individual Parcel Assessment as applicable.

3.5.4 Failure to Fulfill Maintenance Obligations. If the Assembly fails to perform any its maintenance obligations as set forth in this Declaration, then the Declarant shall be entitled (but not obligated) to notify the Assembly in writing of its failure to perform such obligations and include a reasonable description of its deficiencies and actions necessary to cure them. If the Assembly fails on or before three (3) business days after receipt of such failure notice to either provide reasonable objection in writing to such failure notice or commence and make reasonable progress to cure the maintenance deficiencies, then the Declarant may perform the required maintenance work and be entitled to receive reimbursement from the Assembly for the reasonable cost of the work. If, however, the condition asserted by in the failure notice as causing the default by the Assembly is such that remedial work cannot reasonably be initiated within three (3) business days after the Assembly's receipt of the failure notice, the Assembly shall have such additional time to remedy or cause the remedy of the maintenance obligation failure as may be reasonable, provided that the Assembly has given written notice to the Declarant of its intent to remedy the failure within such three (3) business day period and has promptly commenced efforts to remedy the failure and is thereafter diligently prosecuting such cure to completion. If the Assembly provides written objection to such failure notice, the Assembly and the Declarant shall engage in efforts to reach mutual agreement on the maintenance work necessary to cure the alleged deficiency. In the event the parties are unable to reach agreement within seven (7) days, the Declarant shall be entitled (but not obligated) to perform the required maintenance work and to pursue reimbursement from the Assembly through arbitration. The Declarant shall make any request to the Assembly for reimbursement in writing and the Assembly shall make the reimbursement within thirty (30) days of receipt of such request. All requests for payment shall be accompanied by a reasonable itemization of the charges and receipts for all amounts paid.

3.6 Insurance and Casualty.

3.6.1 Review of Coverage. At least once each year, the Executive Board should review types of insurance and terms and limits of coverage for insurance held by the Assembly. Changes in replacement costs or anticipated liabilities can make old insurance inadequate. In rare cases, if coverage becomes too expensive, the Assembly may make a decision to drop certain coverage or to take a higher deductible. In any event, the Executive Board is expected to exercise the *"prudent person"* principle in determining how to deal with insurable risks of the Assembly.

3.6.2 Types of Insurance. The following are examples of insurance the Assembly should consider:

(a) Property Insurance. The Executive Board should consider whether the Commons includes structures or other improvements that can and should be insured against loss. Certain improvements, such as green space or landscaping, may not be insurable. However, buildings or other structures usually are insurable. The Executive Board shall obtain property insurance for insurable improvements unless the Executive Board determines that the cost is unreasonable and the Executive Board adopts a plan for self-insurance. If the Executive Board obtains insurance, endorsements for fire and extended coverage, vandalism, malicious mischief, flood and windstorm should be obtained where available at reasonable cost. Coverage should be in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy or *"agreed amount"* insurance should be obtained.

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

(c) Director Liability Insurance. The Executive Board may obtain liability insurance insuring against loss for actions taken by members of the Executive Board, officers of the Assembly and committee members in the performance of their duties. The Executive Board may also obtain fidelity insurance or bonding for Executive Board members, officers and employees.

(d) Other Coverage. The Executive Board shall obtain and maintain worker's compensation insurance if and to the extent necessary to meet the requirements of law and such other insurance as the Executive Board may determine.

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

3.6.3 Individual Insurance Coverage. Townhouses shall be insured as provided in Section 6.2. Condominiums shall obtain insurance as required by their declarations and statute. The Assembly may require other Parcel Owners to obtain property insurance, and such requirement

may be for full replacement value of improvements constructed on the Parcel. If requested by the Assembly, an Owner shall provide evidence of such insurance.

3.6.4 Repair and Reconstruction after Fire or Other Casualty.

(a) Commons. If fire or other casualty damages or destroys any of the improvements on the Commons, the Executive Board shall arrange for and supervise the repair or restoration of the damage as provided in this section, unless the area is to be redeveloped as provided in Section 9.3. The Executive Board may restore the Commons to substantially original condition or may improve or modify the design or use. The reconstruction may be considered a substantial Capital Improvement in accordance with Section 4.1.5 only if and to the extent that it modifies the original purpose of the Commons, in which case insurance proceeds shall be considered as if they were assessments. The Executive Board shall obtain funds for reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

(b) Townhouses and Condominiums. The provisions concerning Townhouses are found in Part VI. Condominiums shall be repaired as provided by the condominium declaration.

(c) Other Parcels. If fire, severe weather or other loss damages or destroys a building or any other improvements on a Parcel, the Owner is required to restore the property as follows:

(i) Clean-Up. The Owner of the Parcel shall immediately clear and secure the Parcel. If the Owner fails to clear and secure a Parcel within 30 days after a loss, the Assembly may, in accordance with the provisions of Section 7.3.3, remove debris, raze or remove portions of damaged structures and perform any other clean up the Assembly deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Parcel Owner as an Individual Parcel Assessment.

(ii) Rebuilding. Within 18 months of the loss, the Owner shall proceed to rebuild and restore the improvements and shall continue such improvement until completion without undue delay, unless a plan for redevelopment is approved as described in Section 9.3. The improvements shall be restored to the plans and specifications existing immediately prior to such damage or destruction, unless the Owner submits, and the ARC approves, other plans. If an Owner fails to begin rebuilding within the time allowed or abandons reconstruction, then the Assembly has the right but not the obligation to purchase the Parcel at 80% of fair market value in *"as is"* condition. The reduction in value is intended to allow the Assembly to market and resell the Parcel to an Owner who will restore the property.

Part IV:
Budget, Assessments

4.1 Assembly Budget.

4.1.1 Assembly Expenses. The Executive Board shall adopt a budget for management of the Assembly, insurance (other than coverage for the Townhouse Parcels or other Maintenance Zone expenses), and landscaping that are not part of a Maintenance Zone, legal and accounting services and other generalized expenses of the Assembly. The Assembly budget shall be assessed to all Owners, including Owners in those Maintenance Zones that have created separate associations under Section 3.4.6, and shall be divided according to Allocated Interest.

4.1.2 Maintenance Zone Expenses. Except for those Maintenance Zones that have created separate associations under Section 3.4.6, the Executive Board shall adopt a separate budget for each Maintenance Zone for Maintenance Zone expenses. In creating a Maintenance Zone budget, the Executive Board shall consult with the Maintenance Zone Advisory Council, if any, formed for that Maintenance Zone.

4.1.3 Budget Process.

(a) Fiscal Year. The fiscal year of the Assembly shall begin January 1 of each year and end on December 31 of the following year, unless the Executive Board selects a different fiscal year.

(b) Budget Items. For both the general and Maintenance Zone budgets, the budget shall estimate total expenses to be incurred by the Assembly in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Executive Board, for working capital for the Assembly and, as further provided in Section 4.1.4, for reserves. If the Commons are taxed separately from the Parcels, the Assembly shall include such taxes as part of the budget. Fees for professional management of the Assembly, accounting services, legal counsel and other professional services may also be included in the budget.

(c) Approval. The Executive Board shall review and approve the budget prior to the beginning of the fiscal year for which it applies in accordance with the Bylaws. If General Assessments are to be increased to greater than 115% of the previous year's General Assessment, and petitions signed by at least 10% of all Owners requesting review are delivered to the Executive Board within thirty (30) days after the budget is delivered to Owners, the Executive Board shall call a membership meeting to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless a quorum of Owners required under the Bylaws is present and the budget is rejected by a majority of the Owners

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

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

4.1.4 Reserves and Deferred Maintenance.

(a) Generally. Although not required, it is recommended that the Assembly establish reserves for deferred maintenance, which are significant expenses that occur infrequently (in most cases, no more frequently than every five years). Without sufficient reserves, the Assembly will be required to levy a Special Assessment when these major expenses arise. Costs which reoccur more frequently or which are less expensive may be handled as an ordinary expense, although reserves may be established for these costs as well.

(b) Maintenance Zone Reserves. Reserves shall be kept separate by Maintenance Zone. The Townhouse Maintenance Zone should reserve for roof replacement and building painting as provided in Section 6.1.8.

(c) Using Reserves. When it is time to perform deferred maintenance, the Executive Board can authorize use of the appropriate reserve fund. Reserve funds are an estimate; sometimes one reserve fund will have excess funds, while another will not have enough. If specifically authorized by the Executive Board, reserves set aside for one purpose may be used for another purpose. For instance, money set aside for painting may be used for re-roofing a building. However, the Executive Board shall not use reserve funds from one Maintenance Zone for another Maintenance Zone's expenses.

(d) Calculating Reserves. The amount of reserve required is based on the life expectancy of the item, its replacement cost, and the amount of money already in the fund. Once the amount of the reserve is determined, the reserve funds should be included in the budget and funded each year from General Assessments.

(e) Investing Reserves. Although separated for the Assembly's internal bookkeeping purposes, the various reserve funds can be deposited in a single bank or investment account, to be invested in a prudent way.

(f) Excess Reserves. If there is an excess of reserves at the end of the fiscal year, the Executive Board may decide to reduce the following year's assessments for reserves. If the Executive Board, by two-thirds vote, determines that a reserve is no longer necessary for its original purpose, it may assign all or part of the funds to a reserve for another purpose. If the reserve funds in question are applicable to a particular Maintenance Zone, then the Executive Board shall assign funds for another purpose within that particular Maintenance Zone, or allocate the funds to the operating account of that particular Maintenance Zone.

4.1.5 Capital Improvements. The Executive Board may authorize Capital Improvements to the Commons and include the cost in the budget. Approval of the ARC is required for all Capital Improvements. If the Capital Improvement is considered substantial, it must also be ratified by a majority of the Owners. A Capital Improvement shall be considered substantial if the cost to the Assembly of the improvement is more than six percent (6%) of the annual budget, or if, when added to other Capital Improvements for the fiscal year, totals more than ten percent (10%) of the annual budget. However, any repair or replacement of existing improvements with materials of similar price and utility is not a Capital Improvement. If the Owners approve the substantial Capital Improvement, the Executive Board shall determine whether it shall be paid from General Assessments or by Special Assessment.

4.1.6 Individual Parcel Expenses. Certain services may be provided by the Assembly but are to be assessed to the affected Parcels rather than be included in the Maintenance Zone budget. Where such services can be reasonably estimated in advance, the Assembly may budget for such expenses and assess the cost in advance to the affected Parcels, including the establishment of reserves.

4.2 Covenants for Maintenance Assessments.

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

(a) General Assessments for expenses included in the budget for general Assembly expenses,

(b) Special Assessments for the purposes provided in this Declaration,

(c) Maintenance Zone Assessments, and

(d) Individual Parcel Assessments for any charges particular to that Parcel.

Each Owner also agrees to pay a late fee and interest, as established by this Declaration and the Executive Board, and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought. Upon default in the payment of any one or more installments, the Executive Board may accelerate the entire balance of such Assessment, which shall be declared due and payable in full.

4.2.2 General Assessments.

(a) Establishment by Executive Board. General Assessments shall become due and payable on or before the first day of each fiscal year; provided, however, that the Executive Board may provide for collection of assessments in periodic installments, which would be paid in arrears. The Executive Board may charge a reasonable fee to Owners for the opportunity to pay Assessments in installments, which shall offset the increased costs of billing and collection.

General Assessments paid by a mortgagee as part of an Owner's mortgage escrow are not eligible for installment payment and shall be due on or before the first day of each fiscal year.

(b) Date of Commencement. The annual General Assessments shall begin on the day of conveyance of the first Parcel to an Owner other than the Declarant. The initial General or Special Assessment on any Parcel subject to assessment, prorated to the month of closing, shall be collected at the time title is conveyed to the Owner.

4.2.3 Special Assessment. In addition to the General Assessment, the Executive Board may at any time levy a Special Assessment:

(a) Johnson Square Assembly Fund Transfer Fee. To fund arts, educational, cultural, design, and community projects and activities at Johnson Square, the Johnson Square Assembly Fund Transfer Fee is owed upon any Transfer (as such term is defined below) of any Parcel subsequent to the initial conveyance from the Declarant to an Owner. The Johnson Square Assembly Fund Transfer Fee shall not exceed the amount of one tenth of one percent (0.10%) of the purchase price of a given Parcel. The Johnson Square Assembly Fund Transfer Fee shall be paid directly to the Johnson Square Assembly and shall be due and payable upon a Transfer. The Declarant or, after the Development Period, the Assembly may, in its respective discretion, change the Johnson Square Assembly Fund Transfer Fee annually to maintain appropriate levels of the fund, given however, that the amount shall not exceed one tenth of one percent (0.10%). For the purpose of determining the amount of the Johnson Square Assembly Fund Transfer Fee, a Parcel's "purchase price" shall be the amount used to determine the real property transfer tax as shown on the settlement statement for such conveyance or, in the absence of the imposition of a real property transfer tax, the "purchase price" shall be deemed to be the actual consideration given by the purchaser, including assumed indebtedness and consideration of forbearance. "Transfer" shall mean the conveyance of fee simple title to a given Parcel of Parcels.

(b) Capital Improvements. A Special Assessment may be levied for a Capital Improvement. If the Capital Improvement is considered substantial, it must first be approved by Owners in accordance with Section 4.1.5.

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

The Executive Board may decide whether to collect the Special Assessment in one or more payments over a reasonable period of time. The Executive Board may give a reasonable discount for early payment appropriately tied to the cost of borrowing or investing money.

4.2.4 Individual Parcel Assessments. The Executive Board may levy at any time an Individual Parcel Assessment against a particular Parcel for the purpose of defraying, in whole or in part, the cost of any special services to that Parcel or any other charges designated in this Declaration as an Individual Parcel Assessment.

4.2.5 Effect of Nonpayment of Assessment; Remedies.

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

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

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

(d) Other Remedies. The Assembly shall have the right to assess fines and suspend the voting rights and right to use of the Commons by an Owner for any period during which any Assessment against his Parcel remains unpaid.

(e) Intent. No provision of this section shall be interpreted so as to limit in any way the rights of the Assembly for collection of Assessments under Arkansas law.

(f) Authority of the Executive Board to Settle Unpaid Assessment Charge. The Executive Board, using its reasonable judgment, may settle or compromise any claim for unpaid Assessment Charges.

Notice to Purchasers Concerning Unpaid Assessments

If there are any Assessments unpaid on the Parcel, you will automatically become liable for those Assessments when you accept a deed. You should contact the Assembly before purchasing a Parcel to make sure no Assessments are owed. You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

The Assembly, upon request of any Owner or contract purchaser, will furnish a certificate stating whether assessments are paid to date by that Owner and whether any Special Assessments have been levied. Such a certificate, when co-signed by at least two officers of the Assembly, may be relied upon by a good faith purchaser or mortgagee. Alternatively, the Executive Board may delegate to the Assembly's management company the responsibility for preparing and executing such certificates.

Part V:
Design Review

5.1 TND Plan and Town Architect.

5.1.1 The TND Plan. Declarant prepared the TND Plan for Johnson Square, and subsequently, pursuant to the Ordinances, the TND Plan was approved by the Johnson City Council. The TND Plan and the Ordinances set standards for the Commons and for various aspects of a given Parcel visible from the outside, including without limitation the size and shape of the building, and its placement on the lot. The TND Plan and the Ordinances also regulate the type, placement and number of residential or business units that may be constructed on a Parcel.

5.1.2 Regulating Plan. Declarant may also prepare a regulating plan or other instrument (a "*Regulating Plan*") that sets standards for various other aspects of some or all of the Parcels, including without limitation detailed requirements concerning the size and shape of the building and its placement on the lot, its roof, windows, doors, porches, garages, garden walls, party walls, and other components of the building, fences, drainage, paving, landscaping, antennas, signage, and all finish materials and colors. Some or all of the Property may become subject to a Regulating Plan pursuant to a Bill of Assurance or other instrument filed by Declarant in the real estate records.

5.1.3 Town Architect. Johnson Square is to have a Town Architect, whose job it is to understand, interpret and, when necessary, propose modifications to the TND Plan. During the Development Period, the Town Architect is appointed by the Declarant and serves at its pleasure. After the Development Period, the Town Architect is appointed by the Executive Board and serves at its pleasure. The Town Architect must have a professional degree in architecture, landscape architecture or urban design from an accredited university, or comparable qualifications.

5.1.4 Permitted Uses. Although the TND Plan and the Ordinance are primarily concerned with the shape and placement of buildings and other improvements, the TND Plan may also designate or limit permitted uses for Parcels, which may include residential use, civic use, retail, office, restaurant or other commercial use or a mixture of uses. For instance, commercial uses of Live/Work Units located in or near residential areas may be restricted to those that do not overload the available parking. Uses may be revised by modification of the TND Plan in accordance with Section 5.1.5; however, no such modification shall prohibit a legally existing use without the consent of an affected Owner. A deed restriction or other restriction specific to a Parcel or designated Parcels and recorded in the public records prior to or at the time of conveyance, or at any time with the consent of the Parcel Owner, may further restrict a Parcel's use. The Town Center Declaration may include further use restrictions for property subject to its terms.

5.1.5 Modification of the TND Plan. The Town Architect, with the approval of the Declarant, may make changes to the TND Plan, subject to any necessary approval by the Johnson City Council or as otherwise as may be required.

5.1.6 Applicable Governmental Codes. It is the intent of the Declarant that the TND Plan be consistent with all applicable requirements of state and local law. In the event of a conflict, Declarant shall be afforded the opportunity to attempt to resolve the issue with the applicable agency and, if necessary, to pursue revision of the TND Plan.

5.1.7 Trees. The cutting, removal or intentional damage of existing trees (including excessive pruning or failure to use due care with equipment or when removing other trees permitted to be removed) is strictly regulated as set forth in the Landscaping and Tree Preservation Regulations as set forth on Exhibit C.

5.1.8 Signage.

(a) Generally. Signs, advertisements, and notices of any type or nature located on Parcels situated within the Town Center may be regulated or prohibited solely by the Town Center Declaration, the TND Plan and any applicable Bill of Assurance and not by any action taken under the authority of this Declaration. Signs, advertisements, and notices of any type or nature whatsoever located on Parcels situated on Property other than the Town Center may be regulated or prohibited by the TND Plan, any applicable Bill of Assurance, or by rules and regulations enacted by the Executive Board. "For Sale" and "For Rent" signs within residential areas and may be significantly restricted

(b) Development Period. During the Development Period, the Declarant may require all signs to be approved by the Declarant under the review processes established under Section 5.2, even for developed portions of the Property. The Declarant shall be permitted to post and display advertising signs within the Property during the Development Period, and hereby reserves an easement for reasonable use of the Commons for such purposes.

5.1.9 Temporary Structures. A Bill of Assurance may prohibit or regulate construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Parcel. However, reasonable, occasional use of tents or other temporary structures for festive occasions or children's backyard camping is part of life and should be enjoyed. In connection with parties and other special events, the Executive Board may approve the use of tents, trailers and other temporary buildings on the Commons or elsewhere within the Property. A Bill of Assurance may set out standards for such temporary buildings. The Declarant may permit construction trailers and other temporary structures during construction.

5.1.10 Sports Equipment. Swing-sets, climbing structures, trampolines, basketball hoops, skateboard ramps and other play structures must be kept in good repair and, unless otherwise approved by the Executive Board, screened from view so as to not be substantially visible from the street right of way along the front lot line of a Parcel.

5.1.11 Satellite Dishes and Antennas. A Bill of Assurance or the Design Review Board or the Architectural Review Committee (as the case may be) may regulate the placement, size and

appearance of satellite dishes, antennas or other types of communication or electronic devices to the greatest extent permitted by federal law. Further restrictions may be placed on satellite dishes if permitted by federal law without amendment of this Declaration.

5.1.12 Drainage, Erosion. All plans must comply with applicable drainage, water conservation, erosion control and stormwater detention requirements.

5.1.13 Irrigation Systems. Each Parcel to be developed with a single family residence must have a professionally-installed subterranean irrigation system for landscaping in the front yard of such Parcel.

5.1.14 Commons. Although this Part V refers to *"Parcels"* and applies primarily to private property, it also applies to modification of the Commons. Construction of any structure upon the Commons (other than initial construction by the Declarant), reconstruction or repair after a loss, modification of any existing structure, or any material alteration of the landscaping or topography of any Commons, must be approved in advance under this Part V.

5.2 Review Process for Original Construction.

5.2.1 Construction Subject to Review.

(a) Approval Required. All modifications to an undeveloped Parcel, including without limitation clearing, grading, building construction, building materials, paving and landscaping, must be approved by the Design Review Board. No tree or land clearing or grading or any construction is permitted on any Parcel until the Design Review Board has reviewed and approved construction plans and specifications.

(b) Modifications. Once a plan is approved, any modification to that plan prior to or during construction must also be reviewed and approved by the Design Review Board. Any modification within two years of the receipt of a Certificate of Completion and Release as described in Section 5.2.5, including without limitation the addition of any landscaping, fence or other improvements, shall be considered part of the original construction, unless the Development Period has ended or the Design Review Board declines review, in which case the improvement shall be subject to Section 5.4.

5.2.2 Basis for Decision. Applications shall be approved or denied based upon compliance with the provisions of the Ordinance, the TND Plan, any Regulating Plan and overall quality of design. If the Design Review Board rejects an application due to overall design quality, despite compliance with the Ordinance, the TND Plan and any Regulating Plan, the Design Review Board shall make suggestions for improving the design. The Design Review Board may occasionally grant a variance from the TND Plan and any Regulating Plan based on existing topographical or landscape conditions, existing trees, accessibility needs or architectural merit. Any such variance must be in writing. Approval of a variance does not constitute a precedent for other applications, and such requests may be arbitrarily denied.

5.2.3 Review Procedure.

(a) Applications. The Design Review Board may establish forms and procedures for the review of applications, including review costs and fees, if any, to be paid by the applicant. The Design Review Board may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

(b) Notification. The Design Review Board shall make best efforts to notify the applicant of its decision within the time allowances set out in its design approval process handbook. However, a delay in reviewing an application shall not be deemed consent to construction unless the delay exceeds forty-five (45) days and the applicant notifies Design Review Board in writing, receipt acknowledged by Design Review Board, that failure to respond within ten (10) days shall be deemed approval. If approval is given, construction of the improvements may begin.

(c) Construction; Inspection. All construction must comply with the submitted plans. The Declarant or its agent may inspect the property during construction but has no obligation to make any such inspection.

(d) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes, along with applicable drainage, water conservation, erosion control and stormwater detention requirements. If the Design Review Board notes noncompliance, the Owner will be required to make the necessary changes. However, the Design Review Board is not responsible for the construction's compliance with governmental requirements.

(e) Exception. Interior construction and modifications not affecting the external structure or appearance of any building are not subject to review. However, construction drawings may be required as part of the review process to assist in interpreting the design.

5.2.4 Approval of Architects, Builders.

(a) Generally. The creation of the streetscape depends on the quality of design and construction, and adherence to the TND Plan and any Regulating Plan. Approval of architects and builders is necessary to assure quality construction and a reasonable spirit of cooperation. Once granted, approval status may be reviewed and revoked or extended from time to time based on actual performance.

(b) Architects. Architects must be approved by the Declarant before submitting plans. Approval shall be based on quality of past work, client satisfaction, and understanding of, and willingness to work within, the TND Plan and any Regulating Plan.

(c) Builders. Builders must be approved by the Declarant before building in the Property. Approval shall be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to dispose of construction debris properly and to build in accordance with the approved plans and specifications. Builders may be required to post

a deposit or surety bond for compliance and damages. Failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in the Property. The Declarant may form a Builders' Guild to promote excellence and may either require builders to join the Builders' Guild or may offer benefits to Builders' Guild members.

5.2.5 Completion. When the primary building and landscaping are completed in substantial compliance with the approved plans and specifications, the Design Review Board may issue an Inspection Report (the *"Report"*) describing any areas of deficiency that need to be corrected, or a Certificate of Completion and Release indicating compliance with the approved plans and specifications as described in Section 5.3.1(f). If a Report is issued, all fines and other enforcement shall be waived so long as the deficiencies are corrected within sixty (60) days of the issuance of the Report. Upon correction of all deficiencies, the Owner may apply for a Certificate of Completion and Release in recordable form.

5.2.6 Liability. The Design Review Board and its inspectors are concerned primarily with aesthetic considerations, and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the Design Review Board of an application, builder or architect shall not constitute a basis for any liability of the Design Review Board for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any builder or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition or event.

5.2.7 End of Development Period. After the Development Period, all of the Design Review Board's functions under this Section 5.2 shall be automatically assigned to the Architectural Review Committee established under Section 5.4. The Declarant may assign all or some of these rights sooner but is not required to do so. Any Parcel Owner who owns a Parcel at the time of the termination of the Development Period but who has not yet constructed a building shall be permitted to build improvements that are substantially similar to those permitted during the Development Period.

5.3 Time Limit for Original Construction.

5.3.1 Construction Time Limit.

(a) Requirement. Owner shall begin construction of the primary building on the Parcel no later than the Required Commencement Date and diligently pursue construction until completion, including landscaping. This agreement is part of the consideration Owner has paid for the Parcel. Owner must submit plans and begin the architectural review process in sufficient time to begin construction on time.

(b) Required Commencement Date. Unless otherwise specified on the deed or other recorded instrument executed by Declarant, the *"Required Commencement Date"* shall mean twelve (12) months from the date of the deed conveying the Parcel from the Declarant to the Owner or the Owner's predecessor in title.

(c) Start of Construction. Construction shall be considered to have begun when the clearing of the building site is begun or laying the foundation is begun, whichever is first.

(d) Continuous Construction. Failure to make significant progress during any thirty-day period or to complete the primary building within eighteen (18) months from the start of construction shall be considered a failure to diligently pursue construction under (a), except in the case of extreme material shortages, extreme weather conditions or other significant matters beyond the builder's control.

(e) Holder of Rights. The right to enforce this Section 5.3 is held originally by the Design Review Board and the Declarant, who may assign these rights at any time to the Architectural Review Committee or to the Assembly. The time limit for construction does not apply to any Parcels held by the Declarant.

(f) Completion, Release of Restriction. Upon completion of a primary building in accordance with this section and completion of all required landscaping and other improvements, an Owner may apply to the Design Review Board for a *"Certificate of Completion and Release"* in recordable form. Construction of an outbuilding without construction of a primary building fails to satisfy this requirement.

5.3.2 Enforcement.

(a) Events of Default. If Owner fails to comply with the requirements of Section 5.3.1, then Declarant shall have the right, but not the obligation, to repurchase the Parcel for the Repurchase Price defined in the following sub-section. These rights shall be in addition to the Declarant's rights of enforcement under Section 9.4.4 and Section 5.5.

(b) Repurchase Price. The Repurchase Price shall be equal to the amount paid by the Owner of the Parcel (or Owner's predecessor(s) in title) to Declarant for the original purchase of the Parcel or the current fair market value of the unimproved Parcel, whichever is less, plus the cost or fair market value, whichever is less, of any improvements made in accordance with plans approved by the Design Review Board. Amounts payable secured by any mortgage or lien on the Parcel, all closing costs for the repurchase, and a resale fee of 20%, shall be deducted from the amount paid to Owner by Declarant.

(c) Time of Exercise. Unless Owner has obtained a Certificate of Completion and Release as provided in Section 5.3.1, Declarant may exercise its rights against Owner at any time up to five (5) years after the Required Commencement Date. Declarant may preserve its enforcement rights by recording, within five (5) years after the Required Commencement Date, a lien or other notice of its intent to exercise its rights.

5.3.3 Resale Restriction. If Owner has not constructed a primary building on the Parcel in accordance with approved plans and specifications prior to reselling the Parcel, the Parcel shall remain subject to the requirements and remedies set out in this Section 5.3. The requirement to begin and timely complete construction shall continue to run commencing on the date of recording the original deed, unless the Declarant in its sole discretion agrees to an extension.

5.3.4 Right of First Refusal. If Owner has not constructed a primary building on the Parcel in accordance with approved plans and specifications prior to offering the Parcel for sale, Owner shall notify Declarant in writing of Owner's intent to market the Parcel, and shall also notify Declarant in writing of any offer Owner has received and intends to accept for purchase of the Parcel. In the event of such a proposed sale, Declarant shall have a right of first refusal to repurchase the Parcel on the same terms and conditions as Owner intends to sell. Declarant shall have ten (10) business days from receipt of Owner's written notice to notify Owner whether Declarant will exercise its right. If Declarant does not exercise its right, then Owner may sell the Parcel to another purchaser, but only for the same price and terms offered to Declarant. If Owner does not consummate that sale, Declarant's right of first refusal applies to all subsequent offers. Declarant's right of first refusal shall automatically terminate when Declarant no longer has any Parcels for sale in the Property or in the remainder of the JS Master Plan Area.

5.4 Review Process for Modifications.

5.4.1 Architectural Review Committee.

(a) Establishment. The Executive Board shall establish an Architectural Review Committee to review substantial changes or modifications to buildings under this Article. The ARC shall be composed of not fewer than three or more than five members. The Town Architect shall have one seat on the ARC, with the remaining seats to be appointed by the Executive Board. Members of the Executive Board may sit on the ARC. The ARC may employ personnel or contract with individuals or companies as necessary to assist in the review process.

(b) Procedures. Plans and specifications for review shall be submitted in the form and number required by the ARC. The ARC may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

(c) Maintenance Zone Input. The applicable Maintenance Zone Advisory Council or Maintenance Zone association shall be notified of any application concerning that Maintenance Zone. A representative designated by the council or association shall be entitled to be review the application, to comment upon the application and to be present at any meeting regarding the application.

(d) Fees. The Executive Board shall set the Architectural Review Committee's review fees to cover all or part of the expected cost of its operation and shall fund any deficit. Fees shall not be intended to create a surplus, other than an ordinary operating capital fund for the Architectural Review Committee to which any excess fees shall be contributed.

(e) Inspection. The ARC or its agent may inspect the property during construction but has no obligation to make any such inspection.

5.4.2 When Approval Required. Review by the ARC is not required to repaint with originally approved paint and colors, or to replace the roof or other components with duplicates of those originally approved, unless the ARC has previously notified the Owner in writing that replacement with the original colors or materials will not be permitted. The ARC shall maintain

a registry of such notifications, indexed by address and by the name of the Owner to whom the notice was originally given, so that any purchaser of a Parcel may check to see if such notice has been given. If the registry is properly maintained, it shall serve as notice to any subsequent Owner. Any other modification of the main building, outbuilding, hardscape, landscaping in excess of 200 square feet in area, and all other parts of the Parcel visible from outside the Parcel must be approved in advance of performance of any work. Once construction begins, all construction must comply with the approved plans and specifications, and any changes to the plans must be reviewed and approved.

5.4.3 Modifications to New Construction. Modifications within two years of the receipt of a Certificate of Completion and Release shall be considered part of the original construction, subject to review by the Design Review Board as provided by Section 5.2.1. If the Development Period has ended, then the modifications shall be subject to review by the ARC under this Section 5.4.

Modifications Requiring Approval

Modifications requiring approval include but are not limited to the following:

- *Materials and color selection for the main building and any outbuilding (including roof, doors, windows and trim);*
- *Landscaping, grading and any removal or substantial pruning of trees or plants;*
- *Privacy walls or other fences and gates, driveways, walks, patios and other ground surface materials;*
- *Antennas, satellite dishes or receivers, solar panels or other devices which are visible from outside the Parcel;*
- *Fountains, swimming pools, whirlpools or other pools, awnings, flower boxes, shelves, statues or other outdoor ornamentation and window coverings visible through the window;*
- *Signage of any type; and*
- *Play equipment, whether or not secured, such as tree houses, pools, skateboard ramps, basketball hoops and swing sets.*

The listing of a category does not imply that such construction or use is permitted.

5.4.4 Townhouses.

(a) Modification by Owner. Because the Townhouses are intended to have a uniform appearance and are to be maintained by the Townhouse Administrator, as provided in Part VI, the ARC must review any maintenance, repair or replacement of any part of the exterior of a Townhouse Parcel by an Owner, other than maintenance, repair or replacement with materials and colors identical to those originally approved. The TND Plan restricts Owners' ability to enlarge or enclose space or to make any other changes in the exterior appearance of the building or yard to a much greater degree than for other housing types. In addition to review by the Architectural Review Committee, the Executive Board and the Townhouse Advisory Council must approve any private antenna, satellite dish or other structure to be placed on the roof to assure that the roof will not be damaged.

(b) Modification by Assembly. If the Assembly wishes to make any maintenance, repair or replacement of any part of the exterior of a Townhouse Parcel or Parcels other than with materials and colors originally approved, then the ARC must review and approve such change. In such an instance, the ARC shall notify the Townhouse Maintenance Zone Advisory Council and obtain its advice concerning the modification.

5.4.5 Standard for Review.

(a) Generally. Applications are approved based upon compliance with the TND Plan and any Regulating Plan in effect at the time of the submittal, compatibility with surrounding Parcels and Commons and overall quality of design. The ARC may also consider other factors, including purely aesthetic considerations, so that it may require changes to a plan to improve its appearance even if the design meets the technical requirements of the TND Plan. If the ARC rejects an application due to overall design quality, despite compliance with the TND Plan and any Regulating Plan, the ARC shall make suggestions for improving the design.

(b) Variances. The ARC may occasionally grant a variance from the TND Plan and any Regulating Plan based on existing topographical or landscape conditions, accessibility needs or architectural merit, but the granting of such a variance shall not be deemed a precedent for other variances.

(c) Tree Protection. The cutting, removal or intentional damage of existing trees (including excessive pruning or failure to use due care with equipment or when removing other trees permitted to be removed) is strictly regulated as set forth in the Landscaping and Tree Preservation Regulations as set forth on Exhibit C.

(d) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes. All plans must comply with applicable drainage, water conservation, erosion control and stormwater detention requirements. If the ARC notes noncompliance, the Owner will be required to make the necessary changes. However, the ARC is not responsible for compliance with governmental requirements.

5.4.6 Builders. The ARC may establish review and approval processes for builders and other contractors. Approval shall be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to properly contain and dispose of construction debris, and to build in accordance with the approved plans and specifications.

5.4.7 Limitation. The ARC and its inspectors are concerned primarily with aesthetic considerations, and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the ARC of an application, builder or architect shall not constitute a basis for any liability of the Declarant, or members of the ARC, Executive Board or Assembly for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of

any contractor or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition or event.

5.5 Enforcement.

5.5.1 Generally. If any construction or installation is not timely commenced pursuant to Section 5.3, or is started but has not been approved or which deviates from approved plans and specifications, the Declarant (for original construction and for signage during the Development Period) or Assembly (for modifications) may approve any of the following actions or any combination of the following:

(a) Require the Owner to resolve the dispute through binding arbitration,

(b) Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans, and/or

(c) Bring suit seeking other remedies, including any combination of damages, specific performance, declaratory decree and/or permanent injunction or other remedy at law or in equity.

If the Declarant or Assembly brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Declarant or Assembly as applicable shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted. By virtue of the acquisition of a Parcel within Johnson Square subject to this Declaration; each Owner is deemed to have waived the right to assert, in any court proceeding, that a sufficient remedy at law exists.

5.5.2 Deposit, Fines. The Declarant (for new construction) or Assembly (for modifications) may require the builder or Owner to post a deposit from which the Declarant or Assembly, as applicable, may deduct fines for failure to comply with the approved plans and specifications, damage to the Commons, tree regulations and rules for builder conduct. The Declarant or the Assembly acting through the Executive Board, as applicable, may assess fines up to one percent (1%) of the value of an affected Owner's Parcel, as reasonably determined by the Declarant or Executive Board, with no limit on the aggregate amount except as required by law. Fines shall be charged against the Parcel as an Individual Parcel Assessment. All fines collected shall be contributed to the general fund of the Assembly. The collection of a fine shall not in any way diminish the available remedies at law or equity.

5.5.3 Tree Protection. Improper cutting, removal or intentional damage to existing trees is subject to fines as set by the Declarant or Assembly as applicable, plus a requirement that the tree be replaced with one or more of approved species and size.

5.5.4 No Waiver. Failure to enforce any provision of this Declaration, the TND Plan or construction rules shall not be deemed a waiver of the right to do so at any time thereafter.

Part VI:
Townhouses

This Part VI shall apply only to Townhouses.

6.1 Townhouse Maintenance.

*Townhouse Parcels are individually owned but, because of their structure, need to be maintained in a uniform fashion and require special maintenance provisions. The Assembly may maintain Townhouses as a Maintenance Zone, or a separate Townhouse Maintenance Association may be formed for that purpose. The term "*Townhouse Administrator*" refers to the Assembly if the Assembly is maintaining the Townhouses, or to the Townhouse Maintenance Association if one has been formed.*

6.1.1 Establishment of Maintenance Zone. This Part VI provides basic provisions for the maintenance of all Townhouses within the Property.

(a) Designation of Townhouse Maintenance Zone. As further provided in Section 3.4.5(a) or (b), a Townhouse Maintenance Zone may be designated at time of submitting the property to this Declaration or with the consent of the Owners or, if not so designated, the Executive Board may designate the boundaries of the Townhouse Maintenance Zone.

(b) Special Provisions. A special Supplemental Declaration may be recorded for a particular Townhouse Maintenance Zone as follows:

(i) by the Declarant and the Owners of all property within the Townhouse Maintenance Zone, or

(ii) by the Executive Board with consent in writing of Owners representing a majority of the allocated interests of all property within the Townhouse Maintenance Zone, plus consent of the Declarant if within the Development period.

A Supplemental Declaration may establish special provisions for that Maintenance Zone and may modify some or all of the provisions of this Part VI. Unless specifically modified by a Supplemental Declaration for a particular Townhouse Maintenance Zone, the Provisions of this Part VI shall apply.

6.1.2 Townhouse Maintenance Association.

(a) Creation. A Townhouse Maintenance Association may be formed in either of two ways:

(i) Prior to the conveyance of any Townhouse Parcel to an individual purchaser (or with the consent of any such Owners), the developer of any Townhouse Maintenance Zone may establish a Townhouse Maintenance Association by the recording

of a Supplemental Declaration with Articles of Incorporation and Bylaws for the Townhouse Maintenance Association. The Supplemental Declaration shall require the consent of the Declarant but shall not require the consent of the Assembly.

(ii) An association may be created at any time in the same manner as any Maintenance Zone Association as provided in Section 3.4.6.

In either case, the association may be formed to administer a single Townhouse Maintenance Zone, or it can administer multiple such zones, each of which would have a separate budget.

(b) Responsibilities. A Townhouse Maintenance Association, if created, shall assume all of the responsibilities provided under this Part VI as to that Townhouse Maintenance Zone.

(c) Powers. Whether or not so stated in the Supplemental Declaration, a Townhouse Maintenance Association shall have the same powers as the Assembly to levy and collect assessments, including a lien on the Parcel. Such assessments may include all costs associated with carrying out its responsibilities under this Part VI plus general management and operation of the Townhouse Maintenance Association.

6.1.3 Roof. The Townhouse Administrator shall be responsible for maintenance of the roof deck, surface, flashing and gutters, if any, on all Parcels in the Townhouse Maintenance Zone. The Townhouse Administrator shall not be responsible for maintenance of the framing. Owners shall promptly report to the Townhouse Administrator any water leakage in any Townhouse or any other damage to the roof. The Townhouse Administrator shall replace a roof when either of the following shall occur:

(a) A roof which is approaching its normal life expectancy (or which the Townhouse Administrator deems to be defective) requires repair and the Townhouse Administrator determines that it would be more efficient to replace the roof, or

(b) A portion of the roof has been damaged by casualty, and the Townhouse Administrator chooses to replace the roof.

If the roof does not need to be replaced but is causing water leakage into any townhouse or the Townhouse Administrator otherwise determines that a roof requires repair, then the Townhouse Administrator shall make all necessary repairs. If the Townhouse Administrator determines that a roof does not need to be replaced, the Owner of the Townhouse Parcel directly underneath the damaged portion shall have the right to repair the roof with matching materials.

6.1.4 Exterior Maintenance. Unless otherwise provided in the supplemental declaration or other agreement concerning the Maintenance Zone, the following shall apply:

(a) Townhouse Administrator Responsibility. The Townhouse Administrator shall maintain exterior wall surfaces and exterior trim of Townhouses. Such maintenance shall include repair and replacement as necessary, and painting, pressure washing or other cleaning as determined by the Executive Board.

(b) Owners' Responsibility. Each Owner shall care for and maintain at the Owner's expense the interior of the Townhouse, structural beams and any other structural element of the Townhouse, doors, garage doors and windows, plumbing, electrical, heat and air-conditioning systems serving that unit and all other portions except those specifically required to be maintained by the Townhouse Administrator.

(c) Porches. The Owner shall be responsible for maintaining all horizontal porch surfaces and keeping the porch clean. Porch railings shall be maintained in the same manner as exterior trim unless the Townhouse Administrator makes a rule providing otherwise. If the Townhouse Administrator is responsible for maintenance and the Owner notices any dangerous condition of the railing, the Owner shall promptly notify the Maintenance Zone association.

(d) Party Walls. A party wall is a structural, fire-rated wall between two adjacent Townhouses that provides structural support for each of the Townhouses. Damage to the party wall could impair the structural integrity of more than one Townhouse. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose Townhouse faces such wall. Each Owner grants to the Owner of each adjacent Parcel an easement to use and maintain the party wall between them. The adjacent Owners shall share the cost of any repairs to the party wall equally unless the Owner damages the wall, in which case the Owner causing the damage shall be liable and responsible.

(e) Outbuildings. The Townhouse Administrator shall maintain, repair and insure outbuildings, such as garages, in the same manner as the primary structure.

(f) Interpretation. The Executive Board may make and consistently apply reasonable rules interpreting these provisions to determine which portions of the Townhouse Parcel shall be maintained by the Townhouse Administrator and which portions shall be maintained by the Owner.

6.1.5 Landscape Maintenance.

(a) Townhouse Administrator Responsibility. The Townhouse Administrator shall maintain the front yards of each Townhouse Parcel, plus any side yard along a street that is not enclosed by a fence. Street trees, grass and landscaping adjacent to the sidewalk, whether part of the Parcel, Commons or right-of-way, may also be included within the commonly maintained landscape service.

(b) Owner Rights and Responsibility. Subject to rules and regulations by the Townhouse Administrator and design review under Section 5.4 as applicable, an Owner may plant additional plantings on Owner's Parcel. If an Owner plants any flowers or other plantings, the Owner shall properly maintain them. After notice and hearing, the Townhouse Administrator may remove any plantings visible from outside the Parcel that are not well maintained, that are invasive species or that are not in keeping with other landscaping. Rear yard maintenance may be provided on a contract basis.

(c) Irrigation. Parcels may have a shared irrigation system. If so, the Townhouse Administrator shall maintain the irrigation system, the cost of which shall be included in the

common expenses of the Townhouse Administrator. Owners shall not damage or interfere with the operation of the irrigation system and shall promptly report any damaged or inoperable equipment.

6.1.6 Pest Control. The Townhouse Administrator may provide basic pest control service, including termite prevention measures. The Executive Board shall determine the type of service. The Owner shall cooperate in granting access for pest control service if provided. The Owner is responsible for, and shall promptly repair, any termite damage or any other infestation that is not covered by the Townhouse Administrator coverage, if any.

6.1.7 Owner's Additional Responsibilities; Townhouse Administrator Action.

(a) Owner's Failure to Maintain. If Owner's failure to properly maintain and repair those portions of the Townhouse Parcel not maintained by the Townhouse Administrator is endangering the structural integrity of other Townhouse Parcels or causing water leakage into other Townhouses, the Townhouse Administrator shall have the right to enter and repair the defect and charge the cost, plus a management fee of 15%, to the Owner as an Individual Parcel Assessment. The Townhouse Administrator shall give at least ten (10) calendar days notice or, in an emergency, whatever notice is reasonable under the circumstances.

(b) Damage or Destruction by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family intentionally or as a result of negligence or misuse damages the roof or any other portion of the Townhouse Parcel to be maintained by the Townhouse Administrator, the Owner hereby authorizes the Townhouse Administrator to repair the damage. To the extent not paid by insurance, the cost of repair shall be the responsibility of that Owner and shall become an Individual Parcel Assessment payable by the responsible Owner. The Townhouse Administrator may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable.

6.1.8 Assessment of Costs.

(a) Generally. The cost of all maintenance and services to be provided to the Townhouse Maintenance Zone, along with the cost of the Townhouse Administrator's additional professional management attributed to the Townhouse Maintenance Zone and the reserves described below, shall be divided among all Townhouse Parcels in a Townhouse Maintenance Zone as a Maintenance Zone Assessment. Unless the instrument creating the Townhouse Maintenance Zone provides otherwise, the cost shall be divided among the Townhouse Parcels in accordance with Allocated Interests.

(b) Reserves. The Townhouse Administrator shall establish and maintain a reserve account for each Townhouse Maintenance Zone for repair and replacement of roofs based on the expected life and replacement cost. The Townhouse Administrator may also establish a similar reserve for repainting of Townhouses if appropriate to the type of construction.

(c) Roof Repair. The cost of roof replacement or repair shall be paid first from any insurance proceeds and then from the reserve fund. If the reserve fund is not sufficient to pay for

the repair or replacement, or if the Townhouse Administrator faces any other unanticipated expense for the Townhouse Parcels, then the Townhouse Administrator shall levy a special Individual Parcel Assessment on each Townhouse Parcel in that Townhouse Maintenance Zone to cover the cost.

6.2 Insurance.

6.2.1 Purchase by Townhouse Administrator. Unless such coverage is not available or is available only at a cost significantly greater than that available if purchased by the individual unit owners, the Townhouse Administrator may contract for property insurance for the buildings on the Townhouse Parcels. If the Townhouse Administrator contracts for property insurance, the Townhouse Administrator is expected to exercise the "prudent person" principle in assessing the insurable risks and obtaining coverage against them.

6.2.2 Type of Coverage. Any policy shall, at a minimum, insure the structural components of the building and the exterior surfaces. The Townhouse Administrator shall determine whether to purchase coverage for the interior of the Townhouse and other parts of the Parcel. The Townhouse Administrator shall communicate to Parcel Owners in writing a description of the type of coverage selected.

6.2.3 Notification of Change or Termination. If the Townhouse Administrator decides to eliminate or reduce existing coverage, the Townhouse Administrator shall notify all Owners at least sixty (60) days prior to the effective date of the change so that each Owner can obtain coverage.

6.2.4 Liability. The insurance purchased by the Townhouse Administrator may or may not include liability coverage for the individual Parcels. Parcel Owners are strongly encouraged to obtain liability coverage if the Townhouse Administrator policy does not include liability coverage or if the Owner needs additional coverage.

6.2.5 Parcel Owner's Coverage. The Parcel Owner is strongly encouraged to purchase coverage that insures those items that are not covered by the Townhouse Administrator policy.

6.2.6 Deductible. The Townhouse Administrator in its discretion shall determine the amount of the deductible for the Townhouse Administrator policy. If the Townhouse Administrator purchases the policy, the deductible amount may be significantly higher than would be appropriate for an individual policy. In such a case, the Townhouse Administrator shall from time to time determine the amount of a reasonable deductible for an individual claim (the *"Individual Deductible"*) and the Parcel Owner shall be responsible only up to that amount in the event of a claim. Any damage that is of the type that would be covered under the Townhouse Administrator policy and that falls between the Individual Deductible and the policy deductible shall be a Zone expense. If the Townhouse Administrator determines that the policy deductible is reasonable, then the policy deductible shall be the Individual Deductible.

6.2.7 Assessments. If the Townhouse Administrator purchases coverage for the Townhouses, the expense shall be assessed to all Parcels within the Zone as Individual Parcel Assessments. If

the insurance policy indicates assessed value and the relative cost of the insurance for each individual Parcel, then the coverage shall be allocated according to such determination. Otherwise, the cost shall be allocated equally among the Townhouses in the Zone.

6.2.8 Individual Coverage. If the Townhouse Administrator does not insure the Parcels, then the individual Owners are required to obtain homeowners' property insurance with an amount of coverage equal to replacement value of the structure and provide evidence of such coverage to the Townhouse Administrator, according to rules and procedures established by the Executive Board for providing such evidence. If any Owner fails to provide evidence of coverage to the Townhouse Administrator on a timely basis, then, upon ten (10) days notice to the Owner, the Townhouse Administrator shall obtain the coverage for the Owner, the cost of which, plus a 15% service charge for the Townhouse Administrator, shall be assessed to the Townhouse Parcel as an Individual Parcel Assessment. The Townhouse Administrator may establish rules concerning such policies, including without limitation (a) requiring the Townhouse Administrator to be named as a loss payee on any such policy, (b) requiring the Townhouse Administrator to be notified prior to any cancellation of the policy and (c) requiring coverage to be with a company rated *"A"* or better. The Townhouse Administrator may negotiate group-rate insurance from a provider or providers for voluntary participation.

6.3 Loss and Reconstruction.

6.3.1 Generally. After a casualty loss, the Townhouse Administrator shall be responsible for performing any repair unless:

(a) the damage is confined to one Parcel or exclusively or primarily involves the interior of a Parcel or Parcels and the Townhouse Administrator decides that the individual Owner shall make the repair, or

(b) the Owners rather than the Townhouse Administrator were responsible for purchasing the insurance and the Townhouse Administrator decides that the individual Owner or Owners shall be responsible for repair.

Any repair or reconstruction shall be according to the plans and specifications as they existed before the damage unless modifications are approved in accordance with Part V.

6.3.2 Townhouse Administrator Repair. If the Townhouse Administrator is responsible for performing the repair, the following shall apply as to financial responsibility:

(a) Townhouse Administrator Insurance Policy. If the Townhouse Administrator has purchased the insurance or is a loss payee on Owners' policies, the Townhouse Administrator shall be responsible for all repairs to those portions of the Parcel covered by the Townhouse Administrator insurance policy. The following shall be an Individual Parcel Assessment: (i) the individual deductible described in Section 6.2.6 and (ii) repair or replacement of any portion of the Parcel not insured under the Townhouse Administrator policy. The following shall be a Zone expense: (i) the amount between the Individual Deductible and the policy deductible as described

in Section 6.2.6 and (ii) repair or replacement of any portion of the Parcel insured under the Townhouse Administrator policy but for which there are insufficient funds.

(b) Individual Insurance Policies. If the individual Owner was responsible for purchasing property insurance and the Townhouse Administrator has waived the requirement to be named a loss payee, then the Owner shall assign the insurance proceeds to the Townhouse Administrator. Any deductible and any additional amount not covered by insurance shall be an Individual Parcel Assessment.

6.3.3 Individual Repair. If the Townhouse Administrator has determined that the affected Owner or Owners shall make the repair, the following shall apply:

(a) Townhouse Administrator Insurance Policy. The Townhouse Administrator shall release any insurance funds it has received for the repair and shall pay the amount between the Individual Deductible and the policy deductible as provided in Section 6.2.6 but the Owner shall be responsible for the individual deductible as provided in Section 6.2.6 and any remaining cost.

(b) Individual Insurance Policies. In the event of damage to more than one Townhouse Parcel, the Townhouse Administrator may coordinate the work and each Parcel Owner shall be required to cooperate with the coordinated effort. Each Owner shall pay the deductible and shall be responsible for any remaining cost.

The Townhouse Administrator shall institute reasonable procedures to assure proper use of insurance proceeds. The Townhouse Administrator, the ARC or both may supervise all work.

6.3.4 Cooperation. Owners shall cooperate with repair efforts, whether the repair is to that Owner's Townhouse Parcel or to another within the Townhouse row, including granting access as necessary.

Part VII:
Residential Uses

This Part VII shall apply only to Parcels with Residential Units, and to the residential portion of mixed-use Parcels. Commercial uses shall be regulated under a Town Center Declaration, if one exists, and in such event the Assembly established by this Declaration shall not have any authority to regulate commercial uses.

7.1 Covenants and Restrictions.

This Declaration does not incorporate long lists of rules. Instead, the concept is simple: neighbors should not create unreasonable disturbances or unsafe conditions—and neighbors should tolerate a certain amount of activity, noise, pets and exuberant children as part of a vibrant community.

7.1.1 Uses.

(a) Home Industry. To the extent permitted by law and subject to reasonable regulation by the Assembly, home industry that does not generate significant traffic, noise or odor or change the exterior appearance of a building shall be permitted on any Parcel. Signage for home-based business, if any, shall be regulated under the TND Plan and the Ordinance.

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

(c) Soliciting. The Assembly may regulate or prohibit soliciting within the Property.

(d) Time Sharing. Establishment of any time-share ownership of a Parcel or Parcels requires consent of the Declarant if during the Development Period and consent of the Executive Board if after the Development Period. Such consent may be arbitrarily withheld. Leasing a building or ownership of a Parcel by a corporation, partnership or other entity or division of ownership into no more than four shares will not by itself constitute time-share ownership.

(e) Garage Sales. Garage sales, estate or yard sales, sample sales and similar kinds of sales activity from Parcels is permitted on an occasional basis. However, the holding of frequent sales from a particular Parcel shall be considered a business and may be regulated, limited or prohibited by the Assembly.

(f) Nuisances, Unlawful Use. No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist or operate on any Parcel or Commons. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with, by and at the sole expense of the Owner or the Assembly, whichever shall have the obligation to maintain or repair the affected portion of the Property. No

light that is unreasonably bright or causes unpleasant glare shall be permitted on any Parcel. No loud or annoying noises or noxious or offensive odors shall be emitted beyond the boundary lines of any Parcel.

7.1.2 Renting. Residential dwelling units may be rented, subject to reasonable rules and regulations as promulgated by the Declarant during the Development Period and by the Executive Board if after the Development Period, which may be modified from time to time. The Executive Board may set a minimum term for leases of up to seven (7) months, a maximum number of consecutive months a residential dwelling unit may be without owner occupancy or vacancy and the length of any such required vacancy, and may prohibit the leasing of a Parcel while the Owner is in default in the payment of Assessments. The rules and regulations may require an Owner to disclose to its tenants the land use restrictions applicable to Johnson Square, and may require Owners to register any leases with tenants with the Declarant or the Assembly.

7.1.3 Attractiveness and Safety of Parcels. Each Owner and occupant of a Parcel and their respective guests and invitees shall keep all parts of his Parcel in good order and repair and free from debris. The TND Plan or the Assembly may regulate placement and maintenance of garbage and trash containers, and fuel or gas storage tanks, visibility at intersections and other matters affecting the attractiveness or safety of the Property.

7.1.4 Pets. Most pets are welcome so long as the pets do not cause an unsafe condition or unreasonable disturbance or annoyance.

(a) Types of Pets Permitted. Pets are limited to cats, dogs and birds, as well as animals weighing less than five pounds that are not specifically prohibited by rule, that are contained inside the home in an aquarium, terrarium or cage and that are not poisonous or otherwise hazardous if they were to escape. The Assembly may further regulate the number and size of pets and may prohibit the keeping of particular breeds of dogs or other animals that it deems to create unreasonable danger or nuisance.

(b) Pet Behavior. Pets shall not be permitted to roam loose outside the Parcel, and shall not create unreasonable noise or odor. Owners shall collect and dispose of animal waste. The Assembly may designate specific areas within the Commons where pets may be walked, may prohibit pets on other areas, and may require pets to be on leash.

7.1.5 Vehicles and Garages.

(a) Parking. All parking within the Property shall be in accordance with the Ordinance, the TND Plan and any Regulating Plan and with rules and regulations adopted by the Assembly. The Assembly reserves the right to regulate or prohibit the parking of oversize vehicles (including campers and boats).

(b) Good Repair. The Assembly may restrict or prohibit the parking or storage of disabled automobiles or automobiles undergoing repair, other than emergency repairs.

(c) Garages. The Ordinance and the TND Plan or the Assembly may prohibit or restrict the conversion of parking areas within garages into living space, and may require that

parking space within garages not be blocked with storage items or otherwise made unusable for parking of cars. By design, the amount of parking within Johnson Square is limited, and it is the intent that cars be parked within garages whenever possible. This provision is not intended to restrict the creation of garage apartments where permitted under the Ordinance and the TND Plan. The Assembly may require that garage doors be kept closed except when automobiles are entering or leaving the garage.

7.1.6 Rules and Regulations. The Executive Board may from time to time adopt rules or amend previously adopted rules and regulations governing the details of the operation, use, maintenance and control of the Parcels, Commons and any facilities or services made available to the Owners. Rules and Regulations shall take effect immediately upon approval by the Executive Board, or at a later date selected by the Executive Board. If requested in writing by at least 10% of all Owners, a membership meeting may be called and any Rule or Regulation may be repealed by majority vote of the Owners. A copy of the Rules and Regulations adopted from time to time shall be posted in a conspicuous place within the Property or furnished to each Owner.

7.1.7 Owner's Responsibility. Each Owner, family members of Owners and Owners' guests and tenants shall conform and abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Executive Board. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

7.2 Conciliator.

7.2.1 Establishment. Disputes concerning this Part VII shall be heard and decided by the Executive Board, subject to assignment at the Executive Board's sole discretion to a Conciliator, or a Conciliatory Panel. The Executive Board shall determine the number of Conciliators and decide if the Conciliators are to be elected or appointed. The Executive Board may decide to make the Conciliator a paid position.

7.2.2 Issues to be Heard. Upon assignment by the Executive Board, a Conciliator will hear issues concerning any complaints of violations of Part VII of the Declaration or the Rules and Regulations adopted by the Executive Board. The Executive Board may also refer to the Conciliator certain violations of Part V, Design Review, as it deems appropriate. In each case, the Executive Board shall determine if the matter is to be heard by a single Conciliator or by a panel of Conciliators.

7.2.3 Notice. The Conciliator shall notify the resident who is believed to be in violation, as well as the Owner of the Parcel, if different, and set a convenient date and time for a hearing. The hearing shall occur not later than forty-five (45) days after the date of such notice. The Conciliator shall also notify the Maintenance Zone Advisory Council, which shall be permitted to comment on the matter, and may participate to the extent deemed advisable by the Conciliator.

7.2.4 Hearing. The object of the hearing is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. Sessions must be conducted with tact,

dignity and respect. The Conciliator has the discretion to decide if the complaining party should participate in the hearing.

7.2.5 Resolution. The Conciliator (or Conciliatory Panel) is to evaluate whether the resident or Owner has caused an unreasonable disturbance or other violation, and if so, to help reach a resolution. If the parties reach agreement and the Conciliator approves the agreement, the agreement is to be summarized in writing and signed by the parties, including the Conciliator. The Conciliator has the right to consider whether the same problem has arisen in the past and whether the resident has complied with previous agreements in evaluating the current agreement. If agreement is not reached, or if the parties do not comply with the agreement, or if the Conciliator determines that a fine or suspension be imposed, the Conciliator is to make a report and recommendation to the Executive Board for further action. The decisions or recommendations of the Executive Board of a Conciliator in one case shall not be construed to set a precedent or require any particular resolution of future complaints or violations that may come before the Executive Committee or Conciliator for resolution

7.3 Enforcement.

As contemplated in Section 7.2.1, the Executive Board shall, subject to appointment to a Conciliator, hear a dispute between two or more affected parties directly. In such event, the Executive Board shall conduct a hearing in keeping with the provisions of Sections 7.2.3 and 7.2.4. After receiving the report of the Conciliator or, upon hearing from the parties directly as contemplated in Section 7.2.1, the Executive Board may take any of the following actions.

7.3.1 Fines and Suspension. If so recommended by the Conciliator, the Executive Board has the right to assess fines up to one percent (1%) of the value of an affected Owner's Parcel, as reasonably determined by the Executive Board, with no limit on the aggregate amount except as required by law, and may restrict the resident's use of the Commons for up to sixty (60) days or until the violation is remedied, whichever is longer. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Assembly. However, the primary goal of this Declaration is not to punish but to resolve problems. The Assembly may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored.

7.3.2 Pets. If the Executive Board finds that a pet causes an unsafe condition or unreasonable disturbance or annoyance or violates this Declaration or any of the Rules and Regulations concerning pets, the Executive Board may require the resident or Owner to take steps to cure or limit the offensive condition. If such steps are ineffective, if the resident or Owner fails to cooperate or if the pet is considered to create an unsafe condition or is in violation of the types, number or size of permitted pets, the Assembly may require that an Owner or resident permanently remove the pet from the Property.

7.3.3 Corrective Action for Parcel Maintenance. If the Executive Board determines that any Owner has failed to maintain any part of a Parcel (including the yard and any wall, fence, or building for which the Owner is responsible) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, TND Plan and applicable Rules and

Regulations, the Executive Board shall notify the Owner of its findings and may assess fines. If the violation continues for ten (10) days after notice to the Owner, the Assembly shall have the right without liability to enter the Parcel to correct, repair, restore, paint and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. The Executive Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Parcel Assessment.

7.3.4 Tenant Violations. If after notice to both the tenant and the Owner and opportunity for a hearing before the Conciliator, the Executive Board determines that a tenant has violated this Declaration or Rules and Regulations, the Assembly may assess fines against the Owner. All costs related to such action shall be charged to the Owner as an Individual Parcel Assessment.

7.3.5 Additional Remedies. All remedies listed in this Section are non-exclusive and may be applied cumulatively. The Assembly shall also have the right to bring suit to enforce the covenants contained in this Declaration, including the right to an injunction.

7.3.6 Executive Board's Discretion with Respect to Enforcement. Enforcement decisions shall be left to the Executive Board's discretion, except that the Executive Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Executive Board may determine that, under the circumstances of a particular case:

(a) the Assembly's position is not strong enough to justify taking any or further action; or

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Assembly's resources; or

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

Such a decision shall not be construed a waiver of the right of the Assembly to enforce such provision at a later time under other circumstances or preclude the Assembly from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce any provision in this Declaration.

Part VIII:
Declarant's Reserved Rights

The rights contained in this Section 8.1 apply only to the Development Period or other stated period of time, and expire automatically after that time.

8.1 Development Period

8.1.1 Selection of Executive Board. The Declarant shall appoint and remove the initial officers and members of the Executive Board. No later than ninety (90) days after completion of construction on at least sixty (60) Parcels within the Property and sale to Owners other than the Declarant or builder, Parcel owners other than the Declarant shall have the right to elect at least two members of the Executive Board. Elections shall be conducted in accordance with the Bylaws. The Declarant reserves the right to elect a majority of the Executive Board until ninety percent (90%) of the Parcels in the JS Master Plan Area have been conveyed to Owners other than the Declarant or builders. For the purposes of this provision, the term *"Parcel"* shall include those pieces of real property that have not yet been submitted to this Declaration but that have not been developed in an inconsistent manner and may reasonably be anticipated to be submitted in the future. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the control period, in which case the Declarant reserves the right to record an instrument specifying that certain actions of the Assembly or Executive Board must be approved by the Declarant before they become effective.

8.1.2 Guarantee of Assessments. The Declarant shall pay General Assessments and Special Assessments on all Parcels it owns which have been made part of the Property and that have been improved with a building. However, the Declarant shall be excused from payment of assessments if the Declarant guarantees to Parcel Owners that their Assessments during the Guarantee Period, as defined below, shall not exceed the amounts shown in the then-current estimated operating budget. If the Declarant offers such a guarantee, the Declarant agrees to pay any Common Expenses incurred during the Guarantee Period that exceed the amount produced by Assessments during that time. The *"Guarantee Period"* may begin at Declarant's discretion at any time within the first three years after the recording of this Declaration in the public records of Washington County, Arkansas, and shall end at the beginning of the next fiscal year. The Guarantee Period shall then be automatically extended for successive six-month periods up to an additional five (5) years unless terminated upon written notice by the Declarant to the Assembly at least thirty (30) days before the end of the then-current Guarantee Period. During the Guarantee Period, the General Assessments may be increased by up to 15% per year.

8.1.3 Commons. The Declarant reserves the right, at any time, whether during the Development Period or otherwise, to modify the design of the Commons, to make further improvements and to provide landscape maintenance and other maintenance in addition to that provided by the Assembly. The Declarant also shall have the right to use the Commons for concerts, festivals and other events that bring people together, to meet each other and to enjoy being part of a community. As part of these events, the Declarant may rent or assign space for

pushcarts, kiosks, trucks, trailers, stands or temporary sales structures and may permit the erection of tents and banners. The Declarant should, but shall have no obligation, to consult and coordinate with the Assembly for the planning of such events.

8.1.4 Review of Parcel Modifications. The Declarant may require notification and an opportunity to review modifications to Parcels under Section 5.4, and may prohibit any modification that is not in compliance with the TND Plan and any Regulating Plan.

8.1.5 Models; Sales and Management Offices. The Declarant reserves for itself and its assigns the right at any time during the Development Period to maintain a sales office, a management office and an unlimited number of models within the Property. These facilities may be located on any Parcel in the Property and may be relocated from time to time at the Declarant's discretion. The sales office, management office and models may be owned by different entities, including builders and other entities that are unrelated to the Declarant. At the end of its use as a sales or management office or model, the Parcel shall be owned by the owner of record, subject to all normal covenants and restrictions for the Property. Subject to state law and local ordinances, the Declarant or its assigns may maintain signs on the Commons and on the sales office, management office and models advertising Johnson Square.

8.1.6 Change of Name. The Declarant shall have the right to change the name, Johnson Square, for all or any part of the property subject to this Declaration. Declarant may, but is not required to, amend this Declaration to reflect the name change.

8.2 Additional Rights.

The rights in this Section 8.2 are perpetual.

8.2.1 Commercial Use of Images. The Declarant shall have the following rights:

(a) the exclusive right to grant permission for the Commons to be photographed, sketched, painted or otherwise reproduced for promotional, publishing, academic or commercial use (including without limitation its use as a background for the display of fashions or other goods), and

(b) the right to grant permission for similar reproduction of the exteriors of any other part of the Property which can be viewed from streets, lanes or Commons. Such exteriors may be reproduced without the consent of, or payment to, the Parcel Owner, but the above right is not intended to prevent any Parcel Owner from granting independent permission for any part of the Property owned exclusively by that Owner, in which case the consent of the Declarant shall not be required.

The exercise of these rights shall not interfere with normal and customary rights of architects as to structures designed by them. The Declarant may collect a fee for its consent to the use of common area images, or for the providing of support services to photographers or others.

8.2.2 Trademark. The Declarant reserves the right to trademark the name "Johnson Square" or other name of the community as a trade name owned by the Declarant. An Owner may use the

trademarked name to describe the location of the business, and may advertise a business as being located "in Johnson Square" or other trademarked name. If requested by the Declarant, Owner shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name. Owner may not use the trademarked name in any other manner without the express permission of the Declarant, which may be arbitrarily denied.

Part IX:
General Provisions

9.1 Easements

9.1.1 Owners' Easement of Enjoyment.

(a) Commons. Every Owner shall have a right and easement for appropriate use of the Commons, subject to regulation by the Assembly. This easement shall be appurtenant to and shall pass with title to every Parcel.

(b) Tenants, Guests. Any Owner may delegate, subject to the provisions of this Declaration, the Bylaws and the Rules and Regulations, his right to enjoyment to the Commons to the members of his family, his tenants or his guests who reside on the Parcel or are accompanied by the Owner. The Assembly may adopt rules to prohibit or restrict dual use of the Commons recreational facilities by both an Owner and the Owner's tenant, except when the Owner is a bona fide guest of the tenant.

(c) Safety and Security. Each Owner and occupant of a Parcel, and their respective guests and invitees shall be responsible for their own personal safety and the security of their property in Johnson Square. The Assembly may, but shall not be obligated to, maintain or support certain activities within Johnson Square designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Assembly nor Declarant shall in any way be considered insurers or guarantors of security within Johnson Square, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Johnson Square, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of a Parcel that the Assembly, its Executive Board, and Declarant are not guarantors of security or safety and that each user of Johnson Square assumes all risks of personal injury and loss or damage to property, including Parcels and their contents, resulting from acts of third parties. By owning a Parcel or using the facilities and amenities, such Owners and users shall be deemed to have waived all claims of liability and damages against Declarant, the Assembly, and their respective owners, employees, officers, and members arising from such ownership and use, except for claims and damages caused by the gross negligence or intentional misconduct of such parties.

9.1.2 Use by the Public.

(a) Generally. Johnson Square is intended to be a mixed-use community that welcomes the public to shops, restaurants, and other areas within Johnson Square.

(b) Recreational Facilities. If any active recreational facilities such as swimming pools or tennis courts are created as part of the Commons, the Assembly may limit or prohibit use by the general public. However, all tenants and guests of Parcel Owners, other than Hotel guests, shall be permitted to use such recreational facilities. Hotel guests may use swimming pools and other active recreational facilities upon approval of the Executive Board, which may be granted upon such terms and for such consideration as it deems appropriate. Passive recreational facilities such as parks, squares or plazas shall be open for appropriate use by the public, subject to reasonable regulation by the Assembly to prevent nuisances.

(c) Private Pedestrian Walkways. As set forth in any Bill of Assurance, nonexclusive easements for the areas noted as "Private Pedestrian Walkways" on a plat or plats, which are not dedicated to the public and which may be intended solely for pedestrian or bicycle use, may be granted by Declarant.

9.1.3 Easements in Favor of the Declarant and Assembly. The Declarant hereby reserves for itself, its successors and assigns and for the Assembly and its assigns the following perpetual, nonexclusive easements, which shall benefit the Property and all other properties owned by Declarant or its assigns which are adjacent to, or reasonably near, the Property (including property separated from the Property by a public road):

(a) Utility Easements. Easements upon, across, over, through, and under the Property for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, gas, television, cable or communication lines and other equipment. Such easements shall be located as indicated on any Bill of Assurance or related Plat.

(b) Police Powers. A blanket easement throughout the Property for private patrol services, and for police powers and services supplied by the local, state and federal governments.

(c) Drainage. A blanket easement and right on, over, under and through the ground within the Property for drainage of surface water and other erosion controls.

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

(e) Maintenance of Commons. To the extent reasonably necessary, an easement over any Parcel for maintenance of the Commons or to perform any duties required or permitted to be performed by the Assembly, its agent or assigns.

9.1.4 Relationship between Parcels.

(a) Intent. The easements in this Section are intended to provide guidelines for reasonable cooperation between neighbors. The Assembly may make rules for maintenance and use of easement areas and shared improvements, which shall be applied uniformly to all Parcels similarly configured.

(b) Parcel Lines. Parcels may not be subdivided or separated into smaller Parcels, or any portion of a Parcel separately conveyed, except by the Declarant or as permitted in any Bill of Assurance. However, this shall not prohibit corrective deeds or similar corrective instruments. The Declarant may redefine Parcels prior to sale by dividing or combining Parcels or portions of Parcels and adjusting the boundary of a Parcel. The Declarant shall also have the right to modify subdivision plats of the Property to make adjustments to Parcel boundary lines with consent only of those Owners whose Parcel boundaries are to be changed. The division or combination of Parcels may be subject to zoning or other governmental regulation.

(c) Structural Party Walls. Each Owner grants to the Owner of each adjacent Parcel the right and easement to maintain and to utilize any exterior or interior wall of a building that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the buildings, or parts of a building, on more than one Parcel. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose building faces such wall. Each Owner grants to the Owner of each adjacent Parcel an easement to use and maintain the party wall between them. The adjacent Owners shall share the cost of any repairs to the party wall equally unless the Owner damages the wall, in which case the Owner causing the damage shall be liable and responsible.

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

(e) Side-Yard Easements. If provided in any Bill of Assurance, in order to allow most efficient use of a Parcel while complying with governmental setback requirements, a portion of a Parcel along a Parcel line may be subject to an easement for use by the adjoining Parcel Owner. Rather than have narrow, useless side yards on both sides, such Parcels are designed so that each Parcel has a private, accessible yard on one side, while sacrificing the use of the side yard on the other side. Such easements may be designated on the plat, the TND Plan, any Regulating Plan or on the deed from the Declarant to the first Owner other than the Declarant. Side-yard easements shall generally run the length of the Parcel and shall encompass the area between the structure and the Parcel boundary line. The Owner of such a Parcel subject to an easement shall be the beneficiary of a similar easement along a portion of another Parcel, unless the Parcel is a corner lot, is larger than the surrounding Parcels or has other special conditions. Subject to regulation under the TND Plan or the provisions of any Bill of Assurance, the Owner of the Parcel subject to the easement shall have the exclusive use and maintenance responsibility for the easement area and may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure) upon the easement area. The beneficiary of the easement shall have the right to enter the area as reasonably necessary for maintenance of that Owner's home but for no other purpose. The TND Plan or any Regulating Plan may require that any windows on the side burdened by the easement be placed high enough so that people inside the house cannot look out into the neighbor's side yard.

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

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

9.2 Modification of Commons

9.2.1 Capital Improvements. The Assembly may make Capital Improvements to the Commons and may modify the uses of the Commons. Expenses for substantial Capital Improvements must be approved in accordance with Section 4.1.5.

9.2.2 Purchase of Additional Commons. The Assembly may acquire additional real property to be owned as Commons. The decision to acquire additional Commons (other than that added by the Declarant), whether by purchase or lease or other means, shall be authorized by a two-thirds vote of the Executive Board. If the purchase or lease is costly enough to be considered a substantial Capital Expense, it must be approved as described in Section 4.1.5.

9.2.3 Sale or Lease for Community Benefit. Although it would be unusual, the Assembly may sell, donate or grant long-term leases for small portions of the Commons or exchange parts of the Commons for other property inside or outside the Property when the Executive Board finds that it benefits the community in at least one of the following two ways:

(a) The conveyance is intended to benefit the community in ways other than the revenue, if any, to be derived from the transaction. For instance, the Assembly may convey or exchange property if necessary to improve access to the Property or to improve utility service.

(b) The revenue to be derived is significant and the use and appearance of the Commons is not significantly impaired. For instance, the Assembly might sell or lease small amounts of space for cellular telephone transmission equipment if such equipment were not obtrusive.

Any decision to donate, sell, exchange or lease any portion of the Commons must be approved by two-thirds of the Executive Board and must have the consent of the Declarant if within the Development Period. A transaction for sale, exchange or lease for a term of more than one year,

including all tenant renewal options, cannot be completed until thirty days after notice to Owners. If requested by at least 10% of the Owners within the 30-day period, a meeting of Owners must be held following at least seven (7) days' notice and, if a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by majority vote of the Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Commons should be contingent upon this right of rescission, unless the Executive Board has previously passed a resolution describing the intended transaction and giving thirty (30) days' notice.

9.2.4 Corrective Instruments. The Assembly, by approval of two-thirds vote of the Executive Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Commons.

9.2.5 Dedication. All or any part of the Commons may be dedicated to the public by the Assembly by approval of the Executive Board and consent in writing of two-thirds of all Owners.

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

9.2.7 Mortgage. The Assembly may mortgage the Commons provided that the funds secured are used for the benefit of the Assembly, including the payment of debt owed by the Assembly.

9.2.8 Other Conveyances. Except as specifically permitted by this Declaration, the Commons cannot be conveyed or used for commercial purposes without the approval of at least two-thirds of the Parcel Owners other than the Declarant, plus the consent of the Declarant during the Development Period.

9.2.9 Limitation on Modification of Certain Commons. The Declarant may, in the instrument conveying certain Commons to the Assembly, restrict or prohibit the sale or modification of the Commons being conveyed. In such an instance, the provisions of the instrument of conveyance will take precedence over the provisions of this Section 9.2.

9.3 Amendment, Redevelopment and Termination

9.3.1 Amendment.

(a) Generally. Except as provided otherwise, this Declaration, including vested rights, may be amended at any time by an instrument signed by the president or vice president and secretary of the Assembly, certifying approval in writing by Owners representing sixty percent (60%) of the Allocated Interests. A meeting shall not be required to obtain such consents and the individual consents do not need to be recorded.

(b) Declarant. Any amendment during the Development Period shall require Declarant's consent. Rights reserved to the Declarant may not be amended at any time without

the specific consent of the Declarant. The Declarant specifically reserves the absolute and unconditional right, at any time during the Development Period, to amend this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify, explain or make more certain any the Declaration's provisions or to correct errors, omissions or inconsistencies, or (iv) to voluntarily terminate the Development Period.

(c) Limited Provisions. An amendment establishing a Maintenance Zone association shall require only those consents as provided in Section 3.4.6 and may be amended in the same way. The provisions in a Supplemental Declaration affecting only the Parcels subject to the Supplemental Declaration may be amended as provided in the Supplemental Declaration; if the Supplemental Declaration does not provide an amendment process, it may be amended in the same manner as this Declaration as applied to the Owners subject to the Supplemental Declaration. The provisions of Part VI may be amended by approval of the Executive Board and consent in writing of Townhouse Owners representing sixty percent (60%) of the Allocated Interests of Townhouse Owners, and consent of other Owners shall not be required. Any Amendment concerning or regulating commercial uses requires the approval in writing of Owners representing two-thirds (2/3) of the commercial Parcels' Allocated Interests and the consent of the Executive Board.

(d) Limitation. Whenever any action described in this Declaration requires approval of Owners representing greater than two-thirds (2/3) of the Allocated Interests, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.

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

9.3.2 Redevelopment. All or a portion of the Property, known as a *"Redevelopment Area"*, may be purchased for redevelopment in accordance with the following provisions:

(a) Purpose. If the Property should ever be struck by a natural disaster or other casualty, all or a portion of the Property might be destroyed and need to be rebuilt. In general, after any casualty loss, improvements are to be rebuilt in accordance with the original plan. Alternatively, this Section provides a method for redevelopment in accordance with a new plan when that plan is approved by Parcel Owners representing greater than eighty five percent (85%) of the Allocated Interests. This super-majority approval is designed to protect individual Owners' rights and expectations in their property. However, when such consensus is achieved, this Section allows redevelopment, while continuing to protect the dissenting Owners by assuring payment to them of fair market value, plus a relocation allowance. The same method may be used when, after long periods of time, changing uses and conditions make redevelopment desirable.

(b) Redevelopment Area. A Redevelopment Area may be all or a portion of the Property. If a portion of the Property, it must be a defined, logical area for redevelopment. A Redevelopment Area must include all of a Maintenance Zone. Both the plan for redevelopment and exercise of the purchase option for a Redevelopment Area must be approved by the Design Review Board or the Architectural Review Committee (as the case may be) and the Executive Board prior to exercise of the option. The plan for redevelopment may include modification of the TND Plan or termination of the Declaration for the Redevelopment Area. If the Declaration is terminated for a Redevelopment Area, the Executive Board may sell or donate to the Owners within the Redevelopment Area the Commons located there, reserving access and use easements as appropriate.

(c) Purchase Option; Time When Available. The option to purchase Parcels within the Property for redevelopment is not available until the occurrence of one of the following:

(i) Any time after fifty (50) years from the recording of this Declaration, or

(ii) Upon a casualty loss destroying at least 75%, by value, of the insurable improvements, either within the entire Property, or within a Redevelopment Area. The option period for a casualty loss ends one hundred twenty (120) days after the casualty, and if the option is not exercised within that time, the damage must be repaired in accordance with Section 3.6.4.

(d) Requirements for Exercise. If Owners representing greater than eighty five percent (85%) of the Allocated Interests within the Property or the Redevelopment Area, as applicable, wish to make a new use of that portion of the property, such Owners may exercise an option to purchase the remaining Parcels. The option to purchase must be executed by all Owners of all Parcels seeking to exercise the option, and must include all remaining Parcels.

(e) Delivery of Option; Closing. The option to purchase (or copy of the original, executed option) must be delivered in person or by registered mail to each Owner of a Parcel to be purchased. The sale price shall be paid in cash or upon terms approved by the seller, and the sale shall be closed in a timely fashion following determination of the sale price.

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

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

(h) Enforcement. A judgment of specific performance of the purchase based upon the determination of the price by the appraisers may be entered in any court of competent jurisdiction.

(i) Limitation. If necessary for this Section's validity under the Rule Against Perpetuities or similar law, this option shall expire on the fifty-second (52nd) anniversary of the date of this Declaration or whatever greater time period allowed under Arkansas law.

9.3.3 Duration; Termination. The covenants and restrictions contained in this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Declarant, the Assembly, and all Owners of property within the Property, their respective legal representatives, heirs, successors or assigns for twenty (20) years, and shall be automatically extended for succeeding ten (10) year periods unless an instrument signed by Owners representing 90% of the Allocated Interests shall have been recorded, agreeing to terminate the Declaration as of a specified date. This Declaration may also be terminated in any of the following ways:

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

(b) Dedication of Commons. The Declaration may be terminated by consent in writing by Owners representing greater than two-thirds (2/3) of the Allocated Interests, if the Commons have been accepted for dedication or taken by eminent domain by the City of Johnson (or, if alleys or footpaths are not accepted for dedication, they have been conveyed to the adjacent Parcel Owner, reserving an easement for continued use).

(c) Redevelopment. The Declaration may be terminated for all or a part of the Property in accordance with the redevelopment provisions of Section 9.3.2.

9.3.4 Rerecording. Unless this Declaration is terminated, the Assembly shall rerecord this Declaration or other notice of its terms at intervals necessary under Arkansas law to preserve its effect.

9.4 Additional Provisions

9.4.1 Assignment. Declarant may assign all or any portion of its rights at any time for all or part of the Property to any successor or assigns, or to the Assembly.

9.4.2 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of the Property as a high quality community. Boxed text is part of the operative provisions of this Declaration. Italicized portions may be used as an aid to interpretation. However, if the italicized portion conflicts with the operative provision, the operative provision shall govern.

9.4.3 Standard of Care. In addition to any specific provisions in this Declaration concerning maintenance of any Commons or Parcel, each Owner, the Assembly and any other association

established in accordance with Section 3.4 shall properly maintain the property for which it is responsible. The Town Architect may establish a standard of care or, if not so established, the standard of care shall be deemed to be the average level of care evident within the Property. After notice and opportunity to cure, any Owner, the Assembly or any of the associations established in accordance with Section 3.4 shall have the right to bring an action against the responsible person or entity to enforce this standard of care.

9.4.4 Enforcement of Declaration.

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

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

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

9.4.5 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when delivered in accordance with the Bylaws and applicable statute.

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

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

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

IN WITNESS WHEREOF, the undersigned does hereby make this Declaration of Covenants, Conditions and Restrictions for Johnson Square and has caused this Declaration to be executed as of the day and year first above written.

JOHNSON SQUARE HOLDINGS, LLC,
an Arkansas limited liability company

By: Gerald Johnston

Name: Gerald Johnston

Title: manager

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF WASHINGTON)

On the 24 day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Gerald Johnston, who acknowledged himself to be the Manager of Johnson Square Holdings, LLC, an Arkansas limited liability company, and that s/he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained, by signing the name of the limited liability company by him/herself as such officer.

In witness whereof, I hereunto set my hand and official seal.

My Commission Expires:

3/30/2019

Kelli D. Stevens
Notary Public

KELLI D. STEVENS NOTARY PUBLIC COMM. # 12370724 EXP. DATE 03/30/2019 WASHINGTON COUNTY, AR

JOINDER OF MORTGAGEE

Chambers Bank (the "*Lender*") holds a mortgage and other security interests in the property described on Exhibit A and other lands owned by Declarant pursuant to that certain instrument dated March 3, 2017 and recorded in the real estate records of Washington County, Arkansas on March 3, 2017, as Instrument No. 2017-00006509 (as now or hereafter amended, the "*Mortgage*"). Lender hereby consents to the execution by Declarant and the recording of this Declaration of Covenants, Conditions and Restrictions for Johnson Square (the "*Declaration*"). Lender further subordinates the lien of the Mortgage to the Declaration so that the Mortgage shall hereafter be subject to the terms hereof. The foregoing consent and subordination shall not be deemed a consent or subordination to any future instruments recorded in connection with the development of the lands encumbered by the Mortgage.

Chambers Bank,
an Arkansas state bank

By: _____

Name: J R Meeks

Title: SVP Authorized Agent

STATE OF ARKANSAS)
)ss
COUNTY OF WASHINGTON)

On JULY 17, 2017 before me, a duly qualified and acting Notary Public, personally appeared J R MEEKS, who acknowledged him/herself to be the SENIOR VICE PRESIDENT of **Chambers Bank**, an Arkansas state bank, and that s/he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained, by signing the name of the bank as such officer.

In witness whereof, I hereunto set my hand and official seal.

Commission expires: 09/28/2022

_____
Signature of Notary Public

(Seal) PATTY LINSNER NOTARY PUBLIC WASHINGTON CO. ARK. Expires September 28, 2022 #12376039

ACKNOWLEDGEMENT OF CONSENT

Johnson Landholdings, LLC, an Arkansas limited liability company and an affiliate of the Declarant ("**LANDHOLDINGS**"), being the owner of all the real property described as "Parcel 2" on Exhibit B to the Declaration of Covenants, Conditions and Restrictions for Johnson Square, dated October 24, 2017 (the "**DECLARATION**"), hereby acknowledges, agrees, consents to, ratifies and confirms the Declaration, in all respects, and to the recording of the Declaration in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas and further agrees, acknowledges and consents that such property shall be bound by the terms of the Declaration as set forth therein as if an original party thereto. Landholdings further agrees that, from time to time hereafter, upon request of the Declarant, Landholdings will execute, acknowledge and deliver such other documents and instruments, specifically including, but not limited to, any Supplemental Declaration requested pursuant to Section 2.2.2 of the Declaration, and take such further action, as may be necessary to carry out the intent and purposes of the Declaration. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Declaration.

JOHNSON LANDHOLDINGS, LLC

By: _____
GERALD JOHNSTON, Manager

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this 24 day of September, 2017, before me, a duly qualified and acting Notary Public, personally appeared Gerald Johnston, who acknowledged himself to be a Manager of Johnson Landholdings, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

3/30/2019

KELLI D. STEVENS NOTARY PUBLIC COMM. # 12370724 EXP. DATE 3/30/2019 WASHINGTON COUNTY, AR

ACKNOWLEDGEMENT OF CONSENT

Sandy Creek, LLC, an Arkansas limited liability company and an affiliate of the Declarant ("**SANDY CREEK**"), being the owner of all the real property described as "Parcel 4" on Exhibit B to the Declaration of Covenants, Conditions and Restrictions for Johnson Square, dated October 24, 2017 (the "**DECLARATION**"), hereby acknowledges, agrees, consents to, ratifies and confirms the Declaration, in all respects, and to the recording of the Declaration in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas and further agrees, acknowledges and consents that such property shall be bound by the terms of the Declaration as set forth therein as if an original party thereto. Sandy Creek further agrees that, from time to time hereafter, upon request of the Declarant, Sandy Creek will execute, acknowledge and deliver such other documents and instruments, specifically including, but not limited to, any Supplemental Declaration requested pursuant to Section 2.2.2 of the Declaration, and take such further action, as may be necessary to carry out the intent and purposes of the Declaration. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Declaration.

SANDY CREEK, LLC

By: _____
GERALD JOHNSTON, Manager

By: _____
BOB HILL, Manager

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this 24th day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Gerald Johnston, who acknowledged himself to be a Manager of Sandy Creek, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

OFFICIAL SEAL
VIRGINIA A. RIVERS
NOTARY PUBLIC, ARKANSAS
BENTON COUNTY
COMMISSION #12382617
COMMISSION EXP. 08/01/2021

_____
Notary Public

My Commission Expires:

8/1/2021

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this 24th day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Bob Hill, who acknowledged himself to be a Manager of Sandy Creek, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

OFFICIAL SEAL
VIRGINIA A. RIVERS
NOTARY PUBLIC, ARKANSAS
BENTON COUNTY
COMMISSION #12382617
COMMISSION EXP. 08/01/2021

Virginia A. Rivers
Notary Public

My Commission Expires:

8/1/2021

ACKNOWLEDGEMENT OF CONSENT

Johnson Square Medical Building I, LLC, an Arkansas limited liability company and an affiliate of the Declarant ("**MOB**"), being the owner of all the real property described as "Parcel 3" on Exhibit B to the Declaration of Covenants, Conditions and Restrictions for Johnson Square, dated October 24, 2017 (the "**DECLARATION**"), hereby acknowledges, agrees, consents to, ratifies and confirms the Declaration, in all respects, and to the recording of the Declaration in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas and further agrees, acknowledges and consents that such property shall be bound by the terms of the Declaration as set forth therein as if an original party thereto. MOB further agrees that, from time to time hereafter, upon request of the Declarant, MOB will execute, acknowledge and deliver such other documents and instruments, specifically including, but not limited to, any Supplemental Declaration requested pursuant to Section 2.2.2 of the Declaration, and take such further action, as may be necessary to carry out the intent and purposes of the Declaration. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Declaration.

JOHNSON SQUARE MEDICAL BUILDING I, LLC

By: Gerald Johnston
GERALD JOHNSTON, Manager

By: _____
LARRY SHACKELFORD, Manager

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this 24 day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Gerald Johnston, who acknowledged himself to be a Manager of Johnson Square Medical Building I, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

Kelli D. Stevens
Notary Public

KELLI D. STEVENS NOTARY PUBLIC COMM. # 12370724 EXP. DATE 03/30/2019 WASHINGTON COUNTY, AR

My Commission Expires:

3/30/2019

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this ___ day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Larry Shackelford, who acknowledged himself to be a Manager of Johnson Square Medical Building I, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

ACKNOWLEDGEMENT OF CONSENT

Johnson Square Medical Building I, LLC, an Arkansas limited liability company and an affiliate of the Declarant ("**MOB**"), being the owner of all the real property described as "Parcel 3" on Exhibit B to the Declaration of Covenants, Conditions and Restrictions for Johnson Square, dated effective October 24, 2017 (the "**DECLARATION**"), hereby acknowledges, agrees, consents to, ratifies and confirms the Declaration, in all respects, and to the recording of the Declaration in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas and further agrees, acknowledges and consents that such property shall be bound by the terms of the Declaration as set forth therein as if an original party thereto. MOB further agrees that, from time to time hereafter, upon request of the Declarant, MOB will execute, acknowledge and deliver such other documents and instruments, specifically including, but not limited to, any Supplemental Declaration requested pursuant to Section 2.2.2 of the Declaration, and take such further action, as may be necessary to carry out the intent and purposes of the Declaration. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Declaration.

JOHNSON SQUARE MEDICAL BUILDING I, LLC

By: _____
GERALD JOHNSTON, Manager

By: _____
LARRY SHACKELFORD, Manager

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this 24th day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Gerald Johnston, who acknowledged himself to be a Manager of Johnson Square Medical Building I, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) **ss.**
COUNTY OF WASHINGTON)

On this 24th day of October, 2017, before me, a duly qualified and acting Notary Public, personally appeared Larry Shackelford, who acknowledged himself to be a Manager of Johnson Square Medical Building I, LLC, an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained.

In witness whereof, I hereunto set my hand and official seal.

Nancy J. Mitchell
Notary Public

My Commission Expires:

8-21-20

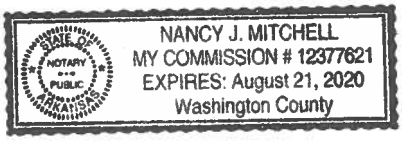


EXHIBIT A

LEGAL DESCRIPTION

[this is the description of Phase IA – the property to be directly encumbered by this Declaration]

Portion of the NW 1/4 of the NW/4 of Section 22, Township 17 North, Range30 West, Washington County, Arkansas being more particularly described by metes and bounds as follows: Commencing at a found 3 and 1/4 inch aluminum monument at the NW corner of said NW 1/4 of the NW 1/4; thence S 02° 27' 52" W, n distance of 987.86 feet to the North right-of-way of Johnson Mill Blvd.; thence along said right-of-way, S 79° 34' 28" E, a distance of76.47 feet to the point of beginning; thence departing said right-of-way, N 10° 25' 32" E, a distance of 320.00 feet; thence S 79° 34' 28" E, a distance of 120.00 feet; thence N 10° 251 32" E, a distance of 19.00 feet; thence S 79° 34' 28" E, a distance of 236.38 feet; thence S 79° 34' 28" E, a distance of 2.23 feet; thence N 79° 54' 32" E, a distance of95.84 feet; thence S 10° 05' 2·8" E, a distance of 28.46 feet; thence N 79° 54' 32" E, a distance of 164.96 feet; thence S 07°18' 57" E, a distance of 17.06 feet; thence S 10° 05' 28" E, a distance of 31.55 feet; thence N 79° 54' 32" E, a distance of 43.00 feet; thence S 10° 05' 28" E, a distance of 158.02 feet; thence N 79° 54' 32" E, a distance of 45.17 feet; thence S 09° 59' 14" E, a distance of 70.00 feet; thence N 79° 54' 32" E, a distance of 127.81 feet; thence S 10° 05' 28" E, n distance of 147.54 feet; thence S 10° 21' 24" W, a distance of81.87 feet to aforementioned right-of-way; thence along said right-of-way, N 79° 34' 28" W, a distance of 962.99 feet to the point of beginning, containing 6.81 acres, more or less.

EXHIBIT B

[this is the description of the Master Plan Area – It includes Phase IA and the property likely to be encumbered by this Declaration at some point in the future]

Parcel 1

Portion of the NW 1/4 of the NW/4 of Section 22, Township 17 North, Range30 West, Washington County, Arkansas being more particularly described by metes and bounds as follows: Commencing at a found 3 and 1/4 inch aluminum monument at the NW corner of said NW 1/4 of the NW 1/4; thence S 02° 27' 52" W, n distance of 987.86 feet to the North right-of-way of Johnson Mill Blvd.; thence along said right-of-way, S 79° 34' 28" E, a distance of76.47 feet to the point of beginning; thence departing said right-of-way, N 10° 25' 32" E, a distance of 320.00 feet; thence S 79° 34' 28" E, a distance of 120.00 feet; thence N 10° 251 32" E, a distance of 19.00 feet; thence S 79° 34' 28" E, a distance of 236.38 feet; thence S 79° 34' 28" E, a distance of 2.23 feet; thence N 79° 54' 32" E, a distance of95.84 feet; thence S 10° 05' 2·8" E, a distance of 28.46 feet; thence N 79° 54' 32" E, a distance of 164.96 feet; thence S 07°18' 57" E, a distance of 17.06 feet; thence S 10° 05' 28" E, a distance of 31.55 feet; thence N 79° 54' 32" E, a distance of 43.00 feet; thence S 10° 05' 28" E, a distance of 158.02 feet; thence N 79° 54' 32" E, a distance of 45.17 feet; thence S 09° 59' 14" E, a distance of 70.00 feet; thence N 79° 54' 32" E, a distance of 127.81 feet; thence S 10° 05' 28" E, n distance of 147.54 feet; thence S 10° 21' 24" W, a distance of81.87 feet to aforementioned right-of-way; thence along said right-of-way, N 79° 34' 28" W, a distance of 962.99 feet to the point of beginning, containing 6.81 acres, more or less.

Parcel 2

A PART OF THE NORTHWEST QUARTER OF SECTION 22 AND A PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS SOUTH 00 DEGREES 23'52" EAST 474.14 FEET AND SOUTH 65 DEGREES 07'07" EAST 723.35 FEET FROM THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 22 AND RUNNING THENCE SOUTH 84 DEGREES 04'30" EAST 700.12 FEET TO A FENCE CORNER POST, THENCE NORTH 89 DEGREES 52'45" EAST 373.96 FEET TO A FOUND IRON PIN, THENCE SOUTH 03 DEGREES 27'24" EAST 171.13 FEET TO A FOUND IRON PIN, THENCE SOUTH 72 DEGREES 19'09" EAST 83.89 FEET TO A FOUND STONE, THENCE SOUTH 00 DEGREES 06'34" WEST 238.52 FEET TO A FOUND IRON PIN, LOCATED AT THE NORTH RIGHT-OF-WAY OF CARLEY ROAD, THENCE ALONG SAID RIGHT-OF-WAY WITH A CURVE TO THE LEFT HAVING A RADIUS OF 418.43 FEET, A LENGTH OF 435.70 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 48 DEGREES 46'46" WEST 416.28 FEET, THENCE SOUTH 19 DEGREES 00' 17" WEST 125.33 FEET, THENCE LEAVING SAID RIGHT-OFWAY NORTH 70 DEGREES 23'26" WEST 178.37 FEET, THENCE NORTH 69 DEGREES 53'26" WEST 330.00 FEET, THENCE NORTH 70 DEGREES 23 '05" WEST 1039.36 FEET TO A FOUND STONE, THENCE NORTH 75 DEGREES 03'23" WEST 132.30 FEET TO A SET IRON PIN, THENCE NORTH 12 DEGREES 02'38" EAST 589.93 FEET, THENCE NORTH 00 DEGREES 23'52" WEST 70.00 FEET, THENCE SOUTH 65 DEGREES 07'07" EAST
723.35 FEET TO THE POINT OF BEGINNING, SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD, IF ANY. ALSO SUBJECT TO: AN EASEMENT FOR INGRESS AND EGRESS 50 FEET IN WIDTH DESCRIBED AS: A PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION

22, ALL IN TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A SET IRON PIN THAT IS SOUTH 00 DEGREES 23'52" EAST 474.14 FEET AND SOUTH 65 DEGREES 07'07" EAST 49.69 FEET FROM THE NORTHWEST CORNER OF THE SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER AND CONTINUE THENCE SOUTH 65 DEGREES 07'07" EAST 50.05 FEET, THENCE SOUTH 22 DEGREES 18'49" WEST 182.54 FEET, THENCE SOUTH 12 DEGREES 02'38" WEST 456.59 FEET, THENCE NORTH 75 DEGREES 03'23" WEST 50.00 FEET, THENCE NORTH 12 DEGREES 02'38" EAST 461.09 FEET, THENCE NORTH 22 DEGREES 18'49" EAST 189.28 FEET TO THE POINT OF BEGINNING. AND ALSO SUBJECT TO: AN EASEMENT FOR INGRESS AND EGRESS 50 FEET IN WIDTH DESCRIBED AS: A PART OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT THE NORTHWEST CORNER OF THE SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND RUN THENCE SOUTH 01 DEGREES 52'09" EAST 863.05 FEET TO A FENCE CORNER POST, THENCE NORTH 89 DEGREES 52'45" EAST 373.96 FEET TO A FOUND IRON PIN, THENCE SOUTH 03 DEGREES 27'24" EAST 171.13 FEET TO A FOUND IRON PIN, THENCE SOUTH 72 DEGREES 19'09" EAST 31.44 FEET TO THE ACTUAL POINT OF BEGINNING, THENCE CONTINUING SOUTH 72 DEGREES 19'09" EAST 52.45 FEET TO A FOUND STONE, THENCE SOUTH 00 DEGREES 06'34" WEST 238.52 FEET TO A FOUND IRON PIN LOCATED AT THE NORTH RIGHT-OF-WAY OF CARLEY ROAD, THENCE ALONG SAID RIGHT-OF-WAY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 418.43 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 75 DEGREES 03'47" WEST 51.78 FEET, THENCE LEAVING SAID RIGHT-OF-WAY NORTH 00 DEGREES 06'34" EAST 267.79 FEET TO THE POINT OF BEGINNING.

AND

A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHEAST CORNER OF THE SAID FORTY ACRE TRACT AND RUNNING THENCE SOUTH 01 DEGREES 52'09" EAST 863.05 FEET TO A FENCE CORNER POST, THENCE NORTH 84 DEGREES 04'30" WEST 700.12 FEET, THENCE NORTH 65 DEGREES 07'07" WEST 673.66 FEET TO A SET IRON PIN, THENCE NORTH 22 DEGREES 18'49" EAST 234.98 FEET TO A SET IRON PIN, THENCE NORTH 74 DEGREES 59'42" EAST 630.34 FEET TO A SET IRON PIN, THENCE NORTH 22 DEGREES 54'08" EAST 131.97 FEET TO THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, THENCE NORTH 89 DEGREES 29'21" EAST 530.21 FEET TO THE POINT OF BEGINNING. SUBJECT TO UTILITY EASEMENTS AND RIGHT-OF-WAYS OF RECORD. TOGETHER WITH: AN EASEMENT FOR INGRESS AND EGRESS 50 FEET IN WIDTH DESCRIBED AS: A PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, ALL IN TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A SET IRON PIN THAT IS SOUTH 00 DEGREES 23'52" EAST 474.14 FEET, AND SOUTH 65 DEGREES 07'07" EAST 49.69 FEET FROM THE NORTHWEST CORNER OF THE SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER AND CONTINUE THENCE SOUTH 65 DEGREES 07'07" EAST 50.05 FEET, THENCE SOUTH 22 DEGREES 18'49" WEST 182.54 FEET, THENCE SOUTH 12 DEGREES 02'38" WEST 456.59 FEET, THENCE NORTH 75 DEGREES 03'23" WEST 50.00 FEET, THENCE NORTH 12 DEGREES 02'38" EAST 461.09 FEET, THENCE NORTH 22 DEGREES 18'49" EAST 189.28 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT

Portion of the NW 1/4 of the NW/4 of Section 22, Township 17 North, Range30 West, Washington County, Arkansas being more particularly described by metes and bounds as follows: Commencing at a found 3 and 1/4 inch aluminum monument at the NW corner of said NW 1/4 of the NW 1/4; thence S 02° 27' 52" W, n distance of 987.86 feet to the North right-of-way of Johnson Mill Blvd.; thence along said right-of-way, S 79° 34' 28" E, a distance of76.47 feet to the point of beginning; thence departing said right-of-way, N 10° 25' 32" E, a distance of 320.00 feet; thence S 79° 34' 28" E, a distance of 120.00 feet; thence N 10° 251 32" E, a distance of 19.00 feet; thence S 79° 34' 28" E, a distance of 236.38 feet; thence S 79° 34' 28" E, a distance of 2.23 feet; thence N 79° 54' 32" E, a distance of95.84 feet; thence S 10° 05' 2·8" E, a distance of 28.46 feet; thence N 79° 54' 32" E, a distance of 164.96 feet; thence S 07°18' 57" E, a distance of 17.06 feet; thence S 10° 05' 28" E, a distance of 31.55 feet; thence N 79° 54' 32" E, a distance of 43.00 feet; thence S 10° 05' 28" E, a distance of 158.02 feet; thence N 79° 54' 32" E, a distance of 45.17 feet; thence S 09° 59' 14" E, a distance of 70.00 feet; thence N 79° 54' 32" E, a distance of 127.81 feet; thence S 10° 05' 28" E, n distance of 147.54 feet; thence S 10° 21' 24" W, a distance of81.87 feet to aforementioned right-of-way; thence along said right-of-way, N 79° 34' 28" W, a distance of 962.99 feet to the point of beginning, containing 6.81 acres, more or less.

AND LESS AND EXCEPT

A part of the NW1/4 of the NW1/4 and a part of the SW1/4 of the NW1/4 of Section 22, T17N, R30W in Washington County, Arkansas, and being described as follows: Commencing at the NW Corner of said NW1/4, NW1/4, thence S87°38'02"E 797.42 feet, thence S25°43'44"W 131.78 feet, thence S77°49'18"W 630.34 feet, thence S25°08'25"W 234.98 feet, thence S62°17'31"E 505.56 feet, thence N86°42'38"W 539.59 feet, thence S15°02'46"W 446.08 feet, thence S72°01'00"E 130.87 feet, thence S69°41'56"E 318.54 feet, thence S67°45'51"E 231.14 feet to the POINT OF BEGINNING, thence N22°13'40"E 130.51 feet, thence S79°34'28"E 49.97 feet, thence N10°25'32"E 59.82 feet, thence S79°34'28"E 191.50 feet, thence S10°25'32"W 243.62 feet, thence N67°46'20"W 206.91 feet, thence N67°45'51"W 67.04 feet to the POINT OF BEGINNING: Containing 1.1829 acres more or less subject to easements and right of way of record.

Parcel 3

A part of the NW1/4 of the NW1/4 and a part of the SW1/4 of the NW1/4 of Section 22, T17N, R30W in Washington County, Arkansas, and being described as follows: Commencing at the NW Corner of said NW1/4, NW1/4, thence S87°38'02"E 797.42 feet, thence S25°43'44"W 131.78 feet, thence S77°49'18"W 630.34 feet, thence S25°08'25"W 234.98 feet, thence S62°17'31"E 505.56 feet, thence N86°42'38"W 539.59 feet, thence S15°02'46"W 446.08 feet, thence S72°01'00"E 130.87 feet, thence S69°41'56"E 318.54 feet, thence S67°45'51"E 231.14 feet to the POINT OF BEGINNING, thence N22°13'40"E 130.51 feet, thence S79°34'28"E 49.97 feet, thence N10°25'32"E 59.82 feet, thence S79°34'28"E 191.50 feet, thence S10°25'32"W 243.62 feet, thence N67°46'20"W 206.91 feet, thence N67°45'51"W 67.04 feet to the POINT OF BEGINNING: Containing 1.1829 acres more or less subject to easements and right of way of record.

Parcel 4

A part of the NE 1/4 of the NW 1/4 of Section 22, T-17-N, R-30-W, Washington County, Arkansas, being more particularly described as follows: Beginning at a found rebar pin for the NW Corner of said forty acre tract: thence S 88°13'20" E, 1,027.95 feet; thence S 01°41'58" W, 817.38 feet to a found iron pin; thence S 81°10'35" W, 217.69 feet to a fence corner; thence S 14°14'45" E, 117.85 feet; thence S 48°50'39" E, 82.62 feet: thence S 63°00'00" W, 170.53 feet; thence N 72°30'00" W, 315.00 feet; thence N 03°28'00" W, 171.00 feet; thence N 90°00'00" W, 416.60 feet to a fence corner; thence N 00°00'00" E, 862.91 feet to the point

of beginning, containing 21.79 acres, more or less. Subject to the Right-of-Way of Carley Road and electric easements.

Now more accurately described by a plat of survey by Alan Reid & Associates dated December 28, 2009 designated Job No. 08129-111, as follows: A part of the NE 1/4 of the NW 1/4 of Section 22, T-17-N, R-30-W, Washington County, Arkansas, being more particularly described as follows: Beginning at the NW Corner of said 40 acre tract, said point being an existing iron pipe; thence N 89'49'29" E, 1,022.45 feet (deed = 1,027.95 feet) along the North line of said 40 acre tract to an existing iron rebar; thence S 00°31'50" E, 818.39 feet (deed=817.38 feet) to an existing iron pinched pipe; thence S 79°20'55" W 217.64 feet along an existing fence to an existing iron pinched pipe; thence S 15°53'56" E, 117.64 feet along an existing fence to an existing fence corner post; thence S 50°57'39" E, 90.46 feet to an existing iron rebar; thence S 65°11'27" W, 90.40 feet to an existing iron rebar at the Easternmost point of a Tract of land described in land document 2006-13654 of the land records of Washington County, Arkansas; thence S 61°14'20" W, 83.35 feet to an existing iron rebar; thence N 74°22'35" W, 315.02 feet to an existing iron rebar: thence N 05°21'01" W, 170.93 feet to an existing iron rebar; thence S 88°08'02" W, 43.31 feet to a set 1/2" iron rebar; thence S 03°21'41" E, 11.62 feet to an existing iron rebar as shown on a plat of survey filed as land document 2006-19238 in the land records of Washington County, Arkansas; thence S 89°55'36" W, 373.73 feet to an existing nail in a fence corner post as shown on said survey plat; thence N 01°51'00" W, 862.52 feet to the point of beginning, containing 21.81 acres, more or less. The above described 21.81 acre tract being subject to an existing power line easement as recorded in land record book 1372 at pages 551-553, an existing gas line easement as recorded as land document 93-14573 and any other easements and/or rights-of-way, whether or not of record.

AND

A part of the NE 1/4 of the NW1/4 of Section 22, T-17-N, R-30-W, Washington County, Arkansas, being more particularly described as follows: Commencing at the SE Corner of said 40 acre tract; thence S 89°44'40" W, 841.78 feet along the South line of said 40 acre tract; thence N 00°18'58" W, 268.70 feet to a set 1/2' iron rebar for the true point of beginning, said point being S 89°44'40" W, 67.51 rods, S 02°15'20" E, 24 rods, S 75°30'20" E, 16.22 rods and N 00°18'58" W, 44.40 rods from the SE Corner of said 40 acre tract as described in Deed Book 91 at page 280, said point also being the NW Corner of a tract of land belonging to Maxine Hill as described in Land Document #93-19990; thence leaving the Hill Property, N 75°44'15" W, 68.26 feet to an existing iron rebar as shown on a plat of survey by Presley, Brannon, & Associates, Inc. dated March 1, 2005; thence N 03°21'41" W, 171.05 feet to an existing iron rebar as shown on said survey; thence N 01°56'41" W, 11.68 feet to a point in an existing fence as shown on said survey; thence N 88°07'25" E, 43.04 feet to a point as shown on said survey; thence S 05°20'35" E 171.00 feet to an existing iron rebar as shown on said survey; thence S 74°22'35" E, 315.02 feet to an existing iron rebar as shown on said survey; thence N 61°07'25" E, 83.51 feet to an existing iron rebar as shown on said survey; thence S 25°48'51" W, 22.90 feet to a point as shown on said survey; thence S 15°25'18" W, 49.05 feet to a point on the Westerly right-of-way line of Carley Road, said point being on a 280.00 foot radius curve concave to the Southeast; thence Southwesterly along said curve and right-of-way line 25.75 feet, the chord for which being S 29°28'02" W, 25.52 feet to a set 1/2" iron rebar on the South edge of asphalt drive; thence leaving said right-of-way line and following along the South edge of said drive, the following bearings and distance: N 51°15'36" W, 18.85 feet to a set 1/2" iron rebar; N 72°15'07" W, 35.06 feet to a set 1/2" iron rebar; N 76°28'16" W, 74.56 feet to a set 1/2" iron rebar; N 71°34'27" W, 150.25 feet to a set 1/2" iron rebar on the North line of said Hill Property; thence N 74°10'28" W, 62.47 feet to the point of beginning, containing 0.48 acres, more or less. The above described 0.48 acres tract being subject to all that portion of a 100.00 foot wide power line easement along the West boundary and any other easements and/or rights-of-way whether or not of record.

EXHIBIT C

LANDSCAPING AND TREE PRESERVATION

Landscaping is a critical part of the appearance of Johnson Square. Owners should identify and retain existing trees and plants that help define the character of the area. Owners should install new landscaping that is compatible with the existing neighborhood and indigenous to the area. Owners must protect significant existing trees (8" or greater in diameter breast height) and plants during construction. Owners must preserve any large trees which line the streets of the residential areas. No street tree shall be planted within 15 feet of a street intersection. A list of approved street tree species is available from the Town Architect. The Design Review Board or the Architectural Review Committee (as the case may be) shall use the landscaping regulations set out in the TND Plan as guidelines.

Understory trees shall be planted in cases of overhead power lines. Owners must limit the amount of landscaping in the front yard of small lots in order to retain the neighborhood scale of landscaping to the size of the house.

Removal of one or more significant trees in Johnson Square requires approval by the Executive Board, which also requests the following information:

1. Site plan and/or photographs showing location of significant tree(s);

2. Proof that the tree is dead or so badly diseased or damaged that it cannot be salvaged (such as a letter from a landscape firm);

3. Any other reasons for removal;

4. Species and size of the tree that will be planted to replace it, as well as the location where it will be planted.

5. If a tree is removed, the stump must be removed or ground to the surrounding surface soil level.

In instances where construction or other site work may affect significant trees on a given lot, all appropriate tree protection measures must be taken. The following specific protective measures shall be required for all development, or work requiring a permit, on properties with trees subject to regulation:

1. Protective fencing is required for protection of any tree to be preserved in place within fifteen (15') feet of any construction or construction material or construction equipment storage and is to be shown on the Tree Preservation Plan. All required protective fencing must be in place and approved by the Town Architect, the Executive Board, the City of Johnson Permits and Inspections department and/or City of Johnson Planning Department before a building permit will be issued. All fencing must remain in place during the entire construction period. All fencing shall be of a rigid material (i.e., chain-link, wood

lathe, etc.) unless otherwise specified by the Planning Department. All fencing must be secured to metal posts driven into the ground and spaced no further than ten feet (10') apart. Fencing shall not be removed or relocated unless authorized in writing by the Planning Department. The approved Tree Preservation Plan shall be available on the building site before work commences and always during construction of the project. The general contractor shall be responsible for giving written notice of the Tree Preservation Plan and Tree Removal Permit to all contractors or subcontractors prior to their entering the Site.

2. Pumping of concrete for the foundation or other protective measures such as crown pruning and root pruning may be required for preservation of the existing trees. These measures must be indicated on the Tree Preservation Plan.

3. During construction all reasonable steps necessary to prevent the destruction or damaging of trees to be preserved in place shall be taken.

4. During construction, unless otherwise authorized by the Tree Preservation Plan, no excess soil, additional fill, equipment, liquids, or construction debris, shall be placed within the root zone of any tree that is required to be preserved in its present location.

5. No attachments, fences or wires, other than approved materials for bracing, guying or wrapping, shall be attached to any vegetation during the construction period.

6. All measures shall be taken to maintain the health of trees which are transported to the site.