

# TRAILHEAD HOMEOWNER'S ASSOCIATION

## RESIDENTIAL DECLARATION

Concord Land Development, Inc., an Alabama corporation (the "Declarant") makes this Declaration, with the joinder of Burwell Properties, LLC, an Alabama limited liability company ("Burwell") as of the 29<sup>TH</sup> day of May, 2019.

### STATEMENT OF PURPOSE

Trailhead is a mixed-use community in Huntsville, Alabama. The Declarant and Burwell own the property which shall become Trailhead. The Declarant, with the joinder of Burwell, records this Trailhead Residential Declaration (the "Residential Declaration") and establishes the Trailhead Homeowner's Association, Inc. (the "Homeowner's Association") to enhance community life, to institute and enforce certain covenants and restrictions, to provide for further maintenance of Trailhead and its Neighborhood Commons, including identified streets, alleys, parks, walks and utility facilities, and to allow for self-governing of Trailhead by its Owners.

A separate declaration for the Business District within Trailhead (the "Business Declaration") has been or will be recorded to create a business owners association (the "Business Association") and to regulate and maintain the commercial portions of Trailhead. The plan for Trailhead and the relationship between the various recorded instruments are described in the Trailhead Master Declaration.

This Residential Declaration is intended to provide for the needs of residential property wherever located within Trailhead.

### DECLARATION

The Declarant and Burwell hereby establish "Trailhead" as all of that property making up Trailhead, described on Exhibit A and submits to this Residential Declaration that portion of the Property described in Exhibit B (the "Residential Neighborhood").

The Declarant and Burwell hereby declare that this Residential Declaration shall run with the land and be binding upon all parties having any right, title or interest in the Residential Neighborhood, and which shall inure to the benefit of every Owner in the Residential Neighborhood or any portion of it and to the benefit of the Declarant. Burwell hereby assigns and conveys all of its rights hereunder to Concord Land Development, Inc., who shall be the "Declarant" hereunder, and shall have all rights and obligations attributable to the declarant hereunder. To the extent that any right or obligation of the Declarant hereunder requires Burwell to take an action that it cannot, because it is not the actual owner of all or a portion of property, then Burwell shall take such action at the direction of Declarant and agrees to execute such documents as are necessary to implement or evidence such action.

Except to the extent expressly provided in this Residential Declaration and any Supplemental Declaration, all of the rights, powers, and duties of the Homeowner's Association and the Owners, who are members of the Homeowner's Association, including the Owner's voting rights, shall be governed by the Articles and Bylaws of the Trailhead Homeowner's Association. The Homeowner's Association shall also have all of the rights, powers, and duties provided in the Alabama Homeowners' Association Act, AL Code § 35-20-1 et seq.

## **ARTICLE I**

### **The Homeowner's Association**

All Owners of Residential Parcels in the Residential Neighborhood are automatically members of the Homeowner's Association during the period of their ownership. Membership in the Homeowner's Association is a legal right and obligation attached to the property. New Residential Parcel Owners become members in the Homeowner's Association upon transfer of title to the land. Except as expressly provided, when Owners vote on matters addressed in this Residential Declaration, their vote is weighted in the same way as relative values are assigned to Residential Parcel types (discussed in Article IV). Owner votes on matters set forth in the Bylaws or Articles may be on a different basis, as provided in those documents.

1.1 Homeowner's Association Operation. The Homeowner's Association is composed of the following:

(a) The Board of Directors ("Board"). The Board shall consist of at least three people. Unless specifically provided otherwise, the Board has the authority to act on behalf of the Homeowner's Association and to make all decisions necessary for the operation of the Homeowner's Association, the care of the Neighborhood Commons and the enforcement of covenants contained in this Residential Declaration. The Declarant shall appoint the members of the Board until all of the Parcels in Trailhead have been sold to Owners other than the Declarant or its designated entities, or until the Declarant voluntarily relinquishes its right to appoint some or all of the directors.

(b) President. The President shall be elected by the Board and shall be the chief executive of the Homeowner's Association and is empowered to make decisions within the scope of authority described by the Board and this Residential Declaration. The President must be a member of the Board. Candidates for President must be sitting on the Board with time remaining equal to the term of the President's office.

(c) Chancellors. The Chancellors are not officers of the Board. The Chancellors may mediate disputes among Owners, their tenants or Occupants, related to the requirements of the Trailhead Design Standards, or any rules giving the Board, Owners, their tenants and Occupants a forum to work out differences and find solutions. Depending on the circumstances, the Chancellors may act individually, or more than one Chancellor may act as a panel. If disputes cannot be resolved by mediation, the Chancellors may make recommendations to the Board. The Board determines the number of Chancellors and may decide to make the Chancellor a paid professional position, in which case, the Board will select a mediator, attorney

or other professional for each available Chancellor position. Chancellors are elected by the Board.

(d) Vice President. The Vice President is elected by the Board. The Vice President takes the place of the President and performs the duties of the President whenever the President is absent or unable to act. If neither the President nor a Vice President is able to act, the Board shall appoint some other member of the Board to act in the place of the President on an interim basis. A Vice President also performs such other duties as required by the Board or by the President and, except as specified, has all of the general powers and duties of a Vice President of a corporation organized under the Alabama Nonprofit Corporation Law, Section 10A-3-1.01 et seq. If there is more than one Vice President, the Board determines which Vice President acts.

(e) Secretary. The Secretary shall be elected by the Board. The Secretary (i) keeps the minutes of all meetings of the Homeowner's Association and of the Board; (ii) has charge of such Residential Declarations and papers as the Board directs; (iii) maintains a register listing the place to which all notices to Owners and Mortgagees are to be delivered; (iv) upon request delivers statements of all unpaid assessments applicable to a particular Residential Parcel to be conveyed; (v) executes notices of delinquent assessment(s); (vi) executes notices of and releases of liens for delinquent assessments, and (vii) performs the duties of a Secretary described in the Bylaws and the Alabama Nonprofit Corporation Law, Section 10A-3-1.01 et seq.

(f) Treasurer. The Treasurer shall be elected by the Board. The Treasurer is responsible for managing (i) the Homeowner's Association's funds and securities; (ii) keeping full and accurate financial records and Residential Declarations of account showing all receipts and payments; (iii) preparing all required financial data; (iv) depositing money and valuables in the appropriate bank or other institution as designated by the Board; and (v) in general, performing all the duties of a treasurer of a corporation organized under the Alabama Nonprofit Corporation Law, Section 10A-3-1.01 et seq.

The Officers and Directors shall not be paid for their services; however, they may be reimbursed for actual expenses. If one or more Chancellors are hired by the Board, the Chancellors may be paid for service to the Homeowner's Association on terms negotiated by the Board. Chancellors may be hired on a part-time or as-needed basis.

1.2 Election Procedure. The Board shall regulate election procedure and set policy concerning voter registration and the casting of ballots.

Once the Residential Parcel Owners have the right to elect Class A Directors, then the Residential Parcel Owners directly elect the relevant directors to the Board in accordance with the Bylaws.

1.3 Board Meetings. The Board shall meet in accordance with the Bylaws of the Homeowner's Association.

1.4 Neighborhood Meeting and Voting. The Homeowner's Association meetings shall be held from time to time depending on the Community's needs as determined by the Board in its sole discretion. Notice of each annual or regularly scheduled meeting of the Homeowner's Association must be sent or delivered personally or by e-mail at least ten days and not more than fifty days before each meeting. The notice must state the time and place of the meeting.

Notice of any other Neighborhood Meetings must be sent at least at least ten days and not more than sixty days before such a meeting. This notice must state the time, place and purpose of the meeting. Notice of any meeting at which Residential Parcel Owners are to vote on amendments to the Articles, a plan of merger or a proposed sale of assets pursuant to Section 10A-3-5.03 of the Alabama Nonprofit Corporation Law or the dissolution of the Homeowner's Association must be given as required by Section 10A-3-2.03 of the Alabama Nonprofit Corporation Law.

Rules about notice of meetings for amending articles of incorporation and other actions, quorums and voting procedures are provided in the Bylaws and may also be affected by applicable statutes.

1.5 Records. The Board shall keep a record of all Board meetings and other Homeowner's Association meetings. 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. Any Residential Parcel Owner has the right to review the Homeowner's Association's records, at reasonable times, and can make copies or pay to have copies made for a reasonable fee. Certain records may not be made available to Residential Parcel Owners if genuine privacy considerations exist.

16 Use of Professional Management. The Board may hire a professional manager, either an individual or a management company, for the Homeowner's Association. The duties of the manager may include the following:

- Determining day-to-day maintenance needs and dispatching personnel or service providers as necessary, although major contracts shall be approved by the Board,
- Supervising vendors, employees and service providers and making payment to them,
- Collecting Assessments (including past-due notices as necessary),
- Keeping the books and records of the Homeowner's Association and preparing budgets and financial statements (and working with an accountant as necessary),
- Mailing or posting notices of meetings, election information and other communications to Residential Parcel Owners, and

- Answering inquiries from Residential Parcel Owners and referring questions to the Board or its attorney as necessary.

1.7 Business Commons. In addition to the Neighborhood Commons owned and maintained by the Homeowner's Association, the Residential Parcel Owners may have access to, and contribute to, the maintenance of the common areas owned and maintained by the Business Association (the "Business Commons"). The Homeowner's Association, by its Board, has the authority to enter into agreements with the Business Association for the use of recreational facilities and other Business Commons, to arrange for utilization and payments provided under the Master Declaration, and to pay a fee for such use that will be paid from General Assessments or other Assessments.

## **ARTICLE II**

### **Use Restrictions**

2.1 Residential and Business Uses. Trailhead is a mixed-use community where, in addition to single and multi-family residences, offices, retail and civic uses co-exist. Business uses are subject to the Business Declaration and the Master Declaration. These commercial and civic uses are an integral part of a pedestrian-friendly community and allow people to obtain some goods and services and interact without having to use an automobile. Businesses must use reasonable measures to dispose of garbage properly and to minimize the impact of noise and odor on the surrounding area. However, residents near businesses need to recognize that a certain amount of noise and odor may be unavoidable.

2.2 Home-based Businesses. No business or business activity shall be conducted on, in or upon any Residential Parcel at any time, except with the written approval of the Board. The Board may permit a Residential Parcel to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Residential Declaration or Bylaws and does not create a disturbance. The Board may issue rules regarding permitted business activities.

2.3 Garage Sales. No Garage sales, estate or yard sales, sample sales and similar kinds of sales activity from Residential Parcels is permitted unless approved by the Board.

2.4 Leasing. Residential Parcels or separate residential units within a Residential Parcel, such as an outbuilding apartment, may be rented, so long as the tenants and Occupants comply with the covenants contained in this Article II. The minimum lease term shall be 12 months and the Owner shall provide a copy of the lease to the Homeowner's Association. No short-term or overnight rentals are permitted. Tenants and associated Occupants may use the Homeowner's Association's recreational facilities through a limited number of recallable recreational memberships; provided the Owner authorizes the Tenant to use the recreational facilities. An Owner's house and any outbuilding on a Residential Parcel shall not be rented to two different parties. For example, the outbuilding cannot be rented to a different party than the renter of the main building, but the Owner may live in the main house and rent the outbuilding, or vice versa. The Homeowner's Association may prohibit the leasing of any Residential Parcel or residential unit within a Residential Parcel while the Owner is in default in the payment of

Assessments and may attach rentals if the Residential Parcel or residential unit within the Residential Parcel is leased while the default exists.

## 2.5 Safety and Appearance.

(a) Generally. The Owners and Occupants of each Residential Parcel shall at all times keep all weeds or grass thereon cut or trimmed in a reasonable neat manner, and shall keep and maintain adequate ground cover to protect against soil erosion. The Owner and Occupants of each Residential Parcel shall at all times keep the curb lines and gutter lines, along the streets adjoining their property lines, free of grass, weeds and overgrowth. No Residential Parcel shall be used for storage of material or equipment except for normal residential requirements or incidental to construction of improvements thereon as herein permitted. All dwellings, fences, walls and other approved structures must be kept in a reasonable good state of painting and repair, and must be maintained at the cost of the Owner so as not to become unsightly.

(b) Signage. The Owner of a Residential Parcel shall be entitled to display one sign thereon from time to time for purposes of selling or renting the property; provided, that each face of such sign shall be rectangular in shape and shall not exceed five (5) square feet in surface area, and that the content of such sign be limited to the words "Sold", "For Sale", or "For Rent", the name and telephone number of the seller or real estate agent, and the words "Shown by Appointment Only". No "For Sale" or "For Rent" sign shall be displayed unless a telephone number, where daytime inquiries can be answered is listed in numbers readable from the curbside. No "For Sale" or "For Rent" sign shall be displayed for any purpose other than a bona fide offer to sell or to rent the property upon which the sign is located. No "Sold" signs shall remain on a Residential Parcel more than two (2) weeks after completion of the sale. In addition, during the period of lot sales and construction of new residences, Builders maintaining a sales or construction office within Trailhead, or areas duly annexed, Declarant and Builders with consent of Declarant shall have the right to place directional signs and other "Sold" and "For Sale" signs (not exceeding thirty two square feet in size) that do not contain the telephone number of the builder and other marketing signs, provided such signs are approved in writing by the Trailhead Design Committee (the "Design Committee").

For purposes of security and safety, the Board of Directors shall have the authority to approve the installation of one sign on each Residential Parcel noting the existence of a residential security system; no such sign shall be placed greater than two (2) feet from the residence, and no sign or sticker shall be installed without the size, shape, color, and material being first approved by the Design Committee.

The Homeowner's Association may place signs on Residential Parcels noting special accomplishments, such as awards for "Yard of the Month".

No other sign, advertisement, billboard or advertising structure of any kind may be erected or maintained within Trailhead without first having obtained the consent in writing of the Board of Directors of the Homeowner's Association, which consent may be withheld without cause and which consent may not be given unless the Board finds that the sign will create a

benefit for the general membership of the Homeowner's Association. Said Board of Directors of the Homeowner's Association shall have the right to remove any unpermitted sign, advertisement, billboard or structure which is erected or placed on any Residential Parcel or adjacent easement or right-of-way without such consent, and in so doing, shall not be subject to any liability for trespass or other tort in connection therewith.

No sign shall be displayed on any motor vehicle, trailer, bus, boat, camper or related means of transportation, except for commercial vehicles upon which the following may appear: (1) the name of the business owning or leasing the vehicle, (2) the street address of the business owning or leasing the vehicle, (3) the telephone number of the business owning or leasing the vehicle, (4) any license number of the business owning or leasing the vehicle required by a regulatory authority, and (5) any logo of the business owning or leasing the vehicle. As used herein the term "commercial vehicle" shall mean a motor vehicle that (1) is owned or leased by a business, (2) is utilized solely in the furtherance of the business purpose, (3) is utilized solely for transporting equipment, parts and tools used for the business purpose, (4) is covered by a policy of insurance as a commercial vehicle, and (5) is not used for general transportation of the primary driver. No sign of a temporary nature, i.e. magnetic or easily removed and replaced, shall be allowed.

No sign of any kind shall be placed or allowed to remain on any private street, public street, or right-of-way.

The provisions of this Section 2.5(b) may be enforced at any time by any person or entity named, referenced or identified on any sign.

(c) Vehicles. The term "vehicles" as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, four-wheelers, all-terrain vehicles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, recreational vehicles, and automobiles.

All vehicles shall be parked within garages, driveways, or other Board approved paved parking areas on a Residential Parcel. Parking in yards is prohibited. No vehicle, machinery or equipment of any kind shall ever be parked on any Residential Parcel or on any street right-of-way, easement or common area adjacent to any Residential Parcel, except for temporary parking (not to exceed twenty four (24) hours) incident to the contemporaneous use of such object or as otherwise approved by the Board of Directors of the Homeowner's Association, nor shall any such object be left parked or stored on any Residential Parcel or on any adjacent street right-of-way, easement or common area.

No vehicle may be left upon any portion of Trailhead, except in a garage or other area designated by the Board, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from Trailhead.

Notwithstanding the foregoing, and further limiting the same, no camper, motor home, mobile home, boat, trailer, bus, four-wheeler, all-terrain vehicle, recreational vehicle or the like, shall be placed, kept, parked or stored upon any portion of any Residential Parcel, whether paved

or unpaved, unless same is placed, kept, parked or stored out of general view from the fronting street of such lot and all common areas. No motor home, camper, boat, trailer, or other vehicle of height greater than nine (9) feet shall be kept or stored on any lot or on the street adjoining any lot or Neighborhood Commons.

Any vehicle regularly stored in Trailhead or temporarily kept in Trailhead, except if kept in a garage or other area designated by the Board, shall be considered a nuisance and may be removed from Trailhead. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles; provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Without limiting the foregoing, it shall be presumed that any vehicle that does not have attached a current license plate or has one or more flat tires, or is otherwise disabled or partially disassembled, is a vehicle stored in violation of this Section 2.5(c).

Detached garages or carports shall be permitted only in the sole discretion of the Design Committee. Garage doors shall be kept closed at all times, except when garage is in use.

(d) Sports Equipment. Play structures, such as swing sets, must be approved by the Design Committee in advance and must be kept in good repair and their location shall be limited, in accordance with the Trailhead Design Standards. Large play structures such as skateboard ramps are prohibited. No basketball hoops of any kind shall be allowed.

(e) Temporary Structures. The Trailhead Design Standards shall prohibit or regulate construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Residential Parcel.

2.6 Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residential Parcel, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Homeowner's Association members or Occupants or the owner of any property located adjacent to Trailhead may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a residence be on a leash or otherwise confined in a manner acceptable to the Board. Pets shall be registered, licensed and inoculated as required by law.

2.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within Trailhead shall be used, in whole or in part, for the storage of any property or thing that will cause such Residential Parcel to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within Trailhead, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any



Person using any property within Trailhead. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Trailhead.

2.8 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of Trailhead.

2.9 Antennas and Satellite Dishes. Except where preempted by federal or state law or regulation, no exterior antennas or satellite dishes of any kind shall be placed, allowed, or maintained upon any portion of Trailhead, including any Residential Parcel without the prior written consent of the Board or its designee. No free-standing antennas or satellite dishes whatsoever shall be placed on any Residential Parcel if it is visible from any street. The Board or its designee may approve the installation of antennas or satellite dishes which do not protrude above the roof line of the residence at its highest point and are not visible from any street. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna, satellite dish, or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. Applications for the installation of any and all antennas and satellite dishes must be submitted to the Design Committee and said application must include location, size, and color.

2.10 Tree Removal. No trees shall be removed without the express consent of the Declarant or Board or their respective designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons; or (d) trees in the immediate location of building approved by the Design Committee.

2.11 Site Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

2.12 Clotheslines, Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within Trailhead, except when done during the normal construction of a residence or by Declarant.

2.13 Subdivision of Residential Parcel. No Residential Parcel shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant or its designee. Declarant, however, hereby expressly reserves the right to re-plat and/or subdivide any property or Residential Parcel owned by Declarant during the time in which Declarant may annex property. After the expiration of the Declarant's right to annex, the Board must approve

all re-subdivisions. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations.

2.14 Guns. The use of firearms in Trailhead is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.

2.15 Fencing. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of Trailhead, including any Residential Parcel, without the prior written consent of the Design Committee or its designee. In deciding upon approval of a fence application, the Design Committee may consider the location of the Residential Parcel, the location of fences on adjacent Residential Parcels, and the effect any proposed fencing may have on any surface water drainage. No chain link fence or vinyl fence will be allowed.

It is the responsibility of each Owner to maintain fences located along their Property lines, except where the fence is located between lots, then, it is the responsibility of each Owner to pay one-half (1/2) the cost of maintenance of said fence. In the event any Owner shall fail to maintain their fence after notice by the Homeowner's Association, then, the Homeowner's Association may make such repairs and charge the Owner the cost of such repair plus a twenty-five (25%) service fee. Any damage done to the fencing shall be repaired solely at the expense of the Owner, who, or whose agents or invitees, caused such damage.

2.16 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within Trailhead, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

2.17 Air-Conditioning Units. Except as may be permitted by the Design Committee or its designee, no window air conditioning units may be installed.

2.18 Swimming Pools. In-ground swimming pools and spas are permitted, but only as per the requirements set by the Design Committee or its designee. Above ground swimming pools shall not be permitted.

2.19 Driveways. All driveways and other parking areas must be approved by the Design Committee. Except as may be permitted by the Design Committee or its designee; driveways shall be constructed with concrete.

2.20 Exteriors. The exterior elements of all improvements including, without limitation, paint color must be specifically approved by the Design Committee.

2.21 Window Coverings. Except as may be permitted by the Design Committee or its designee, window coverings shall consist of material designed for such purpose and shall be white, cream, off-white, wood-tone, or of similar color, or be backed with such color so as to appear the same from the exterior of the home. Temporary paper, sheets, bed linens, plastic or any other unsightly material is expressly prohibited as use as window coverings. The covering of window panes with aluminum foil, mirrored or reflective glass is also expressly prohibited.

2.22 Mailboxes. Only mailboxes approved by the Design Committee can be installed in Trailhead. Mailboxes may not be moved to another location on the Residential Parcel without the consent of the Design Committee, or its designee.

2.23 Storage Tanks. Any storage tank must be approved by the Design Committee and, if approved, must be buried, or, if they are less than fifty-gallon capacity, may, with the Design Committee's approval, be installed above ground, if properly screened.

2.24 Outdoor Furniture. No outdoor furniture shall be permitted in the front or side yard of any Residential Parcel.

2.25 Drainage. The Owner of each Residential Parcel shall maintain the original drainage design and construction of drainage on the Residential Parcel. The original drainage design and construction shall not be altered without prior approval by the Design Committee; also during the first ten (10) years of the existence of each Residential Parcel, no approval for alteration of the drainage design or construction of any Residential Parcel shall be effective unless Declarant has given its written approval of such change. Declarant shall have no liability of any kind for its approval or rejection of any request for alteration of drainage. The Owner of the Residential Parcel upon which drainage is altered shall have the sole responsibility for any damages arising therefrom. No landscape plan or design, which would have the effect of altering the drainage of any Residential Parcel to hold water or which would increase the flow of water to another Residential Parcel, may be approved. Each property Owner is solely responsible for changes to the drainage upon each Owner's property, including but not limited to damages to such Owner's property and surrounding properties.

2.26 Utility and Drainage Easements. All easements for utilities and drainage shall be kept clear of improvements or structures of any kind and no trees, shrubs, berms or other obstructions may be placed upon such easements in such a manner as would in any way limit the intended use of the easements. In this regard, neither the Declarant, nor the Homeowner's Association, nor any utility company or drainage authority using said easements shall be liable for any damage done to shrubbery, trees, flowers, or other property which is located within the area covered by said easements.

2.27 Prohibition of Occupancy by Registered Sex Offenders. Except where prohibited by the laws, rules, regulations and ordinances of the United States, the State of Alabama and/or Madison County, no Residential Parcel may be occupied, at any time, by a person registered as a sex offender in the State of Alabama or any other state. This prohibition applies to all persons whether or not such person is an owner, a tenant, a non-owner family member or guest. Without limiting other enforcement rights that may be available under this Declaration or Alabama law, the Owner of any Residential Parcel upon which a registered sex offender may occupy and the registered sex offender occupying such Residential Parcel shall be responsible for all costs incurred in the enforcement of this provision and all damages that arise therefrom.

2.28 Rules and Regulations. The Declarant, at any time, or the Homeowner's Association after the Period of Declarant Control, may adopt or amend Rules and Regulations interpreting or expanding upon the basic principles of this Article II and other portions of this

Residential Declaration, including but not limited to, rules about vehicles, sports equipment, temporary structures and satellite dishes. Rules adopted by the Homeowner's Association addressing a particular subject in a more restrictive manner shall preempt the Rules adopted by the Declarant addressing the same subject. A copy of the current Rules and Regulations will be made available upon request.

Rules and Regulations of the Homeowner's Association take effect immediately upon approval by the Board, or at a later date selected by the Board. Rules and Regulations of the Declarant are effective upon their adoption by the Declarant and may not be repealed or amended by the Residential Parcel Owners during the Period of Declarant Control. After the period of Declarant Control, any Rule or Regulation passed by the Homeowner's Association or the Declarant may be repealed by majority vote of the Residential Parcel Owners, present in person or by proxy, at a special meeting called by the President, a Board Member, or ten percent (10%) of all the Residential Parcel Owners by written petition.

The Rules and Regulations, as adopted by the Homeowner's Association from time to time, are incorporated by reference into this Residential Declaration. In the event of a conflict between any provisions in the Rules and Regulations and this Residential Declaration, the provisions of this Residential Declaration control. The Rules and Regulations of each of the Homeowner's Association and the Business Association shall apply only within the areas of their ownership, their members' ownership or public areas immediately adjacent to these areas.

**2.29 Role of the Chancellor.** When problems with covenant enforcement arise, the Board or any Owner, Owner's tenant or Occupant may file a request with the Board for a Chancellor to hear the issue. The Board may authorize, in advance, categories or types of issues that may be heard by the Chancellor without first coming to the Board. The Board has the authority to approve or deny the use of a Chancellor to attempt to mediate agreement. If requested by the Board or the Chancellor to which the case is assigned, and if there is more than one Chancellor, the case will be heard by more than one Chancellor, sitting as a panel. The Chancellor or panel will notify the resident who is believed to be in violation, as well as the Owner of the Residential Parcel, if different, and set a convenient date for a mediation session.

The Chancellor operates primarily as a mediator. The object of the mediation session is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. The Chancellor or panel has the discretion to decide if the complaining party should participate in the mediation session.

The Chancellor or panel is to evaluate whether the resident has caused an unreasonable disturbance or other violation, and, if so, to help reach a resolution within the general principles set out in this Article II. If the parties reach agreement, the agreement is to be summarized in writing and signed by the parties. The Chancellor's office is to keep a copy of the agreement. The Chancellor or panel has the right to consider whether the same problem has arisen in the past and whether the Owner or 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, the Chancellor or panel may make a report and recommendation to the Board for further action. The decision of the Board is final, subject to any subsequent court action.

2.30 Enforcement. Each Owner and the Residential Parcel Owners' Occupants, Guests and tenants are required to abide by the covenants contained in this Residential Declaration, which are covenants running with the land, the Trailhead Design Guidelines and any Rules and Regulations established by the Declarant or adopted by the Homeowner's Association. Each Owner is responsible for assuring such compliance, and any violation by Occupants, Guests or tenants may be considered to be a violation by the Owner. If the Chancellor cannot resolve a violation, the Board is empowered, on behalf of the Homeowner's Association, to take necessary legal steps to enforce the covenants contained in this Residential Declaration or the Trailhead Design Guidelines.

If the Chancellor determines that the problem is not satisfactorily resolved, the Board may take any of the following actions:

(a) Fines. The Board has the right to assess fines up to the maximum allowed by law and may restrict the resident's use of the Neighborhood Commons for up to ninety (90) days or until the violation is remedied, whichever is longer. The Homeowner's Association may suggest or approve agreements and suspend payment of a fine if the agreement is honored. Fines shall be charged against the Residential Parcel as an Individual Residential Parcel Assessment. Any fines collected shall be contributed to the general fund of the Homeowner's Association.

(b) Pets. All pets shall be confined in a manner acceptable to the Board in its sole discretion. If the Board finds that a pet causes an unsafe condition, unreasonable disturbance or annoyance or public nuisance, it may require the Owner, Owner's tenant or Occupant to take steps to cure or limit the offensive condition. If such steps are ineffective, if the resident or Owner fails to cooperate or if the pet is considered to create an unsafe condition or unreasonable disturbance or annoyance, the Homeowner's Association may require that an Owner, tenant or Occupant permanently remove the pet from Trailhead.

(c) Corrective Action for Enforcement Rights. If the Board determines that any Owner is in violation of this Residential Declaration, the Trailhead Design Standards, or applicable Rules and Regulations, or has failed to maintain any part of a Residential 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 Residential Declaration, the Trailhead Design Standards or applicable Rules and Regulations, the 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 Homeowner's Association shall have the right without liability to enter the Residential Parcel to correct, repair, restore, paint and maintain any part of such Residential Parcel, including but not limited to landscaping, and to have any objectionable items removed from the Residential Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Residential Parcel Assessment. The Board may also assess a management fee for activities that it must take to correct, repair, restore, paint or maintain any part of such Residential Parcel on behalf of an Owner. If, in accordance with this section, authorized agents of the Homeowner's Association enter upon any Residential Parcel to abate or remove a violation or breach of this Residential Declaration, the Trailhead Design Standards, or

the Rules and Regulations, neither the Person entering the Residential Parcel nor the Person directing the entry shall be deemed liable for any manner of trespass for such action. This paragraph shall not apply to Residential Parcels so long as they are owned by the Declarant.

(d) Tenant Violations. If, after notice to both the Owner and tenant the Board determines that a tenant has violated this Residential Declaration, the Trailhead Design Guidelines, or Rules and Regulations, the Homeowner's Association may assess fines against the Owner and otherwise enforce this Residential Declaration, the Trailhead Design Guidelines, or Rules and Regulations.

(e) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Homeowner's Association shall also have the right to file a lien or bring suit to enforce the covenants contained in this Residential Declaration, including the right to an injunction and to recover damages for any violation.

(f) Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved Person to invoke any available remedy in respect to a violation of any provision of this Residential Declaration shall be held to be a waiver by the Person of (or an estoppel of that Person to assert) any right available to such Person upon recurrence or continuance of such violation or the occurrence of a different violation, nor shall there be imposed upon the Declarant, the Homeowner's Association, the Board or the Trailhead Design Committee a duty to take any action to enforce this Residential Declaration.

2.31 Initiation of Litigation by the Homeowner's Association. The Homeowner's Association shall not initiate any judicial or administrative proceeding without prior approval by Owners entitled to cast seventy-five percent (75%) of the total votes other than those of the Declarant in the Homeowner's Association. However, no such approval shall be required for actions or proceedings:

- Initiated during the Period of Declarant Control;
- Initiated to enforce the provisions of this Residential Declaration, including collection of assessments and foreclosure of liens;
- Initiated to challenge ad valorem taxation or condemnation proceedings;
- Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- To defend claims filed against the Homeowner's Association or to assert counterclaims in proceedings instituted against it.

### **ARTICLE III** **The Neighborhood Commons**

The open space, recreational areas and other commonly used portions of the Residential Neighborhood, called the Neighborhood Commons, may be owned by the Homeowner's Association. In most cases, the Homeowner's Association will hold title to the Neighborhood Commons in fee simple. In other cases, the Homeowner's Association's ownership may be in the form of easements, leases or other rights. Similarly, open space, recreational and other

commonly used portions of the Business District may be owned by the Business Association and are known as the Business Commons. The Homeowner's Association may also have an easement, lease, or other rights in the Business Commons.

3.1 Community Areas. Most of the Neighborhood Commons in Trailhead are intended for the mutual benefit and enjoyment of the Community. The Neighborhood Commons of Trailhead may include parks, open space, paths, recreation areas, and stormwater management facilities, streets and alleys that are not publicly dedicated but are intended for public use, and sidewalks, and designated on-street parking zones. Neighborhood Commons may include areas that are privately owned, areas that are publicly owned but maintained by agreement with the Declarant and areas that are owned by the Homeowner's Association. Neighborhood Commons shall be maintained in accordance with the environmental standards set forth in the Trailhead Design Standards. Areas shall become Neighborhood Commons if they are shown as Neighborhood Commons or Common Area in this Residential Declaration or any Supplemental Declaration or any recorded plat. The boundary or character of a Neighborhood Commons may be changed by Supplemental Declaration.

3.2 Use of the Neighborhood Commons. Every Residential Parcel Owner in good standing has, and is hereby granted, a non-exclusive easement for appropriate use and enjoyment of the Neighborhood Commons. This easement passes with title to the Owner's Residential Parcel and is automatically extended to tenants, Guests and Occupants provided that (i) the Owner of the property that they occupy shall be responsible for the manner of such use, (ii) the Owner may withdraw consent for such use by written notice to the Homeowner's Association, and (iii) the easement may only be used by either the Owner or the Tenant, but not both. The easement is subject to the Homeowner's Association's right of regulation in accordance with this Residential Declaration and is also subject to any limitations that may be contained in the conveyance of that portion of the Neighborhood Commons to the Homeowner's Association. There shall be no adverse possession of the Neighborhood Commons by any Owner. Each Owner agrees that he or she shall have no claim of adverse possession and hereby waives any and all such claims he or she may have now or in the future.

Any other member of the public, not an Owner, Occupant, Guest or tenant, shall be deemed a guest of the Homeowner's Association when using the Neighborhood Commons and only the Declarant, the Homeowner's Association or its designees shall have the authority to set the rules for the privilege of use of the Neighborhood Commons or suspend or revoke such privileges.

(a) Open-Air Markets, Festivals and Other Events. The Board may permit use of portions of the Neighborhood Commons for various events. As part of these events, the Board 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 Residential Declaration, no contract shall be for a period of longer than a year, including all renewal options. Any revenue from events is to benefit the Homeowner's Association or other charitable organization.

(b) Rules of Usage of Community Areas. Use of Neighborhood Commons must be in accordance with this Residential Declaration, the Rules and Regulations, and for the use of parks, the following:

- An Owner, tenant or Occupant must arrange for the use of parks for any gathering, class, party, wedding or event through the Homeowner's Association. The Homeowner's Association may approve the functions in accordance with the Rules and Regulations and has the right to require evidence of compliance with the requirements of this Residential Declaration and the Rules and Regulations and the right to bar use of the parks by anyone not complying with these provisions in advance or during an event. The Homeowner's Association may bar any Owner, tenant, Occupant or Guest from event use of the parks for a period of up to one (1) year for a violation of this Residential Declaration. After three violations, an Owner, tenant, Occupant or Guest may be permanently barred by the Homeowner's Association. The Homeowner's Association may charge a reasonable scheduling fee to cover costs associated with its duties under this section.
- Any Owner, tenant or Occupant conducting an event in a park must take the steps necessary to prevent the event from precluding reasonable use by others of the park; provided that portions of the park may have limited access for a reasonable period as approved by the Homeowner's Association.
- Any Owner, tenant or Occupant conducting an event in a park must take the steps necessary to prevent the event or people arriving or departing from the event from unreasonably interfering with traffic around the park or damaging cars parked adjacent to the park. Any Owner, tenant or Occupant conducting an event in a park must take the steps necessary for the removal of all trash, signs, tables, chairs or other property associated with the event promptly following the event and for generally restoring the park to its pre-event condition as determined by the Board and shall be subject to fees, fines and suspension of use privileges for failure to do so.
- Any Owner, tenant or Occupant conducting an event in a park shall be responsible for providing proper trash and recycling receptacles and rest room facilities for the event and for the prompt removal of these receptacles and facilities after the event and the proper disposition of trash and recyclables and may be subject to fees, fines and suspension of use privileges for failure to do so. Trash disposal shall not be allowed in dumpsters or receptacles in any of the commercial areas of Trailhead.



- Any Owner, tenant or Occupant conducting an event in parks shall not charge a fee for access to the park, though fees may be charged for concessions or otherwise in accordance with the Rules and Regulations and applicable law.

(c) Damage or Destruction of Neighborhood Commons. If any Neighborhood Commons or Improvements on a Neighborhood Commons is damaged or destroyed by an Owner, Owner's tenant or Occupant of a Residential Parcel within Trailhead, or by family members, guests (but not including individuals in Trailhead as customers or clients of the Owner) or agents of the Owner, tenant or Occupant, the Owner shall be liable for such damage or destruction and the Owner must, within fifteen (15) days after it occurs, repair the damage in a good and workmanlike manner as determined by the Board and restore any damaged Neighborhood Commons, Improvement or facility to its existing state before the damage or destruction occurred. In circumstances where the Homeowner's Association or the Declarant determines that a shorter response period is appropriate, the fifteen (15) days period may be shortened. If the Owner does not repair the damage as described above, then the Declarant, during the Period of Declarant Control, or the Homeowner's Association may repair the damage at the Owner's expense. The Owner may also be charged a management fee if the Homeowner's Association is required to repair the damage on behalf of the Owner because the Owner does not repair the damage. If the damage is unsightly or dangerous as determined by the Declarant, during the Period of Declarant Control, or the Homeowner's Association at its sole discretion, the Declarant, during the Period of Declarant Control, or the Homeowner's Association has the right to repair the damage immediately and charge the Owner responsible for the damage for the cost of the damage plus a management fee after the repair has been completed. The cost of the repairs becomes a Special Assessment on the Residential Parcel of the Owner and constitutes a lien on the Owner's Residential Parcel. This lien is collectible in the same manner as other Assessments set out in the Residential Declaration. The Declarant, during the Period of Declarant Control, or the Homeowner's Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity to enforce the provisions of this Section.

(d) Delegation of Use; Sale. Any Owner may temporarily delegate his right of enjoyment in the Neighborhood Commons to any tenants or Occupants of the Owner's Residential Parcel and to its invitees or guests, subject to the terms of this Residential Declaration and any Rules and Regulations established from time to time. This right cannot be conveyed except as an appurtenance to Residential Parcels within Trailhead. The Declarant, the Homeowner's Association, or any owner of a portion of the Neighborhood Commons may dedicate or convey all or any part of such area to any public agency or authority with the consent of the Declarant or, if the Declarant no longer owns any property within Trailhead, then with the consent of the Board.

(e) Limitation of Liability. The Homeowner's Association is not an insurer of safety and makes no warranty and assumes no liability for any loss or injury in use of the Neighborhood Commons or otherwise.

3.3 Maintenance and Capital Improvements. The Homeowner's Association is responsible for the management, control and improvement of the Neighborhood Commons. At a minimum, the Homeowner's Association must keep the Neighborhood Commons clean and in good repair. The Homeowner's Association may also make capital improvements to the Neighborhood Commons and may modify the uses of the Neighborhood Commons. Any changes to the Neighborhood Commons must be approved in accordance with the architectural review standards of Article IV.

To the extent reasonably necessary, the Homeowner's Association has, and is hereby granted, an easement over each Residential Parcel for maintenance of the Neighborhood Commons. The Homeowner's Association also has, and is hereby granted, an easement with respect to any improvements constructed on the Neighborhood Commons that unintentionally encroach on a Residential Parcel, whether due to any minor deviation from the subdivision plat or site plan within Trailhead or the settling or shifting of any land or improvements.

3.4 Roads, Utilities, Drainage. The Homeowner's Association shall manage the various systems within the Community that are part of the Neighborhood Commons. The Homeowner's Association has the benefit of certain easements, and also has the power to grant easements to others, such as granting to a utility company rights for utility installation and maintenance.

(a) Common Road Regulation. To the extent permitted by law, the Homeowner's Association may make Rules and Regulations concerning driving and parking within the Residential District and may construct traffic calming devices as approved by the Board, with Declarant approval during the Period of Declarant Control, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving on the Common Roads. While parking requirements for all uses in Residential District may be set forth in the City of Huntsville ordinances, additional parking requirements, such as limiting parking duration or requiring decals for Owners, tenants or Occupants, may be set forth in an Owner's deed, in a Supplemental Declaration filed on a Residential Parcel, or in the Rules and Regulations. Each Owner, Occupant, and their tenants and guests shall comply with all applicable parking requirements. Any failure to comply shall be a violation of this Residential Declaration as well as a violation of the document creating the parking requirement. To the extent permitted by local government, the Homeowner's Association may enforce any violation and may tow or boot offenders.

(b) Surface Water or Stormwater Management System. The Homeowner's Association has the power to maintain proper drainage within the Residential District. In the exercise of this power, the Homeowner's Association shall have a blanket easement and right on, over, under and through the ground within the Residential District 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 Homeowner's Association shall notify affected Owners and Occupants (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable. The surface water or stormwater management system shall be managed as follows:

(i) Each Owner of a Parcel in the Residential District shall have the duty to maintain in good repair and working order, all portions and elements of the stormwater management system, including without limitation, cisterns, permeable surfaces, gutters, infiltration devices or areas, rain barrels, rain gardens, green roofs, and biotreatment swales that may be located on the Owner's Parcel unless the Homeowner's Association has agreed in writing to maintain such elements. No Owner shall take any action to modify or diminish the effectiveness of the elements of the stormwater management system located on that Owner's Parcel without prior written approval by the Homeowner's Association. Such Owner shall promptly replace or restore the stormwater management system elements if they are damaged or wear out. Each Owner shall keep the stormwater management system elements on such Owner's property cleaned out as necessary to provide proper performance.

(ii) The Homeowner's Association has the power to maintain proper drainage and to maintain the stormwater management system within all parts of the Residential District. In the exercise of this power, the Homeowner's Association shall have a blanket easement and right on, over, under and through the ground and all improvements thereupon within the Residential District to: (i) inspect all aspects of the stormwater management system located on an Owner's Parcel. Such inspection right shall include (without limitation) the right to walk on the Parcel, access the roof of any structure on the Parcel, open any trap for rooftop runoff and open and inspect rain barrels (Owner shall provide the Homeowner's Association with keys to all locks on such elements). Other than in emergencies, the Homeowner's Association shall provide not less than 24 hours advance notice of such inspection; or (ii) require Owner to undertake, or where Owner has contracted for the Homeowner's Association to undertake, commence, or where following notice to Owner and Owner's failure to undertake, commence clean up, clean out, removal of sediment, debris or other materials, vacuuming or steam cleaning of permeable surfaces, clearing lines of blockages, planting or removing vegetation, repair, reconstruction, maintenance or replacement of such elements, provided that the Homeowner's Association, in utilizing the easements and rights provided hereunder, shall use reasonable efforts to avoid damage to grounds and structures. Where landscaping must be removed to restore function of an element of the stormwater management system or where damage cannot be reasonably avoided in utilizing those rights, the Homeowner's Association shall have no liability therefore. The Homeowner's Association shall have neither responsibility nor liability from the functioning of the stormwater management system or its failure to function or the occurrence or failure to occur of the maintenance, repair or replacement contemplated hereunder.

(iii) The Homeowner's Association shall notify Owners in writing concerning: (i) maintenance requirements for Owner-owned portions of the stormwater management system and (ii) any non-compliance with those maintenance requirements. If the Homeowner's Association determines that an Owner is not complying with such requirements, and the non-compliance continues for ten (10) days after notice to the Owner, the Homeowner's Association shall have the right without liability to enter the Parcel to correct, repair, restore, and maintain any non-compliant portion or element of the stormwater management system located on the Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such actions are to be assessed to the Owner as an

Individual Parcel Assessment. The Board may also assess a management fee for activities that it must take to correct, repair, restore, or maintain any part of the stormwater management system on the Parcel on behalf of an Owner. If, in accordance with this section, authorized agents of the Homeowner's Association enter upon any Parcel to abate or remove a violation, neither the Person entering the Parcel nor the Person directing the entry shall be deemed liable for any manner of trespass for such action.

(iv) The Homeowner's Association shall have the right to enter into contracts and agreements with the City of Huntsville or other public entities allowing the City or such other public entities to exercise the easements and rights of the Homeowner's Association herein provided, if the Homeowner's Association fails to enforce them. The City may also be granted the right to impose the charges for such undertaking as a lien on the Owner's Parcel.

(c) Utility Easements. The Homeowner's Association has a blanket easement upon, across, over, through and under the Residential District for access, 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, drainage, telephone, intranet, electricity, television, security, fiber optic, broadband, cable or communication lines and other equipment. By virtue of this easement the Homeowner's Association may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's reasonable use of his Residential Parcel. If authorized by majority vote of the Board, the Homeowner's Association may assign all or a portion of its rights under this paragraph to one or more utility providers.

### 3.5 Purchase or Conveyance of Neighborhood Commons.

(a) Purchase of Neighborhood Commons. The Homeowner's Association may acquire additional Neighborhood Commons. The decision to acquire additional Neighborhood Commons (other than that added by the Declarant), whether by purchase or lease or other means, shall be authorized by 60% of the Board. If the purchase or lease is costly enough to be considered a substantial capital expense, it must be approved as described in Article V.

(b) Sale or Long-Term Lease of Neighborhood Commons. As described elsewhere in this Article III, the Board may rent or assign space in the Neighborhood Commons on a short-term basis for open-air markets, festivals, parties, weddings and other events and may dedicate part or all of the Neighborhood Commons to the public. The Homeowner's Association may sell, donate or grant long-term leases for small portions of the Neighborhood Commons or exchange parts of the Neighborhood Commons for other property inside or outside the Residential District when the Board finds that it benefits the Community. Otherwise, the Board may not sell or exchange or otherwise dispose of any Neighborhood Commons except to a successor organization conceived and organized similarly to the Homeowner's Association to own and maintain the Neighborhood Commons.

Any decision to donate, sell, exchange or lease any portion of the Neighborhood Commons must be approved by 60% of the Board and, the Design Committee, for as long as the Declarant owns any Parcels in Trailhead. After the Period of Declarant Control, if requested by the President, a Board member or ten percent (10%) of all the Residential Parcel Owners by written petitions, a special meeting must be held. Notice requirements for special meetings are described in Article I and in the Bylaws. If a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by a sixty percent (60%) vote of the Residential Parcel Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Neighborhood Commons should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and giving notice.

Except as specifically permitted by this Residential Declaration, the Neighborhood Commons cannot be rented or sold.

(c) Corrective Instruments. The Homeowner's Association, by approval of 60% of the Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Neighborhood Commons.

### 3.6 Dedication and Condemnation.

(a) Dedication. If any portion of the Common Roads has not previously been dedicated to the public, the Board may, by majority vote, cause the Homeowner's Association to convey title to or dedicate the Common Roads to the appropriate public authority. Any other dedication of the Neighborhood Commons must be approved in the same manner as a conveyance of the Neighborhood Commons.

(b) Condemnation. If all or any part of the Neighborhood Commons is taken by, or an offer is accepted in lieu of condemnation from, any authority having the power of eminent domain, all compensation and damages shall be paid to the Homeowner's Association. The Board shall have the right to act on behalf of the Homeowner's Association with respect to any negotiation or litigation relating to the offer or taking.

### 3.7 Association Insurance and Reconstruction.

(a) Property and Casualty Insurance. The Board shall obtain property and casualty insurance for Neighborhood Commons including structures or other improvements that can and should be insured for damage or other loss in such amounts and with insurance companies as it deems appropriate.

(b) Commercial General Liability. The Board shall obtain commercial general liability insurance in such amounts as the Board determines, insuring against liability arising out of, or incident to, the membership and use of the Common Areas and any topographic conditions or water access located on or adjoining the Neighborhood.

(c) Director Liability Insurance. The Board may obtain liability insurance insuring against liability for actions taken by members of the Board, officers of the Homeowner's Association and advisory members in the performance of their duties. The Board may also obtain fidelity insurance for its employees.

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

(e) Repair and Reconstruction after Fire or Other Casualty. If Improvements on the Neighborhood Commons are damaged, the Board shall arrange for and supervise prompt repair and restoration of the Improvements.

#### **ARTICLE IV**

##### **Relationship Between Residential Parcels**

As provided by the Trailhead Design Standards, certain buildings within the Residential District may be attached townhouses or the dwellings may be detached but placed on or near the property line. The easements in this section are intended to enable reasonable cooperation between neighboring Owners. The Homeowner's Association may make rules for maintenance and use of easement areas and shared Improvements that are to be uniformly applied to all similarly configured Residential Parcels.

4.1 Residential Parcel Lines. The re-subdivision of any Residential Parcel or the separate conveyance of any part of a Residential Parcel other than as an easement is prohibited except if performed by the Declarant. The specific consent of the Design Committee is required to otherwise modify the boundary lines of any Residential Parcel. Additional approval by the City of Huntsville may also be required.

4.2 Structural Party Walls. Each Owner grants to the Owner of each adjacent Residential Parcel the right and easement to maintain and to utilize any exterior or interior wall 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 Residential Parcel. Maintenance of each surface of the party wall shall be the sole responsibility of the Owner whose building faces such surface. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's building or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

4.3 Exterior Walls. An exterior wall which supports the building on only one Residential Parcel, or which encloses a courtyard on one Residential Parcel, shall not be considered a party wall. The Homeowner's Association 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 Residential

Parcel as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Homeowner's Association's Rules and Regulations.

4.4 Yard Easements. To allow the most efficient use of a Residential Parcel while complying with governmental setback requirements, a portion of a Residential Parcel along a lot line may be subject to an easement for use by the adjoining Residential Parcel Owner. The Owner of a Residential Parcel subject to such an easement will usually be the beneficiary of a similar easement burdening another Owner's Residential Parcel, unless the Residential Parcel is a corner lot or is larger than the adjoining Residential Parcel. Such easements may be designated on the plat, in the Trailhead Design Standards or recorded in the deed from the Declarant to the first Owner of the burdened Residential Parcel. Such easement area may be up to four (4) feet wide and shall run along a boundary line. Subject to regulation under the Trailhead Design Standards, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and, subject to this Article IV, may place fences and other non-permanent fixtures (but not primary structures or above ground HVAC equipment, decks, or other permanent fixtures) upon the easement area. If the Homeowner's Association or utility provider needs access to the easement they shall not be liable for damage to any fences or non-permanent structures located within the easement.

4.5 Roof Overhang; Footings. For certain building types, such as side yard houses, which are to be built along a property line, the Trailhead Design Standards may permit roofs, gutters, soffits, downspouts and other features to overhang this property line and may allow footings and rain leaders to intrude into the adjacent property. To the extent allowed by the Trailhead Design Standards and local governmental regulations, the adjacent property shall be subject to an easement for such intrusion.

4.6 Townhouse or Row House Roof. If a townhouse or row house wall or parapet exists along or very near a property line, the Owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building in accordance with industry standards in order to make the new building watertight. This right includes 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 water tightness of the existing building is not impaired. The cost of this flashing shall be borne by the Owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property Owners.

4.7 Zero Lot Line Easements. To allow maintenance, construction, or repair of structures on an adjoining Parcel while complying with governmental setback requirements, a portion of a Parcel along a lot line may be subject to an easement for use by the adjoining Parcel Owner. The Owner of a Parcel subject to such an easement will usually be the beneficiary of a similar easement burdening another Owner's Parcel, unless the Parcel is a corner lot or is larger than the adjoining Parcel. Such easements may be designated on the plat, in the Trailhead Design Standards or recorded in the deed from the Declarant to the first Owner of the burdened Parcel. Such easement areas may be up to ten feet wide and shall run along a boundary line and may be used by the adjoining Parcel Owner to conduct maintenance, construction, or repair of structures on that adjoining Parcel. The adjoining Parcel Owner shall use best efforts to avoid destruction

of vegetation within the easement area. The adjoining Parcel Owner must provide the Owner of the Parcel subject to such an easement with fourteen days prior written notice before using the easement for maintenance, construction or repair activities.

4.8 Owner Insurance. Each Residential Parcel Owner shall obtain casualty insurance for Improvements on its Residential Parcel. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than eighty percent (80%) of the value (based upon replacement cost) of the insurable improvements constructed on the Residential Parcel. If requested by the Homeowner's Association, an Owner shall provide evidence of such insurance to the Homeowner's Association.

## **ARTICLE V**

### **Architectural Review: Trailhead Design Standards; Community Architect**

Because the Trailhead Design Standards may change from time to time, it is important that an Owner obtain approval based on the current version of the Design Standards before undertaking any change or improvement of his property.

5.1 Community Architect. The Declarant may appoint a Community Architect, whose job it is to understand and interpret the Trailhead Design Standards. The architect who designs the master plan for the Community will not necessarily be named the Community Architect. The Community Architect is not responsible for designing individual houses but can facilitate the design of houses consistent with the overall design vision for the neighborhood. The Community Architect must have a professional degree in architecture or urban design from an accredited university or comparable qualifications. The Community Architect does not, however, need to be licensed to practice in Alabama.

5.2 Declarant and Design Committee Roles. No Improvement will be made, expanded or altered, nor building permit for construction, expansion or alteration of an Improvement sought without written approval of the Improvement's construction, expansion or alteration by the Design Committee. The Design Committee will review construction, expansion or alteration of Improvements using the Trailhead Design Standards procedures set forth in the Master Declaration, as it is amended from time to time. The Design Committee has the sole and absolute ability to review and approve applications.

5.3 Architectural Review: Review Process. The Master Declaration outlines the method for review of both initial construction and modifications to ensure that Trailhead follows the Trailhead Design Standards. In the event of any conflict between this Residential Declaration and the Master Declaration, the Master Declaration shall prevail. While the Declarant and the Design Committee manage the architectural approval process, enforcement may be by the Declarant or Design Committee under the Master Declaration or by the Homeowner's Association under this Residential Declaration or by all of these entities.



By taking title to property in the Residential District, Owners have agreed to the provisions of this Residential Declaration, the Trailhead Design Standards, and other recorded instruments placing certain restrictions on the use of the property.

In addition to the enforcement provisions in the Master Declaration, if any construction or installation is begun which has not been approved or which deviates from approved plans and specifications, the Board may by majority vote approve any of the following actions on behalf of the Homeowner's Association:

- Require the Owner to resolve the dispute through binding arbitration;
- Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans;
- 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; and
- File liens.

If the Homeowner's Association 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 Homeowner's Association shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted.

The Design Committee may require the builder or Owner to post a deposit from which the Design Committee or the Homeowner's Association may deduct published fines and costs of rectifying the deviation for failure to comply with the approved plans and specifications and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

Failure to enforce any provision of this Article IV shall not be deemed a waiver of the right to do so at any time thereafter. It is expressly provided that the Design Committee has the power and authority to waive the requirement or enforcement of any of the Covenants set forth herein.

## **ARTICLE VI**

### **Finance / Budget**

The Board is responsible for managing the Homeowner's Association's financial affairs. The Directors are required to act in accordance with good faith judgment concerning the best interests of the Homeowner's Association.

6.1 Accounting. The Homeowner's Association must prepare annual statements of its income and expenses, which are to be made available to each Owner. Unless required by law or the Board, annual statements do not need to be audited.

6.2 Budget. The fiscal year of the Homeowner's Association begins January 1 of each year and ends on December 31 of that year, unless the Board selects a different fiscal year. The Board may appoint a committee to undertake the preparation of the budget. The budget is adopted by majority vote of the Board. At least one month before the fiscal year to which the budget applies, the Board shall send to each Owner, or post on its web site, a copy of the budget and notice of the amount of the General Assessment each Owner will owe.

If General Assessments on Residential Parcels are to be increased by more than fifteen percent (15%) per Residential Parcel when compared to the previous year's General Assessment, and within thirty (30) days after the budget is delivered to Residential Parcel Owners, review is requested by the President, the Board or by petitions signed by at least sixty percent (60%) of all Residential Parcel Owners, the Board is to call a special meeting to present the budget and to answer any questions. After presentation, the budget is deemed approved unless a quorum of the Residential Parcel Owners is present, and a majority of the voting interests reject the budget. If the budget is rejected, the Board must approve a new budget within thirty (30) days and send a copy to each Owner. If, under the new budget, the General Assessments are to be increased by more than fifteen percent (15%) per Residential Parcel, then the budget must be reviewed again according to the provisions of this paragraph.

If the budget is challenged or if for any other reason the Board is late in approving the budget, Residential Parcel Owners are not released from their obligation to pay General Assessments whenever the amount of such assessments is finally determined. Until a new budget is approved, each Residential Parcel Owner must continue to pay the assessment at the rate established for the previous fiscal year.

6.3 Reserves and Deferred Maintenance. The Homeowner's Association shall establish reserves for deferred maintenance, which are significant expenses that occur infrequently (in most cases, no more frequently than every five years).

When it is time to perform deferred maintenance, the Board can authorize use of the appropriate reserve fund. If specifically authorized by the Board, reserves set aside for one purpose may be used for another purpose. (For instance, money set aside for resurfacing streets may be used for re-roofing a building.)

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 may be included in the budget and funded each year from General Assessments.

Although separated for the Homeowner's Association'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. Reserves must be kept in an account separate from the Homeowner's

Association's operating account. After the period of Declarant Control, the Homeowner's Association's reserve account shall require more than one signature to be accessed.

If there is an excess of reserves at the end of the fiscal year, the Board may decide to reduce the following year's assessments for reserves. If sixty percent (60%) of the Board determines (by vote) that a reserve is no longer necessary for its original purpose, the Board may assign all or part of the funds to a reserve for another purpose or allocate the funds to the Homeowner's Association's operating account. If specifically authorized by the Board, reserves may be used for extraordinary expenses that are not included in the annual budget. A Special Assessment may be used to pay back the reserve fund.

6.4 Special Assessment. The Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Residential Declaration or the law requires the Homeowner's Association to pay, or for deferred maintenance or replacement for which reserves are insufficient. Special Assessments require approval by sixty percent (60%) of the members of the Board. The Board may choose to spread the Special Assessment over a period of up to five years.

Section 6.5 Capital Improvements. Homeowner's Association expenditures for capital improvements shall be approved by the Board without membership approval. However, any Substantial Capital Improvement to the Neighborhood Commons approved by the Board after the Period of Declarant Control must be ratified by a majority of the Residential Parcel Owners. A capital improvement will be considered substantial if the cost to the Homeowner's Association of the improvement is more than ten percent (10%) of the Homeowner's Association's annual budget or if, when added to other capital improvements for the fiscal year, the sum is more than twelve percent (12%) of the Homeowner's Association's annual budget. If the capital improvement is approved, the Board shall determine whether it is to be paid from General Assessments or by Special Assessments, which the Board may spread over a period of time up to five years.

Section 6.6 Zone Expenses. Zones are intended to provide a flexible means for providing additional maintenance or capital improvements to a portion of the Residential District that has special needs. Zone boundaries may be designated at the time of the addition of the property by Supplemental Declaration or at any later time by the Board. Some expenses apply only to a certain Zone within the Residential District:

(a) Capital Improvements. The Board may, by majority vote, assess all Residential Parcel Owners within the Zone for capital improvements to Neighborhood Commons that will primarily benefit that Zone.

(b) Additional Services. The Board may, by majority vote, vote to assess all Owners within the Zone for maintenance or services in addition to those normally provided by the Homeowner's Association. For landscape maintenance, the Board may define a Zone by Residential Parcel type and may approve landscape service for that Zone.

If the assessment is approved, it will be assessed to and allocated among all Owners within that Zone or designated group as Individual Residential Parcel Assessments.

Section 6.7 Contract for Maintenance. The Homeowner's Association may, but is not obligated to, act as agent for a Residential Parcel Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Homeowner's Association, the cost of which will be assessed to that Owner as an Individual Residential Parcel Assessment. The terms and conditions of all such contracts are at the discretion of the Board. The Homeowner's Association may enter into contracts with members of the Board or their companies. However, when the Board considers the contract, the Director should disclose the interest in the company. In addition, a majority of the remaining uninterested Directors must authorize, approve, or ratify the contract (except that a single Director may not authorize, approve, or ratify such a transaction) and the terms of such contracts must be fair and reasonable-in general, comparable to what would be charged by an outside company.

## **ARTICLE VII**

### **Assessments**

The cost of meeting the Homeowner's Association's expenses is divided among all the Residential Parcel Owners by the assessments levied on Residential Parcels.

#### **ALLOCATION OF ASSESSMENTS**

Residential Parcel Type	Relative Value
Single Family	1.0 per Residential Unit
Condominium Multi-Family	To Be Determined
Non-Sold Declarant Parcels	0 per Residential unit
Apartment Multi-Family (from Business Association)	Special access fee
Town Home / Patio Home	To be determined

The common expenses of the Homeowner's Association are to be allocated among the Residential Parcels in accordance with the relative values described in the table above. The allocation of the common expenses of the Homeowner's Association may be calculated for each Residential Parcel by dividing the relative value assigned that Residential Parcel, as shown in the adjacent table, by the sum of the values of all Residential Parcels within the Residential Neighborhood. These are the Assessment Interests.

A single outbuilding with a studio or one-bedroom apartment is not subject to separate assessment if the primary residence on the Residential Parcel is assessed at 1.0 or greater.

If an Owner combines two Residential Parcels or parts of Residential Parcels and uses them as a single Residential Parcel, the Homeowner's Association will continue to assess them as two Residential Parcels.

7.1 Exempt Community. The following portions of the Residential Neighborhood shall be exempt from the Assessments and liens created herein: (i) all property owned by the Declarant, (ii) all properties dedicated to and accepted by a public authority, (iii) all Neighborhood Commons, and (iv) any Residential Parcel deemed exempt pursuant to the Paragraph below regarding Non-Profit Entities and builders. Collectively, the property referred to in items (i) through (iv) of the preceding sentence shall constitute the "Exempt Community."

7.2 Non-Profit Entities/Builders. Residential Parcels that are used by non-profit entities primarily for the benefit of residents of Trailhead may have a zero allocation if granted as described in this paragraph. The Declarant may grant such exempt status of record at any time up to and including the time of conveyance of the Residential Parcel to someone other than the Declarant. Once granted, such exempt status continues so long as the use of the Residential Parcel remains substantially the same. The Board also has the authority to grant exempt status for qualified entities and builders upon terms and conditions established by the Board.

7.3 Determination by Homeowner's Association. The Board, using reasonable discretion, has the authority to determine the type of Residential Parcel and may establish rules for the assessment of unimproved lots, determination of residential and commercial use and other matters relating to assessment. The Homeowner's Association's agent may enter and examine buildings at reasonable times for assessment purposes. An Owner shall have the right to a hearing before the Board to appeal an assessment evaluation; however, the decision of the Board after the hearing is final.

7.4 Collection of Assessments. Each Owner is required to pay all Assessments (General Assessments, Special Assessments, Individual Residential Parcel Assessments, Zone Assessments and Capital Contribution) assessed to that Residential Parcel. Dissatisfaction with the Homeowner's Association is not a legal defense to an Assessment collection case. The Homeowner's Association has the right to institute reasonable policies concerning late fees and interest, which such Owner is also required to pay. The Homeowner's Association may require Owners who are delinquent in paying their Assessments to pay Assessments on a pro-rated monthly or quarterly basis.

Owners pay Assessments in the manner and on the dates the Board establishes. The Board may require advance payment of Assessments at closing of the transfer of title to a Parcel and may impose special requirements, including pro-rated monthly or quarterly payments for Owners with a history of delinquency. The Board may elect to have Assessments paid annually, quarterly, or monthly. However, unless the Board establishes otherwise by Rule or Regulation, Assessments shall be paid in annual installments.

(a) Collection Costs. If any Assessment is still delinquent ten days after the Homeowner's Association has delivered a warning letter to the Owner's last known address, or e-mail address, the Homeowner's Association has the right to also charge the Owner with the Homeowner's Association's collection costs, including reasonable attorney's fees, whether or not suit is brought. The Homeowner's Association may also establish late fees for delinquent payment of assessments.

(b) Legal Remedies. The obligation to pay Assessments and costs is both a personal obligation of the Owner and a lien on the Residential Parcel. (The past-due Assessments, plus late-fee, interest to the time of collection and the Homeowner's Association's attorney's fees and other collection costs are called the "Assessment Charge.") The Homeowner's Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge or may foreclose the lien in the manner permitted by the Alabama Homeowners Association Act, or both.

(i) Personal Obligation. The Assessment Charge shall be the personal obligation of the person or entity that was the Owner of the Residential Parcel at the time when the Assessment Charge was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Residential Parcel.

(ii) Creation of Lien. The Assessment Charge shall also be a continuing lien upon the Residential Parcel against which the Assessment Charge is made. This lien, in favor of the Homeowner's Association, shall secure the Assessment Charge which is then due, and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. The Homeowner's Association may file a lien with the Probate Judge of Madison County, Alabama, if any Assessment remains unpaid for thirty (30) days. Any subsequent Owner of the Residential Parcel shall be deemed to have notice of the Assessment Charge. The lien shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that Residential Parcel, (ii) liens and encumbrances recorded prior to the recordation of the Residential Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of the lien for Assessments. The provisions of this paragraph do not affect the priority of mechanics' and materialmen's liens.

The Homeowner's Association may bid for an interest in any Residential Parcel foreclosed at such foreclosure sale, may acquire a Residential Parcel, and may subsequently hold, lease, mortgage and convey the acquired Residential Parcel.

(c) Other Remedies. The Homeowner's Association shall have the right to suspend the voting rights and the right to prohibit the use of the Neighborhood Commons by an Owner and may prohibit the leasing of the Residential Parcel for any period during which any Assessment against the Residential Parcel remains unpaid. In addition to any other remedies provided by this document for the nonpayment of assessments, the Homeowner's Association shall have all other rights at law or equity against delinquent Owners.

## **ARTICLE VIII**

### **Miscellaneous**

8.1 Amendment. The Declarant may amend this Residential Declaration (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Homeowner's Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify the Residential Declaration's provisions or correct errors or inconsistencies, (iv) to

subject additional property to this Residential Declaration or in connection with Supplemental Declarations or to withdraw property from the Residential Neighborhood, (v) to change a name pursuant to the Master Declaration, (vi) to conform to any law then in effect, or (vii) for any reason during the Period of Declarant Control as Declarant may reasonably deem necessary or appropriate.

The Declarant may amend this Residential Declaration without approval by the Residential Parcel Owners or the Board during the Period of Declarant Control. This Residential Declaration may also be amended at any time after the Period of Declarant Control by an instrument signed by the President or Vice President and Secretary of the Homeowner's Association, certifying approval in writing by Owners representing two-thirds (2/3) of the voting rights, with the following limitations:

- Provisions concerning voting rights and allocation of assessments cannot be amended without the consent of two-thirds (2/3) of each category of affected Residential Parcel Owners.
- Rights reserved to the Declarant may not be amended without the specific consent of the Declarant.

Any amendment takes effect upon its recordation in the public records of the Clerk's Office.

8.2 Duration. The covenants and restrictions contained in this Residential Declaration shall run with and bind Residential Parcels and Neighborhood Commons of Trailhead and shall inure to the benefit of and be enforceable by the Declarant, the Homeowner's Association and its Board, and all Owners of the Homeowner's Association, their respective legal representatives, heirs, successors or assigns for 25 years, and shall be automatically extended for each succeeding twenty five-year period unless an instrument signed by Owners representing 80% of the voting rights in the Homeowner's Association shall have been recorded, agreeing to terminate the Residential Declaration as of a specified date.

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

(i) The Residential Declaration may be terminated at any time after the Period of Declarant Control by the consent in writing of two-thirds of all Owners.

(ii) After the Period of Declarant Control, the Residential Declaration may be terminated by consent in writing by Owners representing at least two-thirds of the voting rights in the Homeowner's Association, if the Neighborhood Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (except that alleys or footpaths between two Residential Parcels may be divided evenly between the adjacent Residential Parcel Owners in accordance with this Part) or another successor entity organized under the same principles and standards as set forth in this Residential Declaration.

## **ARTICLE IX**

### **Definitions**

Affiliate of the Declarant. The "Affiliate of the Declarant" means any Person directly or indirectly controlling, controlled by or under common control with the Declarant. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the Residential Parcel Ownership of voting securities, by contract, or otherwise, and the beneficial ownership of shares representing Ten percent (10%) or more of the votes entitled to be cast by a Person's voting shares.

Articles. "Articles" are the Articles of Incorporation of the Homeowner's Association.

Assessments. "Assessments" is the collective term for the following Homeowner's Association charges, all as further described in Article V:

- General Assessment. The "General Assessment" is the amount allocated among all Owners to meet the Homeowner's Association's annual budgeted expenses.
- Individual Residential Parcel Assessment. An "Individual Residential Parcel Assessment" is a charge made to a particular Residential Parcel Owner for charges relating only to that Residential Parcel.
- Special Assessment. A "Special Assessment" may be charged to each Residential Parcel for capital improvements or emergency expenses.
- Zone Assessment. A "Zone Assessment" is a charge made to a particular Residential Parcel for expenses relating only to Residential Parcels in that Zone.

Board. "Board" is the Board of Directors of the Homeowner's Association.

Building. "Building" shall have the meaning set forth in the building code for City of Huntsville, Alabama.

Bylaws. The term "bylaws" refers to the bylaws of the Homeowner's Association, as amended from time to time.

Commercial Property. "Commercial Property" is a Parcel used for office or retail use and does not include a live/work Residential Parcel, the Residential Units of a mixed-use Residential Parcel, or a home office on an otherwise Residential Parcel.

Common Roads. "Common Roads" are the streets and alleys located within the Residential neighborhood that are intended for automobile traffic. Most of the Common Roads are intended to be dedicated to the public. Any Common Roads not dedicated to the public shall be part of the Neighborhood Commons.



Declarant. The "Declarant" is Concord Land Development, Inc., and its successors as Declarant.

Guest. A "Guest" is someone present at Trailhead by the specific request or invitation of an Owner, Owner's tenant or Occupant.

Homeowner's Association. "Homeowner's Association" is Trailhead Homeowner's Association, Inc. created by the Articles.

Improvements. "Improvements" mean any Buildings, underground installations, slope alterations, lights, roads, driveways, utility facilities and lines, parking areas, fences, satellite dishes, rooftop installations, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plantings, planted trees or shrubs, poles, signs, loading areas and any Structures or landscaping improvements of every type and kind.

Including. Wherever the term "including" occurs in this Residential Declaration, it shall be interpreted broadly and without limitations as "including but not limited to".

Live/Work Unit. "Live/Work Unit" means a building or spaces within a building used jointly for commercial and residential purposes where work activities are intended to be those that are compatible with residential occupancies. The predominant use of a live/work unit is residential and commercial activity is a secondary use.

Lot. "Lot" means any portion of the Residential Neighborhood now or hereafter designated as a Lot or Residential Parcel of land (other than Neighborhood Commons, dedicated public roads, or other areas dedicated to public use) on a recorded plat of subdivision or re-subdivision of the Residential Neighborhood or on a governmental approved site plan. If no plat is recorded, a Lot is each Residential Parcel of land (other than Neighborhood Commons, dedicated public roads, or other areas dedicated to public use) conveyed as a separate Residential Parcel of real estate, and includes any Improvements now or hereafter constructed on the Lot.

Master Declaration. The "Master Declaration" is the Trailhead Master Declaration, recorded with the Office of the Judge of Probate for Madison County, Alabama, as amended from time to time. The Master Declaration establishes design control, reserves certain rights to the Declarant and places other restrictions on the use of Trailhead.

Member. Each Owner of a portion of the Residential Property is a "Member" of the Homeowner's Association.

Mortgagee. A "Mortgagee" is the holder of a mortgage.

Neighborhood Commons. "Neighborhood Commons" comprises real property within the Residential Neighborhood as designated on a plat or specifically conveyed to the Homeowner's Association, for the common use and enjoyment of all Owners. "Neighborhood Commons" also include any improvements on that real property, all utilities, utility easements and other easement rights or personal property for the Owner's common use, and any other property of any type

specifically designated as Neighborhood Commons. The Neighborhood Commons may include areas dedicated to the public to the extent that the Homeowner's Association agrees to maintain, or is required to maintain, such property.

Occupant. "Occupant" means any Person who occupies a Parcel at Trailhead because of a relationship to an Owner or tenant and is not themselves an Owner, tenant or Guest or beneficiary of an easement.

Owner. "Owner" is the record owner, whether one or more persons or entities, of fee simple title to any Residential Parcel. Owners shall not include those having such interest merely as security for the performance of an obligation, or condominium associations (but shall include the condominium Owners individually).

Parcel. A "Parcel" means any plot or Residential Parcel of land designated for separate ownership or occupancy in Trailhead other than a common area, and a unit in a condominium association.

Period of Declarant Control. The "Period of Declarant Control" under the Residential Declaration is that period during which the Declarant may appoint the Directors on the Board which is until all the Parcels in Trailhead have been sold to Owners other than the Declarant or its designated entities, or until the Declarant voluntarily relinquishes its right to appoint all of the directors.

Person. A "Person" is any natural person, corporation, partnership, trust, limited liability company, or other entity.

Residential Declaration. The "Residential Declaration" is this Residential Declaration for Trailhead, as recorded in the records of the Office of the Judge of Probate for Madison County, Alabama, as amended from time to time.

Residential Parcel. "Residential Parcel" is a Parcel of Residential Property.

Residential Property. "Residential Property" is all property that is subject to the Residential Declaration, plus additions and less withdrawals made according to the terms of the Residential Declaration.

Residential Unit. A "Residential Unit" is an individual dwelling unit such as a single-family residence, townhouse or other attached dwelling such as an apartment or condominium unit, a Live/Work Unit, or a residential dwelling within a mixed-use building.

Rules and Regulations. The "Rules and Regulations" mean any Rules and Regulations adopted from time to time by the Declarant or the Homeowner's Association to implement the objectives of this Residential Declaration.

Special Use Residential Parcel. A "Special Use Residential Parcel" is a Residential Parcel of unconventional size, shape, location or use that calls for special design considerations.

Typically, a Special Use Residential Parcel will be used for commercial purposes, multi-family residential or community or recreation facilities.

Structure. "Structure" shall have the meaning set forth in the building code for Huntsville, Alabama.

Substantial Capital Improvements. "Substantial Capital Improvements" are those Improvements the costs of which exceed ten percent (10%) of the Homeowner's Association's annual budget, or if when added to other capital Improvements for the fiscal year, the sum is more than twelve percent (12%) of the Homeowner's Association's annual budget.

Supplemental Declaration. "Supplemental Declaration" is any instrument that may be recorded by the Declarant or the Homeowner's Association as provided in the Residential Declaration.

Trailhead. "Trailhead" is the community described in the Master Declaration. It is the aggregation of the Residential Parcels and the Neighborhood Commons, and the Business Parcels and Business Commons.

Trailhead Commons. The "Trailhead Commons" comprises both the Neighborhood Commons and the Business Commons.

Trailhead Design Committee. The Trailhead Design Committee or "Design Committee" is the panel established by the Master Declaration to review and approve modifications to Residential Parcels and Business Parcels and to perform other tasks described in this Residential Declaration, the Business Declaration, and the Master Declaration.

Trailhead Design Standards. The Trailhead Design Standards are the design and architectural code for Trailhead, as amended from time to time and other design guidelines or requirements as developed, approved, and used from time to time.

Wheeled Transport. "Wheeled Transport" means bicycles, scooters, skateboards, roller skates, roller blades, tricycles, wheelchairs, Segway Human Transport, wagons, baby strollers and similar means of transportation, working on wheels or tracks, whether or not motorized, but not including motorcycles, motorized go carts, all-terrain vehicles or mini-bikes.

Work/Live Unit. "Work/Live Unit" means a building or spaces within a building used jointly for commercial and residential purposes where the work activities are intended to be the dominant pursuit of the occupants.

Zone. "Zones" are smaller areas within Trailhead of distinct building type or character. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone.

**ARTICLE X**  
**Miscellaneous Provisions; Signatures**

10.1 Authority. This Residential Declaration shall be administered by the Homeowner's Association or by any managing agent for the Residential Neighborhood designated by the Homeowner's Association.

10.2 Effect of Invalidation. If any provision of this Residential Declaration (including any attachment, exhibit, or items incorporated by reference) is held to be invalid or unenforceable by any court, the invalidity of such provision shall not affect the validity of the remaining provisions of this Residential Declaration, which shall continue unimpaired and in full force and effect and shall be construed to the fullest extent practicable as if such invalid or unenforceable provision had not been included in this Residential Declaration.

10.3 Interpretation. This Residential Declaration shall be interpreted for the mutual benefit and protection of the Owners of Residential Parcels and in furtherance of the basic goals of this Residential Declaration. Any discrepancy, conflict or ambiguity which may be found herein shall be resolved and determined by the Declarant or the Homeowner's Association (to the extent the Declarant's rights under this Residential Declaration have been assigned to the Homeowner's Association) and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such resolution and determination shall be final. This Residential Declaration and rights of the Residential Parcel Owners within Trailhead shall be governed by the laws of the State of Alabama, without regard to Alabama's choice of law provisions.

10.4 Exhibits and Appendices. All Exhibits and Appendices attached to this Residential Declaration are incorporated by reference and made a part of this Residential Declaration.

10.5 Captions; Capitalized Terms; Gender; Graphics. The paragraph headings and captions appearing in this Residential Declaration are inserted only as a matter of convenience and for reference and in no way limit or otherwise affect the scope, meaning or effect of any provisions of this Residential Declaration. Terms that are capitalized in this Residential Declaration shall have the meaning set forth in Article VII of this Residential Declaration or otherwise in this Residential Declaration unless the context plainly makes such meaning inappropriate. Whenever the singular number is used in this Residential Declaration, the same shall also include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context requires. Graphics or renderings included as a part of this Residential Declaration have no regulatory purpose and do not represent a commitment to a particular outcome or result. The term "and" shall be deemed to mean "and/or".

10.6 Constructive Notice and Acceptance. Each Owner, Occupant or other Person, by acceptance of a deed conveying title to a part of the Residential Neighborhood, or the execution of a contract for the purchase thereof, or the acceptance of a lease or license therefore, or the taking possession thereof, whether from the Declarant or other Owner or lessee, shall for itself, his successors and assigns, be deemed to (i) accept such deed, contract, lease, license or possession upon and subject to each and all of the provisions of this Residential Declaration, and

(ii) covenant, to and with the Declarant, and the other Owners to keep, observe, comply with and perform the requirements of this Residential Declaration, whether or not any reference to this Residential Declaration is contained in the instrument by which such Person acquired his or her interest. Owners agree to refer to this Residential Declaration in deeds, leases and licenses covering any portion of the Residential Neighborhood and to make this Residential Declaration binding upon all Owners and tenants.

10.7 Notice to the Declarant. Any and all notices or other communication required or permitted by this Residential Declaration, or by law to be served on or given to the Declarant must be in writing and shall be deemed appropriately served and given when the notice or communication is personally delivered, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, addressed to the Declarant as follows:

Declarant:                   Concord Land Development, LLC  
                                  Attn: Mark R. Hunter  
                                  2000 Andrew Jackson Way  
                                  Huntsville, AL 35811

with copies to:           Paul B. Seeley  
                                  Lanier Ford Shaver & Payne P.C.  
                                  2101 W. Clinton Avenue, Suite 102  
                                  Huntsville, AL 35805

or to such other address as the Declarant may specify by Supplemental Declaration executed by the Declarant without need for the consent of any other Owners.

10.8 Notice to Owners. Notice to any Owner (other than the Declarant), Tenant or Occupant or to any Mortgagee shall be deemed duly served when personally delivered to the Person to whom it is directed, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first-class postage prepaid, certified or registered mail, return receipt requested, addressed to (i) the Owner, Tenant or Occupant at the address as shown in the applicable City tax records, or to such other address as designated by the Owner, Tenant or Occupant, in writing to the Declarant, as applicable; and (ii) to such Mortgagee at the address designated by the Mortgagee in writing to the Declarant.

10.9 Waiver. Neither the Declarant, nor the Design Committee, nor the Homeowner's Association or its Board nor their successors or assigns shall be liable for damages to any Owner, lessee, licensee, or Occupant by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in the administration of the provisions of this Residential Declaration, the Trailhead Design Standards or the Rules and Regulations or for the enforcement or failure to enforce this Residential Declaration, the Trailhead Design Standards or the Rules and Regulations or any part thereof; and every Owner or Occupant, by acquiring an interest in the Residential Neighborhood, agrees that she will not bring any action or suit against the Declarant, the Design Committee or its members, the Homeowner's Association or its Board to recover damages or to seek equitable relief on account of their enforcement or non-enforcement of this

Residential Declaration.

10.10 Re-recording. Unless this Residential Declaration is terminated, the Homeowner's Association shall rerecord this Residential Declaration or other notice of its terms at intervals necessary under Alabama law to preserve its effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned do hereby make this Trailhead Residential Declaration and have caused this Residential Declaration to be executed effective as of the day and year first above written in the presence of me, Notary Public and the undersigned witnesses, after due reading of the whole.

CONCORD LAND DEVELOPMENT, INC.,  
an Alabama corporation


By:   
Mark R. Hunter  
Its: President

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned Notary Public in and for said county and state, hereby certify that Mark R. Hunter, as President of CONCORD LAND DEVELOPMENT, INC., an Alabama corporation (the "Corporation"), whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this the 29<sup>th</sup> day of May, 2019.

  
Notary Public  
Printed Name: Angela LeAnn Wilson

My Commission Expires: 1/18/2023  
[Notarial Seal]

BURWELL PROPERTIES, LLC,  
an Alabama limited liability company


By:   
Mark R. Hunter  
Its: Manager

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned Notary Public in and for said county and state, hereby certify that Mark R. Hunter, as Manager of BURWELL PROPERTIES, LLC, an Alabama limited liability company (the "Company"), whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand and official seal this the 29<sup>th</sup> day of May, 2019.

  
Notary Public  
Printed Name: Angela LeAnn Wilson

My Commission Expires: 1/10/2023  
[Notarial Seal]

THIS INSTRUMENT PREPARED BY  
Mark Hunter  
HUNTSVILLE, ALABAMA



EXHIBIT A

Trailhead

**All the property in the Final Plat of Trailhead Huntsville, Phase One**, a resubdivision of Tracts 4 and 5 of Chase Creek Park, as recorded as Doc # 20110929000512960 and other lands, as recorded on **July 2, 2018** as **Doc # 2018-00042152** in the office of the Judge of Probate, Madison County, Alabama.

**AND**

**Lot 4, of the Final Plat of Trailhead Commercial Park, Phase II**, as recorded on **March 4, 2019** as **Doc # 2019-00012532** in the office of the Judge of Probate, Madison County, Alabama.

## EXHIBIT B

### Residential

**All the property in the Final Plat of Trailhead Huntsville, Phase Three**, a resubdivision of Tract 2 of Trailhead Huntsville, Phase Two (Doc#2018-00042157), a resubdivision of Trailhead Huntsville, Phase One (Doc#2018-00042152), a resubdivision of Tracts 4 and 5 of Chase Creek Park (Doc#20110929000512960), as recorded on **July 27, 2018** as **Doc # 2018-00048324** in the office of the Judge of Probate, Madison County, Alabama.

### LESS AND EXCEPT:

#### TRACT 2

*(The property in this Exhibit B consists of 73 lots and 5 common areas)*

Filed/Cert: 05/29/2019 02:47:00 PM  
Fee Amt: \$128.25 Page 42 of 42  
Madison County, AL  
FRANK BARGER Probate Judge  
File **2019-00032609**