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BY: DM

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

*MIDTOWN BRYANT*

THIS DECLARATION of Governance, Covenants, Easements, Conditions, and Restrictions for *MIDTOWN BRYANT* is made as of the 1<sup>st</sup> day of October, 2008, by TND Developers, LLC, an Arkansas Limited Liability Company (hereinafter referred to as the "Founder").

STATEMENTS OF PRINCIPLES

"Nothing happens unless first a dream." Carl Sandburg

*MIDTOWN BRYANT* springs from the Founder's desire and vision that:

*MIDTOWN BRYANT* shall be a community that echoes Arkansas' historic neighborhoods while embracing 21<sup>st</sup> Century living and opportunities made available through technology and the Internet;

*MIDTOWN BRYANT* shall be a community that fosters the exploration of the history and beauty of Arkansas through parks, bikeways and walkways that connect the community;

*MIDTOWN BRYANT* shall dare to be different by rejecting planning concepts that dominated community development from the 1950's through the end of the 20<sup>th</sup> century while adopting tenets of New Urbanist design;

*MIDTOWN BRYANT* shall be a community dedicated to living on a human scale with places to live, work, and play within a pleasant five-minute walk from one another;

*MIDTOWN BRYANT* shall be a community that works to replace dependence upon automobiles and freeway connectivity with bike paths, sidewalks, porch swings, and corner stores;

*MIDTOWN BRYANT* shall be a community that provides places for a free range of creativity in play, civic governance, and community living;

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*MIDTOWN BRYANT* shall be a community that celebrates life in its noisiness at shows in the amphitheater, quietude in places of worship and contemplation; shouts from ball games in the park, and commerce in neighborhood centers and civic places; and

*MIDTOWN BRYANT* shall be a community unlike any other in Arkansas, both vast in space but intimate in detail.

These principles shall inform this Declaration of Governance, Covenants, Easements, Conditions, and Restrictions for *MIDTOWN BRYANT* but not tyrannize it, as the fulfillment of this vision is dependent upon the vicissitudes of time, response of the market, and the vagaries of people. The Founder cannot assure that this vision will be fulfilled but intends that in the interpretation of this Declaration and enactment of the rules for *MIDTOWN BRYANT* that the Association shall bear these in mind.

#### RECITALS

The Founder has established *MIDTOWN BRYANT* Design Code (the "Code") as the regulatory expression of the permitted uses, intensity of development, street plan, landscaping, setbacks, and architecture at *MIDTOWN BRYANT*.

The City of Bryant, Arkansas, has adopted the Code pursuant to Ordinance No. 2007-39 as part of the Zoning Ordinance of the City of Bryant, Arkansas.

WHEREAS, the City of Bryant has approved said Subdivision and road names.

The Declaration is intended to further implements the Code and govern the development and maintenance of common properties, buildings, and civic spaces in *MIDTOWN BRYANT* while establishing regulations to encourage harmonious relationships among neighbors within the Community.

The Founder owns or controls all of that certain tract of land in the County of Saline, Arkansas, as such tract of land is more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Community"); and

The Founder intends, by recordation of this Declaration, to subject the Community to the terms and provisions of this Declaration, reserving to the Founder the right, in its sole discretion, to add, to modify, or remove property from the community in the future by amending the Declaration from time to time as set out herein below.

The Founder cannot guarantee that *MIDTOWN BRYANT* will be successful and therefore may choose, as a result of market conditions, not to add to the Community, or to change architectural specifications and criteria within the Community, or with the approval of the City of Bryant, to remove property from the Community, to change the development plan for the Community by altering street patterns, commercial areas, housing stock, or park areas, all rights that are expressly reserved to the Founder as contained in Article III, Section 5 herein.

#### DECLARATION

NOW, THEREFORE, the Founder hereby declares that the Community and any parts thereof, shall be held, sold, and conveyed as *MIDTOWN BRYANT*, Saline County, Arkansas, and that hereafter, any conveyance by the Owners of said lands by lot and block number shall

forever be held to be a good and legal description and the streets and alleys shown on said plats are hereby and will become public roads to be accepted by the City of Bryant for maintenance. Such land will be subject to the following covenants, easements, conditions, and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with, the Community and be binding on all parties having any right, title, or interest in and to the Community or any part thereof and shall inure to the benefit of each owner thereof and their respective heirs, legatees, personal representatives, successors, and assigns.

## ARTICLE I DEFINITIONS

When I use a word, "Humpty Dumpty said, in rather a scornful tone. "It means just what I choose it to mean---neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master—that's all." **ATtribution:** LEWIS CARROL (Charles L. Dodgson). *Through the Looking Glass*, chapter 6. p. 205 (1934). First published in 1872.

1. "Affiliate" shall mean, as to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization (a "Person"), any other Person which, directly or indirectly, is in common control of, or is under direct or indirect common control with, such Person, and, if such Person, is an individual, any member of the immediate family is such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term "control" (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contrast or otherwise.
2. "Architectural Review Board" shall mean and refer to the panel established pursuant to the Declaration to administer the Design Standards contained within the Code.
3. "Association" shall mean and refer to *The Midtown Bryant Council, Inc.* an Arkansas non-profit corporation, its successors, and assigns.
4. "Assessments" shall mean and refer collectively to the following Association charges:
  - (i) General Assessment. The term "General Assessment" is the amount payable each year by each Owner (other than the Founder or any Affiliate of the Founder) to meet the Association's annual budgeted common expenses pursuant to the provisions of Article VII, Section 1.
  - (ii) Individual Parcel Assessment. An "Individual Parcel Assessment" is a charge made to a particular Owner (other than the Founder or any Affiliate of the Founder) for charges relating only to the Owner or such Owner's Parcel, as provided in Article VII, Section 1.
  - (iii) Special Assessment. A "Special Assessment" may be charged to each Owner and such Owner's Parcel (other than the Founder or any Affiliate of the Founder) for capital improvements or emergency expenses, in accordance with the provisions of Article VII, Section 1.

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5. "Assessment Year" shall be the calendar year.
6. "Board" shall mean and refer to the Board of Directors of the Association.
7. "Builders" shall mean and refer to any builder who is approved as a builder within *MIDTOWN BRYANT*.
8. "Building" in the singular and "Buildings" in the plural shall respectively mean and refer to each and all Dwellings, Civic Structures, Community Buildings, and Commercial Structures, Garages, commercial, retail, governmental, office, and other structures, constricted, installed, erected, placed, or maintained on any Parcel within the Community.
9. "City" shall mean and refer to the City of Bryant, Arkansas
10. "Civic Structures" shall mean and refer to all improvements used primarily by, for, or intended for the conduct of governmental or municipal functions or the Association.
11. "Commercial Districts" shall mean and refer to an and all areas of the Community that are designated and established from time to time by the Founder as commercial/retail areas or Live-Work Units; such Districts may be established under a separate set of covenants and may be subject to separate fees and assessments.
12. "Commercial Structures" shall mean and refer to all improvements used primarily by, for, or intended for the conduct of private sector retail or office activity.
13. "Community Buildings" shall mean and refer to Buildings used primarily by, for, or intended for the conduct of public functions including, without limitation, schools, churches, gymnasiums, public swimming pools, and athletic or religious assemblies.
14. "Code" shall mean and refer to *MIDTOWN BRYANT* Design Code, which shall consist of the following documents:
  - (a) The Design Standards and Landscaping Regulations, which guide the design of Buildings and describe the material of each Building may by constructed, and which regulate the planting and maintenance of trees shrubs, flowers and other living plants, and including by reference:
    - (i) the Regulating Plan, including both the overall Master Plan and various Section Plans for the different Districts, which establishes transect zones and depicts the Common Ways, Commons, and any civic used lots for real property encompassed by the Master Plan Area; and
    - (ii) the Design Review Procedures, which describe the steps for approval of all Buildings, landscaping, and other Improvements to any Parcel.
  - (b) The Code of *MIDTOWN BRYANT*, adopted by the City of Bryant as Ordinance No. 2007-39, which establishes setbacks, density, street standards, uses, lot coverage, and other similar matters, and incorporating by reference such Ordinances and Statutes of the City of Bryant not in conflict therewith; and
  - (c) This Declaration of Governance, Covenants, Easements, Conditions and Restrictions for *MIDTOWN BRYANT*, incorporating by reference herein the Plat of *MIDTOWN BRYANT*, as may be amended from time to time, and such Rules and Regulations as may be passed by the Association.

The Code, and in particular the Design Standards and Landscaping Regulations, and documents referenced therein, does not need to be recorded to be effective but shall be available for review and copying from the Founder and from the Association. The Association may adopt additional rules and regulations to implement the Code. The rules and regulations may include information about the design approval process, submittal forms, a review and approval process for architects and builders, and regulation of builders.

15. "Commons" shall mean and refer to the open spaces, greenswards, parks, meadows, amphitheaters, paths, pools, Buildings and Common Ways that are developed or set aside within the Community and are now or hereafter conveyed to the Association, together with the improvements thereon, for the common use and enjoyment of all member, but excluding any of the foregoing that are dedicated to public use. Such Commons shall include, by way of example and not by way of limitations, any area designed on the Plat as "Commons." "Common Area," "Stormwater Detention & Common Ground" and all other areas including the term "Common Ground" or "Commons" within their designation on the Plat.

16. "Common Ways" shall mean and refer to the public and private streets, alleys, bridges, and rights-of-way for the same within the Community which are intended for automobile traffic.

17. "Community" shall mean and refer to the property legally described on the attached Exhibit B and as shown on the Plat, together with such additional parcels of real estate that may be added to the Community and subjected to this Declaration from time to time by amendment in the manner provided herein.

18. "Community Use Parcel" shall mean and refer to those Parcels or Lots containing Civic Structures or Community Buildings. Community Use Parcels are not subject to General Assessment or Special Assessments (but are subject to individual Parcel Assessments) and are not entitled to any voting rights in the Association.

19. "District" or "Districts" shall mean and refer to the geographic areas in the Community determined by the Founder from time to time as governing areas within the Community. The Founder contemplates that the Community, if fully developed, will contain one or more areas to be set aside with covenants, easements, conditions and restrictions not contained in this declaration. The Founder shall initially establish the boundaries of each District as the Founder plats the Community. Prior to the Turnover Date, the Founder may, at any time, expand, contract or otherwise alter the boundaries of any District or change the name of any District.

19. "Dwelling" or "Dwellings" shall mean and refer to the homes constructed or to be constructed upon the respective Lots. Dwellings shall include Apartments, Condominiums, cottages, Live-Work Units, Lofts, Row Homes, Single-family Homes, and Townhomes, Dwellings shall not include accessory buildings such as garages or storage sheds.

21. "Entire Tract" shall mean and refer to the property set forth on the attached Exhibit A, incorporated herein by reference. The Entire Tract may or may not be added into the Community over time by amendment to the Declaration.

22. "Founder" shall mean and refer to the Founder and/or any Affiliates of the Founder and to its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Founder for the purpose of development and is so designated on the deed to such party.

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23. "Garage" shall mean and refer to any attached or detached Building or portion of a Building whose principal use is designed for the storage of one or more automobiles.
24. "Improvements" shall mean and refer to any and all Buildings, structures, or other devices constructed, erected, placed, or maintained upon any Parcel or any Building situated thereon. Improvements shall include, by way of illustration and not limitation, all Buildings, structures, sheds, foundations, covered patios, weather vanes, clock towers, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, tree houses, playhouses, swing sets, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Parcel and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Buildings situated on any Parcel. The term "Improvements" shall also mean any grading, excavation, or fill work undertaken on any Parcel and shall include the planting or removal of plants, trees or other landscaping material; provided, however, that notwithstanding the foregoing, the removal of dead or discarded tress, shrubbery or other plant life or material, the planting of additional trees, shrubbery, flowers, plant life, or other plant matter on a Parcel following the installation of the initial landscaping for such Parcel (as approved by the *MIDTOWN BRYANT* Council, Inc.) shall not be deemed to be "Improvements" to a Parcel.
25. "Live-Work Units" shall mean and refer to the Buildings that are situated within the Community and used as both Residential and Commercial Structures.
26. "Lot" or "Lots" shall mean and refer to the separately designed and numbered lots shown on each Plat, each of which contain or shall contain a single Dwelling or Garage, or the separately designated and numbered lots indicated on any supplemental plat of property subjected to this Declaration from time to time.
27. "Occupant" includes any family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Residential Structure within the Community. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Residential Structure.
28. "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any Lot, Unit, or Parcel which is a part of the Community, including contract sellers on unrecorded land sale contracts, but excluding sellers in recorded land sale contracts and those having such fee interest merely as security for the performance of an obligation by the purchaser, occupant or otherwise.
29. "Parcel" shall mean and refer to any separately delineated and designed plot of ground or block of airspace within the Community including any plot designed as a Lot, Unit, or Commons.
30. "Parking District Use Committee" shall mean and refer to the committee established by the Association for the allocation of the number and use of parking spaces in *MIDTOWN BRYANT*, the maintenance and repair thereof, and promulgation of restrictions and rules with respect to such parking areas.
31. "Permanent Occupant" shall mean and refer to a person who occupies a Dwelling for more than eight (8) weeks in any calendar year.

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32. "Plat" shall mean and refer to the plat of *MIDTOWN BRYANT* recorded in the Office of Recorder of Deeds for the county of Saline, Arkansas, simultaneously with this Declaration and is incorporated herein by reference and which plat reflects, among other matters the lots, the Commons, and certain utility easements. "Plat" shall also mean and refer to any additional subdivided property made subject to this Declaration from time to time by amendment in the manner provided herein.

33. "Regulating Plan" shall mean and refer to the map showing the various zoning categories as approved by the City, including the form and location of public open spaces, and the type and trajectories of the various thoroughfares and transect zones. The platting of lots within the Regulating Plan is illustrative only. Until the Turnover Date, the Regulating Plan is subject to changes based on market conditions. Governmental Regulations and any other modifications which the Town Architect may, in its sole discretion, elect to make to the Regulating Plan. After the Turnover Date, the Regulating Plan may be changed and modified as approved by the Association.

34. "Residential Structures" shall mean and refer to individual dwelling units, including both detached and attached units, townhouses, row houses, apartments, condominium units, senior housing, or other living spaces used primarily for habitation by one or more individuals as their dwelling place who may or may not be part of a family.

35. "Rules and Regulations" shall mean and refer to rules and regulations for the Community adopted by the Board from time to time, which Rules and Regulations are subject to modifications and amendment from time to time and at any time by the action of the Board. The Rules and Regulations are incorporated by reference into this Declaration.

36. "Senior Housing" shall mean and refer to Residential Structures of which at least eighty percent (80%) of the occupied units shall be occupied by at least one person who is 55 years of age or older, and all permanent Occupants must be at least 18 years of age or older.

37. "*MIDTOWN BRYANT* Guild" shall consist of those persons or entities identified from time to time by the Architectural Review Board who are engaged in the business of :

(i) constructing Buildings for resale and who apply and are admitted to the *MIDTOWN BRYANT* Builder's Guild by the Architectural Review Board, making them eligible to purchase Lots and build Buildings in the Community for resale so long as such persons remain participants in good standing in *MIDTOWN BRYANT* Guild,

(ii) constructing or erecting fences and who apply and are admitted to *MIDTOWN BRYANT* Contractor's Guild by the Architectural Review Board, making them eligible to erect or construct fences in the Community so long as such persons remain participants in good standing in *MIDTOWN BRYANT*, and

(iii) designing, planning, establishing, constructing, planting, or placing landscaping and who apply and are admitted to *MIDTOWN BRYANT* Guild by the Architectural Review Board, making them eligible to design, plan, establish, construct, plant or place landscaping in the Community so long as such persons remain participants in good standing in *MIDTOWN BRYANT* Guild.

38. "Town Architect" shall mean and refer to the individual selected to administer the Design Standards in accordance with the following requirements and who shall have such other responsibilities as are ascribed to the office of the Town Architect for the Community in this Declaration and the Code.

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a. Selection. The Town Architect shall initially be selected by the Founder and shall serve at Founder's pleasure. At any time prior to the occurrence of the Turnover Date, the Town Architect may be changed from time to time at any time, with or without cause, solely by the Founder acting in its sole discretion. After the Turnover Date, the Board shall have the right to select and remove with or without cause, at any time and from time to time the Town Architect.

b. Qualification: The Town Architect shall have a professional degree in architecture or urban design from an accredited university or shall have comparable qualifications. The Town Architect does not, however, need to be licensed to practice in Arkansas.

39. "Turnover Date" shall mean and refer to the earlier of (a) the date on which neither the Founder nor any Affiliate of the Founder no longer owns any parcel within the Community or (b) the date on which Founder elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Association pursuant to this Declaration and the Bylaws and (ii) all voting rights in the Association reserved to the Founder pursuant to this Declaration and the Bylaws.

40. "Unit" shall mean and refer to a part of a Building including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and having lawful access to a Common Way.

ARTICLE II  
PROPERTY SUBJECT TO THIS  
DECLARATION AND ADDITIONS THERETO

"I didn't want to go out and change anything. I just wanted to make the music that was part of my background, which was rock and blues and hip-hop." Kid Rock

1. Existing Property: The real property that is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is the Community as shown on the Plat.

2. Addition to Existing Property: The Founder may cause additional properties to be made subject to this Declaration by executing and recording an amendment to this Declaration, all without the consent of any Owner, mortgagee or holder of a deed of trust encumbering the Community. The properties thus added may include areas and facilities that are to constitute a portion of the Commons. An amendment to this Declaration that adds to the Community may contain special covenants and restrictions as to Dwellings, Buildings and/or Commons so added to the Community.

ARTICLE III  
PROPERTY RIGHTS

Buy land. They're not making enough of it any more. **ATtribution:** Mark Twain (Samuel Clemens).

1. Commons:

a. Right of the Association The Association, subject to the rights reserved to the Founder and the rights and obligations of the Owners set forth in this Declaration as it may be amended and/or supplemented from time to time, shall have the right to and shall be responsible



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for the exclusive management and control of the Commons and improvements thereof, together with the fixtures, equipment and other personal property of the Association related thereto. The Association shall be responsible for the maintenance, upkeep and repair of the Commons and for making any capital improvements and alterations thereto as set forth in Article V, Section II.

b. Sidewalks and Parking Lots Upon or Servicing Commercial Lots. Notwithstanding anything provided in this Declaration to the contrary, the use, maintenance, and repair obligations of various parking areas and sidewalks in the Commercial District shall be regulated in the following manner (i) if accepted by the City, some parking lots and sidewalks (ii) if not dedicated to the City by the Founder or its successors in interest, some parking lots and sidewalks shall be available for public use but maintained by the Association as specified in either the plat containing such lots, a Declaration of covenants, deed or other instrument executed by the Founder and recorded in the Saline County Circuit Clerk's office (iii) if not dedicated to the City or designated for maintenance by the Association, some parking lots and sidewalks shall be available for public use but maintained by a separate association to which ownership or an easement over such lot and/or sidewalks is granted (iv) if not dedicated to the City or designated for maintenance by the Association or any other association, some parking lots and sidewalks shall be available for public use but maintained by the Owner of each Parcel within a Commercial District within or upon such Owner's Parcel and any other areas on or adjacent to such Owner's Parcel up to the curb of the street or roadway abutting such Lot. The delineation between areas to be maintained by the City and those by the Association, and those to be maintained by the City, by the Association, by appurtenant Owners of by a separate association, shall be made as completely as then possible on the recorded Plat or Plats, as may be amended in conformity with law. Notwithstanding the foregoing, any Owner may apply to the Parking District Use Committee to reserve spaces in a particular parking lot for special events, commercial business use or overnight parking in the case of a residential use contained in a Live-Work Unit. The Commercial Districts within the Community may be subject to separate covenants or Declarations whereby the cost of maintaining the sidewalks and parking lots within the Commercial District shall be paid on a prorata basis by and among the Owners of any such Parcels therein and the maintenance of such sidewalks shall be performed by one or more owner's associations which may be established for any of the Commercial Districts.

The foregoing maintenance and repair obligations shall extend to and include the repair and replacement of all sidewalks, the general cleaning and removal of debris, trash rubbish, litter snow, therefrom and, to the extent approved by the Association, any and all landscaping situated on or adjacent to the sidewalks in any of the Commercial Districts. Notwithstanding that parking lots situated within any Commercial Districts may be maintained by the Owners of all Parcels within such Commercial Districts or any owners' association established for such Commercial Districts, on-street parking within any of the Common Ways shall be deemed part of the Commons which will be maintained by the City in case of any dedicated public way and by the Association in the case of any private street.

c. Maintenance Occasioned by Acts or Omissions of Owners: In the event that the Association determines that any maintenance, cleaning, repair or replacement for which the Association is responsible is caused by either the negligent or willful acts or omissions of any Owner or Occupant, then the Board, in addition to the exercise of any other rights and remedies set forth in this Declaration may give such Owner written notice of the Board's intent to provide such necessary maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, which notice shall set forth in reasonable detail what action is deemed necessary to be taken by such Owner. Except in the event of emergency situations, such Owner shall have five (5) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such five-day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner

to promptly comply with the provisions hereof after said notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning repair or replacement at the sole cost and expense of such Owner in which event said costs shall be a personal obligation of such Owner, shall constitute an Individual Parcel Assessment to such Owner, and shall be subject to the lien and foreclosure set forth in Article VIII, Section 1, herein. If, and to the extent that, the Association undertakes any action against an Owner pursuant to this Section, then all costs and expenses incurred by or on behalf of the Association, including without limitation, reasonable Assessments payable by such Owner and shall be recoverable by the Association in accordance with the terms and provisions of the Declaration.

d. Owners' Easements and Rights of Enjoyment in the Commons: Subject to the terms and provisions of this Declaration, each Owner and Occupant shall have a nonexclusive, perpetual right and easement of ingress, use, and enjoyment over, across, upon, in and to the Commons, which easement shall include, without limitation, the right of access to and from, and use of the Commons and the right to use access, utility, water, sewer, drainage and ponding easements therein. Such right and easement shall be appurtenant to and shall pass with the title to each Parcel that is part of the Community, shall not be severable therefrom, and shall be subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Commons;

(ii) the right of the Association to suspend any Owner's voting rights and right of such Owner, his family, guests, and invitees to use the recreational facilities for any period during which any Assessment against such Owner's Lot remains unpaid; and the right to suspend the same for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

(iii) the right of the Association or the Founder to dedicate all or any part of the Commons to any public agency, authority, or utility for such purposes and subject to such conditions of the Association's rules and regulations;

(iv) the right of each other Owner and Occupant to the use of the Commons, as provided and limited in this Article;

(v) the restriction that no Owner or Occupant shall operate, drive, ride, store or otherwise place any motorized vehicles on, in or about any part of the Commons other than the Commons Ways, including but not limited to cars, go-cars, trailers, recreational vehicles, recreational motor vehicles, trucks, vans, all-terrain vehicles, motorcycles, motorized bicycles, motortricycles, dirt bikes, minibikes, tractors, campers and house trailers.

(vi) the restriction that no Owner or Occupant shall operate, drive, ride, store or otherwise place any motorized watercraft, including, without limitation, boats, vessels, motorboats, and jetskis on, in or about any part of the Commons and that any swimming or other water activity shall be strictly at the risk of such Owner, member, guest or invitee as no such activity shall be supervised by any lifeguard or other safety personnel;

(vii) the easements, uses, limitations, conditions, reservations, and restrictions hereinafter provided in this Declaration;

(viii) the Rules and Regulations as established from time to time by the Association;

(ix) the right of the founder and any Builder to use the Commons for sign placement purposes during periods of construction and development;

(x) the right of the Founder and the Directors, on behalf of the Association, to negotiate with any public agency for the conveyance of all or any part of the Commons, for any public purposes, and to execute such instruments as may be necessary for such purpose, subject to the proceeds of any such conveyance being held by the Association in trust for the Owners; and

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(xi) the Founder's and any affiliate of the Founder's right to use the Commons as set in this Declaration and the rights reserved to the Founder as provided elsewhere in this Declaration.

Each Owner and Occupant shall use and exercise their easement rights over the Commons in a reasonable manner so as not to endanger or harm others, create a nuisance for others, or cause any obstruction or impediment to the use of the easements created by this Declaration by others authorized to use them. Any Owner may delegate, subject to the provisions of this Declaration and the Rules and Regulations, such Owner's right to enjoyment of the Commons to any Occupant who either resides on the Parcel or are accompanied by such Owner while using any of the Commons. Subject to the rights granted by the Founder to third parties to use the Commons as allowed under this Declaration, the Board may adopt additional rules and regulations from time to time which limit, restrict, or prohibit the use of any recreational facilities constituting part of the Commons by any person who is not an Owner or which impose fees or charges on the use of any of the Commons by any persons who are not owners.

e. Conveyance of Title. Subject to the right of the Founder to dedicate or convey all or portions of the Commons to a governmental entity, for-profit entity, title to the Commons shall be conveyed to the Association no later than the Turnover Date. For those Commons that are easements or other rights, the Association shall be the holder of those rights. Upon termination of the Declaration, title to the Commons shall vest in the then Owners as tenants in common. The rights or such tenants shall only be exercisable appurtenant to and in conjunction with their Lot ownership and any conveyance or change of lot ownership shall convey ownership in the Commons, as no interest in the Commons shall be conveyed by any tenant except in conjunction with the sale of such tenant's Lot.

f. Limitation of Liability. The Association shall endeavor to use reasonable judgment in maintaining the Commons and enforcing traffic control measures, but neither the Association nor the Founder makes any representation or assumes any liability for any loss or injury. Neither the Association nor the Founder shall be liable for any injuries or damage to person or property (a) caused by the elements, acts of God, or any Owner or other person (b) resulting from any surface or subsurface conditions or which may be caused by rain or any other surface water which may leak or flow from any portion of the Commons or another Lot or Parcel onto a Lot or any Improvements thereon (c) resulting from theft, burglary, or other illegal entry onto any Lot or any Improvements thereof (c) resulting from theft, burglary, or other illegal entry onto any Lot or any Improvements thereon or any of the Commons, (d) resulting from improper design of the Commons or improvements therein, or (e) resulting from swimming, fishing, or any other water activities in any body of water in the Commons.

No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or the Founder to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any applicable governmental regulations of any applicable governmental authority.

2. Surface Water or Storm Water Management System: The City and the Association shall each have the right, but not the obligation, to maintain and cause all Owners to maintain proper drainage within the Community in accordance with the grading plan approved by the City as the same may be amended from time to time. In the exercise of this right, the Association shall have a blanket easement and right on, over, across, under and through all portions of the

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Community not owned by the Founder or any Affiliate of the Founder to maintain and to correct drainage of surface water provided, however, that as provided below, each Owner shall be solely responsible for providing and maintaining adequate soil erosion measurers and drainage facilities on such Owner's Parcel. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with applicable governmental regulations; provided, however, that the Association shall not be obligated to undertake any of the foregoing actions. In the event the Association does undertake any of the foregoing, no permanent dwelling or storage structures shall be removed, and all lands affected will be restored as nearly as possible to the state existing prior to taking such actions as set out herein. Notwithstanding the foregoing following conveyance by the Founder, each Owner shall provide and maintain on his or her Parcel adequate soil erosion measurers and drainage facilities to accommodate any storm water runoff from and coming into such Owner's Parcel or resulting from any Improvements being or having been constructed on such Owner's Parcel. Each Owner shall also insure that his or her Parcel and any Improvements thereto area at all times in strict compliance with (a) all soil erosion protection requirements of the City (b) all storm water drainage and runoff requirements and regulations of the City and (c) all their applicable governmental regulations. **Each Owner, by acceptance of a deed to his or her Parcel, shall and does hereby indemnify, defend and agree to hold the Founder, the Architectural Review Board, and the Association and their respective agents, employees, officers, directors, shareholders, members, managers, and representatives harmless from and against any and all other amounts suffered, paid, or incurred by any of them in connection with any action, suit, or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a part by reason of the breach by such Owner (or, any breach by such Owner's Occupants, contractors, subcontractors, guest, agents, employees, or invitees) of any of the terms and provisions of this Section 2.**

3. Utilities:

(a) Water Lines: It is intended that all water supply lines (other than those service lines that may be located within the boundaries of a Lot) shall be owned and maintained by the City of Bryant, Arkansas, and such water supply infrastructure installed, and to be installed by Founder and its contractors and affiliates, is hereby dedicated for such maintenance. Most water supply lines will be placed adjacent to Common Ways and shall be within those specific easements located on the Plat.

(b) Waste Treatment. Waste water (sanitary sewer) treatment services for the Community will be provided by the City of Bryant, Arkansas who shall assess and collect from each Owner a fee for such services, and the sanitary sewer treatment infrastructure installed, and to be installed by Founder and its contractors and affiliates, is hereby dedicated for such maintenance. This Declaration establishes easements in favor of the City for right of access over any Parcel for the purpose of installing, repairing and replacing sanitary sewer lines, pipes, conduit and other apparatus in connection with providing such services to the Community. Further, each Parcel and Unit is burdened with an easement to allow any other Lot Owner to place a lateral line underground and across such Parcel for the purpose of connecting to the main line of any sanitary system or any equipment that is part of such system and transmitting sanitary sewage through such line. Such easements are included with the utility easements reserved by the Founder pursuant to Article IX, Section 6.(b) herein

(c) Cable Television and Internet Service: The Founder, for itself and its successors and assigns, reserves the right to install, maintain and repair within any portion of the Community's lines, pipes wiring, conduit, and other apparatus and equipment for cable television and internet service (including fiber optic service or such

other technologies which may become available in the future) and other communication purposes. The Founder or its assigns may collect a fee for such service.

(d) Owner Responsibility for Utility Services: Each Owner shall, at such Owner's sole cost and expense, be responsible for (i) constructing, installing, maintaining, repairing and replacing all necessary lines, pipes, wiring, conduit and equipment necessary to connect any improvements located on such Owner's Parcel to all utility lines, pipes, wiring, conduit, or other apparatus situated adjacent to or within the boundaries of such Owner's Parcel or which may be situated within the right of way of any Common Ways situated adjacent to such Owner's Parcel which obligation shall include the installation, maintenance, repair and replacement of any grinder pumps, vacuum systems, and/or related equipment to the extent the same are necessary in order to provide or obtain sanitary sewer service and (iii) paying all reservation, tap, impact, service, demand, use, license permit and other fees, charges, costs and expenses charged by the applicable utility companies or utility providers to provide any such services to such Owner's Parcel.

(e) Trash and Garbage Service: Each Owner shall be solely responsible for arranging for the provision for the removal of all trash, garbage, rubbish, refuse, waste, and debris (including without limitation, tree and shrubbery clippings, grass clippings, and the removal of any dead or diseased tress and flora) from such Owner's Parcel, and any payment for such service shall be the responsibility of the Owner. and, provided, further, the continuance of only such service is within the discretion of the City.

4. Association Rights to Grant Easements and Certain Easements Over Lots and Commons: The Association shall have the right to grant permits, licenses, and easements over the Commons for utilities, access, and other purposes necessary or desirable for the operation of the Community.

A Perpetual, nonexclusive easement is hereby established in favor of the Association, its employees, agents, contractors, successors, and assigns for a reasonable right of entry on any Lot to perform repairs or to do work reasonably necessary for the proper maintenance of the Commons and/or to perform any of the powers, rights and duties available to or imposed under the Association by this Declaration and/or the Bylaws of the Association, including without limitation, enforcing the covenants and restrictions imposed by this Declaration.

In addition to the foregoing easement, the Association may, in its sole discretion, elect to maintain, repair or replace, at the expense of the Association as a Common Expense, certain fences or walls located on Lots that abut the Commons or any Common Ways as may from time tot time be designated by the Association or Founder and a perpetual, nonexclusive easement is reserved over the Lots for such purposes.

5. Founder's Rights: Prior to Turnover Date, the Founder may, in its sole discretion, at any time and from time to time, make changes that the Founder believes will better accomplish the objective of the Community, adjust to market conditions, or respond to changing land use conditions both within and without the Community, including, any of the following:

a. Development: The Founder may, in its sole discretion, at any time and from time to time: (i) amend and modify any portion of the Code, including, without limitation, the Regulating Plan or this Declaration; (ii) change District boundaries at any time by expanding, altering or contracting any of the same or change the name of any District; (iii) add property from the Entire Tract to the Community; (iv) release all or any portion of the Community from the provision of this Declaration, including without limitation, any Lot, Parcel or Commons; (v) change the use of any Parcel or classification of any transect zone or uses permitted within a transect zone; and (vi) erect windmills,

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ground source heat pipes, sinks or pumps, or other technology devices or equipment as alternative sources of energy production within any part of the Commons.

The Founder may exercise any of the foregoing development rights by executing and recording an amendment to this Declaration or, in the case of a change of use of a transect zone, by filing an amendment to the Code of Midtown, all without consent of any Owner, mortgagee or holder of any deed of trust encumbering the Community. In addition, the Founder may record one or more revised or amended plats if the Founder deems it necessary in connection with the same.

b. Reservation of Right to Receive Certain Funds. The Founder further reserves the right to receive any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by it for joint main sewers, sanitary sewers, storm sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, traffic signals recording fees, Community fees, consultation fees or any fees charges, and expenses incurred with respect to the development and creation of the Community.

c. Consent of Founder Required for Changes. Prior to the Turnover Date, no modification of the Code or this Declaration may be made without the prior written consent of Founder. From and after the occurrence of the Turnover Date, the Town Architect may make any of the modifications to the Design Standards subject to the prior written consent of same by the Association.

d. Signage Easement: Until the Turnover Date, there is reserved to the Founder and each Builder a nonexclusive easement over all Lots and Commons, for a distance of ten (10) feet behind any Lot line or Commons boundary line that parallels a street, for the purpose of erecting and maintaining street intersection signs, directional signs, promotional or sales signs, entrance features, lights, stone, wood or masonry wall features and/or related landscaping.

e. Commercial Areas The Founder intends to develop commercial areas within the Community as the same may be modified from time to time, that are intended to be an integral part of the community. These commercial areas may be subject to special conditions and assessments. Alternatively any of the commercial areas within the Community may be subject to additional or supplemental restrictive covenants.

f. Interconnectivity: The Community is intended to follow traditional neighborhood design principles that allow interconnectivity of streets with neighboring communities. Certain streets on the Regulating Plan end at the boundary of the Entire Parcel so that areas that are developed later may connect with the streets. If the neighboring property is developed in a way that interconnectivity is not possible or not permitted by the applicable governmental authority, then the Founder reserved the right to convert the streets ends to additional Lots or other uses.

g. Display Homes, Sales and Management Offices. The Founder reserves for itself, its successors and assigns and such third parties or entities as the Founder may designate, including other Builders, the right to build, maintain, operate and relocate from time to time one or more sales offices, management offices, and unlimited number of display homes within the Community and/or to use buildings that maybe designated for Civic Use for purposes of selling Parcels and otherwise promoting and managing the Community.

h. Dedication and Conveyance of Commons. As provided elsewhere in this Declaration, the Founder has reserved the right to dedicate any of the Common Ways as public roadways to the City of Bryant, Arkansas and the Founder is authorized, without obtaining the consent or the approval of any Owners or Mortgagees, to grant easements or otherwise covey by deed any other portion of the Commons to any third parties. While the Founder intends that all or part of the Commons will be conveyed to the

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Association, the Founder expressly reserves the right not to convey all or any part of the Commons or to convey the same subject to the Founder's right to (i) dedicate all or part of the Commons to the City for public use (ii) convey parts of the Commons to a separate, independent operating entity (which may be a for-profit or non-profit entity) which may require the payment of a membership fee in order to use the improvements contained therein (iii) retain or reacquire for no consideration fee title to such lands for the purpose of building structured parking or other improvements, including those that are occupied by persons for residential commercial or civic use therein, all without compensation or reimbursement to the Association. If the Founder desires to retain or reacquire any part of the Commons as aforesaid, it may do so by giving notice to the Association at any time, and upon the giving of such notice, the Association shall immediately convey such designated land to the Founder by special warranty deed.

i. Reservation of Easement by Founder. As more specifically detailed in Article IX, section 6 hereof, The Founder does hereby establish and reserve for itself and the Association and its respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under through and upon all of the Commons for the purpose of

- (i) providing access to and from any Parcels or any other real property (whether situated within or outside of the Community, owned by the Founder or any Affiliate of the Founder,
- (ii) installing, maintaining, repairing, and replacing any Improvements to any portion of the Community or in any of the commons, including, without limitation, sidewalks, walkways, traffic, informational and directional signs
- (iii) using and enjoying any and all of the Commons for such purposes as the Founder may deem appropriate, and (iv) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall the Founder have any obligation to undertake the foregoing.

The Founder further reserves the right, but shall not have any obligation, to

- (i) grant or assign such easement to other third parties, including without limitation, school boards, school districts and any students and teachers thereof. This non-exclusive right and easement, in common with the Founder, the Association and all Owners to use any of the Commons; and
- (ii) convey by Quitclaim Deed to the Association at any time and from time to time any real property and any improvements thereto to be utilized as part of the Commons, as the Founder, in its sole and absolute discretion, may determine.

j. Open-Air Market and Festivals. The Founder reserves for itself, its agents, employees, representatives, designees, invitees, successors, and assigns the permanent and perpetual right to use any portions of the Commons as an open-air market for the rental of space for pushcarts, kiosks, stands, or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. Founder also reserves for itself, its agents, designees, employees, representatives, invitees, successors and assigns the right to use portions of the Commons for festival or other events intended to enrich and enliven the Community. Founder further reserves a right of access, through the Commons for all such purposes. Founder may, but is not obligated to assign such rights to the Association or to any other third party at any time.

k. Conservation Areas. The Founder reserves the right in its sole and absolute discretion, at any time and from time to time to grant conservation easements or otherwise convey by deed to any third party, including, without limitation, tax-exempt entity qualified under Section 5.01 c(3) of the Internal Revenue Code of 1954, as revised, any portion of or rights in any of the Commons, without any requirement that the consent or approval of any Owner, Mortgagee, or the Association be obtained.

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1. Exemptions from Design Standards. Notwithstanding anything provided in this Declaration to the contrary, the Founder may, in its sole and absolute discretion, grant exceptions or exemptions from any of the terms and provisions of relating to the Design Standards or otherwise modify, extend, release, or waive any of the terms and provisions of the Design Standards pursuant to a written instrument executed by the Founder. The issuance or granting of any exemption or exception by the Founder to any one Parcel shall not obligate the Founder to grant any such similar exemption or exception to any other Parcel.

**Each Owner, by acceptance of a deed to any Parcel, does hereby acknowledge and agree that the Founder and, where specified, the Association, shall have the right to take any and all of the foregoing actions specified in this Article III without any obligation or requirement that the consent or approval of any Owner or Mortgagee be obtained.** To the extent any new or additional District classifications are made pursuant to this Section 3, then the allocation of values and voting rights set forth in the Bylaws and Declaration shall be subject to amendment as provided therein.

ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS IN THE  
ASSOCIATION

No man is an island entire of itself; every man is a piece of the Continent, a part of the main....Any man's death diminishes me because I am involved in Mankind; and therefore never send to know for whom the bell tolls; it tolls for thee. Attribution: John Donne "Devotions Upon Emergent Occasions." Part XVII, Meditation

1. Membership. Every Owner of a Parcel within the platted area shall be a member of the *MIDTOWN BRYANT* Council, Inc. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Parcel.

2. Votes. Adjusted by the provisions of Article VI, Section 2, hereof, all Owners, including the Founder with respect to unsold Parcels, shall be entitled to one vote in the Association for each Parcel owned by such Owner and in no event shall more than one vote be cast with respect to any Parcel. If any Owner consists of more than one person, the voting rights of each such Owner shall be exercised as if the Owner consisted of only one person. For purposes of determining votes, Parcels that contain only a Garage and no other Residential or Commercial Structure shall not be included.

3. Proxies. At all meetings of each Association, any Owner, as the case may be, may vote in person or by proxy. All proxies shall be in writing, signed by the giver of the proxy, state that the giver of the proxy is appointing the proxy holder to vote for the proxy giver at a designated meeting or meetings, and be filed with Association, as applicable. Every proxy shall be revocable and shall automatically cease upon the conveyance by the giver of the proxy of such proxy giver's Lot.

4. Association Meetings. Meetings of the Association shall be held at a location within the Community or at such other place in Saline County, Arkansas as may be specified in the written notice of the meeting. The first annual meeting of the Association shall be called by the Founder at such time as the Founder deems appropriate, but in no event no later than sixty (60) days after Founder sells the last Parcel owned by the Founder to a third party Owner, and thereafter the



annual meeting of the Association shall be held on the same day each year on the anniversary date of the first annual meeting called by the Founder at the same hour or at such other date or hour specified in the written notice of such meeting. Annual meetings are to occur within the first 60 days of each fiscal year of the Association. Special meetings of the Association may be called by the President of the Association, a majority of the Board of the Association, or by Owners having at least one-third (1/3) of the votes in the Association. Written notice of the place, day and time of the annual meeting and all special meetings shall be delivered not less than five (5) days before such meetings to all Owners and to those institutional holders of a first mortgage first deed of trust on any Lot that have requested such written notification to the Association no fewer than ten (10) days prior to any such meeting. Any Owner or holder of a first mortgage or first deed of trust shall have the right to designate a representative to attend all annual and special meetings. If sent by mail, notice shall be deemed delivered when deposited in the United States mail, with postage therein prepaid, addressed to the person or entity entitled to notice at his, her or its last known address.

5. Quorum. A quorum of Owners for any meeting shall consist of Owners having one-tenth (1/10) of the votes in the Association, whether present in person or by written proxy submitted to the Association at or before the meeting. Unless otherwise provided herein, the decision of a majority of a quorum shall be valid as the act of the Association. If a quorum is not present at any meeting, another meeting shall be called as provided above, and business may be conducted at said second meeting if at least one-tenth (10<sup>th</sup>) of the Owners attend in person or by proxy.

ARTICLE V  
BOARD OF DIRECTORS OF THE ASSOCIATION

<p>The best argument against democracy is a five-minute conversation with the average voter. Attribution: Winston Churchill</p>
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1. Number and terms of Association Directors. The Board of Directors of the Association shall, except as otherwise provided herein, consist of five (5) persons, with each person elected by a majority vote of a quorum of Owners that owns Parcels within *BRYANT MIDTOWN*. Except as otherwise provided herein, each such Director shall hold office for the term of one year and until his successor shall be elected and qualified. Except for the special elections of Directors who replace Directors appointed by the Founder to the Association Board, elections for Directors that are not appointed by the Founder shall be held in the month of November or December of each year for the next succeeding calendar year.

The Founder shall initially appoint all five (5) Directors to the Association Board, who shall serve until they are replaced by the Founder or in an election as set out herein. Within four months after the closing of the sale by the Founder to a non-affiliated third party of fifty percent (50%) of the Parcels (or at such earlier time as the Founder may elect), two Directors appointed by the Founder shall resign and the Association Board shall conduct a special election by mail or thorough a called meeting through which two Directors shall be elected by a majority vote of a quorum of Owners. The Directors so elected shall serve until the end of the calendar year following their election or until their successor is elected and qualified.

Within four months after the closing of the sale by the Founder to a non-affiliated third party of ninety percent (90%) of the Parcels (or at such earlier time as the Founder may elect), two more Directors appointed by the Founder shall resign and the Board shall conduct a special election by mail or through a called meeting through which two additional Directors shall be elected by a majority vote of a quorum of Owners. The Directors so elected shall serve until the end of the calendar year following their election or until their successor is elected and qualified.

Within four months after the closing of the sale by the Founder to a non-affiliated third party of all of the Parcels (or at such earlier time as the Founder may elect), the remaining Director appointed by the Founder shall resign and Board shall call a special election through which this last Director shall be elected by a majority vote of a quorum of Owners. The Director so elected shall serve until the end of the calendar year following such Director's election or until such Director's successor is elected and qualified.

Notwithstanding any provisions contained herein to the contrary, Founder shall have the sole right and authority to remove, replace and/or fill the vacancy of any Director appointed by the Founder.

2. Qualifications. Directors must own at least one Parcel in the Community but do not need to reside in the Community. Members who are appointed by the Founder shall not be required to own any Parcel in the Community or reside within the Community. Except as otherwise provided herein, if a Director shall cease to meet the qualification during his or her term, such Director shall immediately cease to be a Director and such Director's place on the Board shall be deemed vacant.

3. Vacancies. Any vacancy occurring on the Board of Directors of the Board shall be filled by the remaining Directors, with the successor elected by the Owners at the next election set out in Section 1 above.

4. Actions without Meetings. Any action that is required to or may be taken at a meeting of the *MIDTOWN BRYANT* Council, Inc. may be taken without a meeting if consents in writing setting forth the actions so taken are signed by all of the Directors. The consents shall have the same force and effect as the unanimous vote at a meeting duly held.

5. Compensation. Directors shall receive no compensation for their services.

6. Powers and Duties. The Association, by its Board of Directors, shall manage the Commons and the affairs of the Board with respect thereto. The Board shall have and is vested with all powers and authorities, except as may be expressly limited by law or this Declaration, to supervise, control, direct and manage the Commons, affairs and activities of the Board to determine the policies of the Board, to do or cause to be done any and all lawful things for and on behalf of the Declaration, to levy Assessments, to exercise or cause to be exercised any and all of its powers, privileges or franchises and to seek the effectuation of its objects and purposes. Without limiting the generality of the foregoing, the Board of Directors may:

- a. administer the affairs of the Board and of the Commons;
- b. engage, if deemed necessary or appropriate, the services of a professional managing agent who shall manage and operate the Commons for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- c. formulate policies for the maintenance, management, operation, repair and replacement of the Commons and improvements and obtain such services that provide for the public health, safety and welfare of the Commons as the Directors may consider advisable;
- d. adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair and replacement of the Commons and improvements and to amend such rules and regulations from time to time;
- e. provide for the maintenance, management, operation, repair and replacement of the Commons and improvements including, without limitation, mowing, landscaping, planting, seeding, pruning and care of shrubbery, removal of plants, and maintenance, repair and replacement of improvements located within the Commons.

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f. provide for payments for (i) any and all maintenance, management, operation, repair and replacement of the Commons and improvements therein and (ii) any and all professional services rendered by the Town Architect and other professionals retained by the Board of Directors in accordance with such rates and agreements as the Board shall determine;

g. provide for the levying and collection of Assessments pursuant to this Declaration, including but without limitation, General, Special and Individual Parcel Assessments and to approve payment vouchers or to delegate such approval to the officers or the managing agent.

h. provide for the designation, hiring and removal of employees and other personnel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair and replacement, administration, management and operation of the Community and improvements and to delegate any such powers to a managing agent and any such employees or other personnel that may be the employees of said managing agents.

i. estimate the amount of the annual budget and provide the manner of assessing and collecting from the Owners their respective shares of such common expenses, as hereinafter provided

j. collect funds owing to the Board from persons or entities other than Owners who, by provision of this Declaration, are entitled to use the Commons and who are obligated to share in expenses for the improvements and maintenance of the Commons

k. grant easements and rights-of-way over the Commons to such utility companies or public agencies or others as the Directors shall deem necessary or appropriate and to make rules and regulations not inconsistent with the law and this Declaration for the use and operation of the Commons and in every and all respects governing the operation, funding and usage thereof;

l. receive, hold, convey, dispose and administer, in trust, for any purpose mentioned in the Declaration, any gift, grant, conveyance or donation of money or real or personal property.

m. make all contracts and incur all liabilities necessary related or incidental to exercise the Council's power and duties hereunder

n. dedicate any Common Ways or portions thereof to appropriate agencies and to vacate or abandon easements in accordance with applicable legal procedures;

o. obtain in the Council's discretion, liability and hazard insurance on the Commons, as well as insurance protecting the Directors from any and all claims for damages arising out of any decision, set or failure to act of the Directors acting in their capacity as Directors;

p. coordinate policies with and, as the Council deems appropriate, contract with non-profit entities as may be managing or operating the entertainment venues in the Community;

q. provide for the establishment, levying and collection of Assessments for the establishment and promotion of various funds for the promotion of the Community pursuant to this Declaration and to approve payment vouchers or to delegate such approval to the officers or the manager;

r. exercise all other necessary or appropriate powers and duties commonly exercised by a Board of Directors and all powers and duties of the Directors as stated in the Declarations;

s. purchase a fidelity bond for any person or persons handling funds belonging to the Board or Owners;

- t. enforce the Declaration with respect to the Commons and activities herein an any and all restrictions governing the Commons and to take any and all necessary steps to secure the enforcement and compliance of the same; and
- u. exercise any and all other powers or acts as are authorized by the Declaration.

7. Records. The Board of Directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Community specifying and itemizing the common expenses incurred. Such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Owners, and the holders of a first mortgage or first deed of trust on any Parcel, at convenient hours on week-days. Payment vouchers may be approved in such manner as the Directors may determine.

8. Indemnification. Each Director on the Board of Directors or former Director or other officer's heirs, personal representatives and assigns may be indemnified by the Board from and against any and all claims, demands, losses, damages, liabilities, expenses counsel fees and costs incurred by him/her or his/her estate in connection with or arising out of any actions, suit, proceeding or claim in which he/she is made a party by reason his his/her being or having been such Director or other officer, and any person who, at the request of the Board of Directors, served as Director or officer of another corporation in which the Board owned corporate stock and his/her legal representatives shall in like manner be indemnified by the Board; provided that in neither case shall the Board indemnify such Director or officer with respect to any matters as to which such Director or officer shall be finally adjudged in any such action, suit or proceeding to have been liable for gross negligence or willful misconduct in the performance of his duties as such Director of officer. The indemnification herein provided for, however, shall also in respect of any amount pain in compromise of any which actions, suit, proceeding or claim asserted against such Director or officer (including expenses, counsel fees, and costs reasonably incurred in connection therewith, provided the Board of Directors shall have first approved such proposed compromise settlement and determined that the Director or officer involved was not guilty of gross negligence or willful misconduct but in taking such action, any Director involved shall not be qualified to vote thereon.

In determining whether or not a Director of officer was guilty of gross negligence or willful misconduct in relation to any such matters, the Board of Directors may rely conclusively upon an opinion of independent legal counsel selected by the Board of Directors. Unless otherwise provided by law, any compromise settlement authorized herein shall be effective without the approval of any court. The right to indemnification herein provided shall not be exclusive of any other rights to which such Director or officer may be lawfully entitled.

No Director of officer of the Board of Directors shall be liable to any other Director of officer or other person for any action taken or refused to be taken by him as Director or officer with respect to any matter within the scope of his official duties, except such action or neglect or failure to act shall constitute gross negligence or willful misconduct in the performance of his/her duties as Director or officer.

ARTICLE VI  
BUDGET

We might come closer to balancing the Budget if all of us lived closer to the Commandments and the Golden Rule. **ATtribution:** Ronald Reagan (b. 1911), U.S. Republican politician, president. Quoted in Observer (London, February 5, 1983)

1. Fiscal Year. The fiscal year of the General Board shall begin January 1 of each year and end on December 31 of that year, unless the applicable Board selects a different fiscal year.
2. Common Expenses. Each annual budget of the Board shall estimate total expenses to be incurred by the Board in carrying out its responsibilities. These expenses shall include, without limitation, the following (collectively, the "Common Expenses");
  - a. Salaries, fringe benefits and other compensation paid out-of-pocket expenses reimbursed by the Board for its employees, agents, officers, members of the Board and any third-party contractors;
  - b. Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Board;
  - c. Utility charges for any utilities serving any of the Commons and charges for other common services for the Community, including, without limitation, trash collection and security services, if applicable;
  - d. The costs of any insurance policies purchased for the benefit of the Board as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, commercial general liability coverage, and such other insurance coverage as the Board determines to be in the best interest of the Board, including errors and omissions insurance, fidelity bonds, Directors' and officers' liability insurance, and any other liability insurance coverage for the benefit of the Board, the members of the Board, any officers, employees, agents, or representatives of the Board (including members of the Architectural Review Board);
  - e. The expenses of maintaining, operating, repairing, and replacing all portions of the Commons and any other amenities and facilities serving the Community (whether located within or outside of the Community) which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair, or replace;
  - f. Ad valorem real and personal property taxes assessed and levied upon any of the Commons;
  - g. The expenses of the Architectural Review Board that are not paid in full by plan review charges;
  - h. The costs and expenses for conducting recreational, culture, or other related programs for the benefit of the Owners and Occupants;
  - i. all other fees, costs, and expenses incurred by the Board in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Board, including, without limitations, taxes and governmental charges not separately assessed against Parcels; and
  - j. The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair, and replacement of any portions of the Commons for which the Board is responsible to inspect, maintain, repair, or replace on a periodic basis; (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds; and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matter, all as may be authorized from time to time by the Board.
  - k. The establishment and maintenance of a fund or funds (1) for the promotion of the Community and the commercial businesses therein, including, without limitation,

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providing print, electronic, television, radio and other advertising, billboards, and postage for mailings, and/or (2) for the promotion and support of the New Town Trust, including, without limitation, paying for advertising, festivals, promotional events, entertainment and transportation, all as may be authorized from time to time by the Board.

3. Reserves. If any budget or the amount of General Assessments collected by the Board at any time proves to be inadequate or insufficient for any reason to fully pay all Common Expenses of the Board, then the Board may call a meeting of the members of the Board for the purpose of approving Special Assessments. If the actual amount of General Assessments collected in any one year exceeds the actual costs incurred for the Common Expenses for such year, the excess shall be retained by the Board as a reserve for subsequent years' Common Expenses or for any other purposes as may be determined by the Board, including, without limitation, the making of any capital improvements to the Commons.

## ARTICLE VII COVENANTS FOR ASSESSMENTS

"We make a living by what we get, we make a life by what we give." Winston Churchill.

1. Creation of the Community Lien. Except as otherwise provided herein, each Owner of a Parcel (other than the Founder or any Affiliate of the Founder) by acceptance of a deed thereof, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Board: (1) regular assessments and charges ("General Assessments"); (2) special assessments ("Special Assessments") for capital improvements or for emergencies such as a budget shortfall, such assessments to be established and collected as hereinafter provided; and (3) individual parcel assessments ("Individual Parcel Assessments") which are established or assessed pursuant to Article VII, Section 5; provided, however, no portion of the Commons are subject to any Assessments.

The Assessments and Fees, together with interest, costs and attorney's fees, shall be a charge on each Parcel and improvements thereon and shall be, upon levying of the same, a continuing lien upon the Parcel against which the Assessment or Fee is charged. Each such Assessment or Fee, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Parcel at the time the Assessment or Fee became due. Notwithstanding, the foregoing, no Assessments or Fees of any kind shall be charged against Parcels owned by the Founder, any Affiliate of the Founder, or any Builder during their period of ownership; and neither the Founder, any Affiliate of the Founder, nor any Builder shall have any obligation to pay Assessments or Fees relating to Parcels owned by the Founder, any Affiliate of the Founder, or any such Builder at any time. In the event of co-ownership of any Parcel, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments and Fees.

All Assessments shall commence as to each Parcel as provided herein below and be paid in such a manner and on such dates as may be fixed by the Board, in no case less than thirty days following the determination and the giving notice of same via regular United States Mail to the Owner's address then on file. All Assessments and Fees shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu, of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu, thereof with respect to any Parcel or any improvements thereto, Commons or any other portion of the Community or any other cause or reason of any nature.

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2. Purpose of Assessment. The Assessment levied by the Board shall be used exclusively to promote the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Community, for the improvements and maintenance of the Community and Commons, any recreational facilities constructed by Founder or others for use by the Owners and otherwise to fulfill and perform the Board's rights, duties, obligations, and functions pursuant to this Declaration. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the General Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all the Community. The Board may, in its discretion, pay some part of the Assessments to one or more for-profit or non-profit entities that own, lease, or operate improvements within or about the Community that may benefit the Owners.

3. General Assessments. Pursuant to the provisions of Article VI, the Board of Directors shall determine and approve annually an annual budget covering the estimated Common Expenses for the upcoming year, which budget shall include the amount payable by each Parcel as calculated in Article VI, Section 2, and provided in Article VII, Section 1, plus up to ten percent (10%) in addition to cover cost overruns and unexpected expenses. The amount set forth in such budget shall constitute the aggregate amount of monies remaining on-hand following the end of the preceding fiscal year, plus the General Assessments for all the Community for the then applicable year. Each Owner shall pay his or her proportionate share of the same as provided in Article VI Section 2, less such excess amount collected for unexpected expenses pursuant to the foregoing sentence following the establishment of a reasonable reserve. As used in this Declaration, the term "General Assessments" with respect to each Parcel shall mean the proportionate amount of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of Article VI, Section 2.

4. Special Assessments. In addition to the General Assessments authorized in Article VII, Section 3, the Board of Directors may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred or to be incurred by the Board, including, without limitation, costs which have been, are, or will be incurred for capital improvements which are not paid for from General Assessments or to cover any unexpected budget shortfall; provided, however, that any such Special Assessments must be approved by a two-thirds vote of the Board of Directors cast at a duly conveyed meeting of the Board. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Article VI, Section 2.

5. Individual Parcel Assessments. The Board of Directors may, in its sole discretion, at any time and from time to time, levy and assess as individual assessments (collectively "Individual Parcel Assessments") against any Parcel:

- a. Fines against an Owner and such Owner's Parcel in accordance with the terms and provisions of Article VII hereof or adopted by the Architectural Review Board or the General Board pursuant to any of the terms and provisions of this Declaration.
- b. Any costs or expenses, including, without limitation, collection costs, attorneys' fees, court costs, and any administrative costs and expenses incurred by or on behalf of the Architectural Review Board or Board of Directors as a result of the failure of any Owner or any Occupant to observe and perform their respective

duties and obligations under this Declaration, the Design Code or the Rules and Regulations;

- c. Any special services provided by the Board of Directors to a Parcel at the request of the Owner thereof; and
- d. Fees, charges, and other costs incidental to the use of any of the Commons for which a charge for the use thereof has been established by the Board. The Individual Parcel Assessments provided for in this Section 5 shall be levied by the Board of Directors and the amount and due date of such Individual Parcel Assessment shall be specified in a note to such Owner.
- e. Beginning January 1, 2009, all residential lots shall be subject to an easement of \$800.00 per year. Each commercial lot shall be subject to an assessment of \$1.00 per square foot of ground floor building. The Founder, Affiliates or Assigns shall not be required to pay any assessment provided for in this section.

6. Limits on Increases and Timing of Issuance of Budget. The General Assessments may be increased by more than ten percent (10%) in any given Assessment Year only by approval by Owners having at least two-thirds (2/3) of a quorum of the votes in the General Board at an Board meeting or by a vote in accordance with the voting procedures set forth herein. Copies of the estimated annual budget shall be furnished by the Directors to the Owners not later than thirty (30) days prior to the beginning of such Assessment Year. Any institutional holder of a first mortgage or first deed of trust on any Parcel shall receive at no cost, if it so requests in writing, said statement from the Directors. On or before the first day of each succeeding Assessment Year, and without further notice, the Owners of each Parcel shall pay, as the respective annual General Assessment for such Parcel, such Parcel's share of the expenses for such Assessment Year as shown by the annual budget. In the event that the Directors shall not approve an estimated annual budget or shall fail to determine new General Assessments for any Assessment Year or shall be delayed in doing so, the Owners shall continue to pay each year the annual General Assessment as last determined. All Owners shall pay the annual General Assessments to the managing agent for the Board or as may be otherwise directed by the Directors. **Assessments may be collected by the Saline County Tax Assessor for Recreational District as a Special Assessment on each parcel's tax bill.**

7. Accounting. The Board of Directors shall cause to be kept a separate account for each Parcel showing the respective Assessments charged to and paid by the Owners of such Parcel and the status of such account from time to time. Upon ten (10) days written notice to the Directors, and the payment of a reasonable fee therefore, any Owner or holder of a first mortgage or first deed of trust on any Parcel shall be furnished a statement of the respective account for such Parcel setting forth the amount of any unpaid Assessments that may be due and owing.

8. Uniform Rate. Both General Assessments and Special Assessments must be fixed at a uniform rate for all Parcels within the same class of Parcels and shall be assessed in accordance with the allocation provisions of Article VI herein.

9. Additional Property and Changes in Boundaries. Each Owner of a Parcel, by acceptance of a deed to such Parcel, acknowledges and agrees that the General Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Parcels are combined, subdivided or re-subdivided by the Founder; (ii) any portion of the Community becomes Commons; (iii) additional property is added to the Community; or (iv) any portion of the Community is exempted from Assessments as provided in this Declaration.

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10. Commencement of Annual General Assessments. Each Owner shall pay his first annual General Assessment upon the closing of the purchase of his Parcel, adjusted according to the number of months remaining in the calendar year. Thereafter, annual Assessments shall be paid as provided herein. In addition to the foregoing, each Owner purchasing a Parcel from the Founder or a Builder shall pay as initial set-up fee to be deposited with the Board and which shall be in such amount as the Founder shall determine. The Founder expressly reserves the right to change the amount of the set-up fee at any time.

11. Non-payment of Assessments. Any Assessment or Fee not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of

(i) the rate of twelve percent (12%) per annum or

(ii) the maximum rate per annum allowed by law. The Board of Directors shall have the authority to exercise and enforce any and all rights and remedies as provided in this Declaration or as otherwise available at law or in equity, including, but not limited to, the right to file of record and thereafter foreclose the lien against the defaulting Owner's Parcel in like manner as a mortgage on real estate or a power of sale under Arkansas law. In addition to the foregoing, the Board of Directors shall have the right to suspend any Owner's voting rights and the right of such Owner, his family, guests and invitees to use the recreational facilities in the Commons for any period during which any assessment such Owner's Parcel remains unpaid. No Owner may waive or otherwise escape liability for any of the Assessments or Fees established herein by non-use or abandonment of such Owner's Parcel or the Commons.

12. Unexpected Assessments and Special Assessments. All funds paid from time to time by Owners for Assessments and Special Assessments, from time to time on hand and unexpended, shall be deemed to be owned equally and in common by the Owners.

13. Subordination of the Lien to Mortgages. The liens of the General Assessments or Special Assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust encumbering the Parcel. Sale or transfer of any Parcel shall not affect the liens for General Assessments or Special Assessments; however, the sale or transfer of any Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such General Assessments or Special Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any General Assessments or Special Assessments thereafter becoming due or from the lien thereof.

14. Special Improvement District. **The property is subject to an Assessment for the Bryant Municipal Property Owners' Multipurpose Improvement District No. 84-Midtown above the normal rate for Bryant, Arkansas.**

#### ARTICLE VIII GENERAL COVENANTS AND RESTRICTIONS

"Some men see things as they are and say 'Why'. I dream things that never were and say, 'Why not.'" Robert Francis Kennedy, *The New York Times*, June 9, 1968

1 Creation of Covenants and Restrictions. Each Owner of a Parcel, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to the

following terms, provisions, covenants, and restrictions which run with the land and are perpetual and appurtenant to the Parcels:

a. Use of Parcel. No Parcel shall be used for any purpose except as may permitted under the Code. The Founder shall initially determine the specific uses permitted upon any Parcel prior to conveyance of the Parcel.

b. Approval of Business Uses by Founder. During the period commencing with the date of this Declaration through the fifteenth (15<sup>th</sup>) anniversary thereof, no business may locate or operate in the Community without first obtaining the approval of the Founder, which approval may be withheld based upon the following criteria:

- (i) the nature of the business,
- (ii) the experience of the business operator,
- (iii) the reputation of the business owner,
- (iv) the capitalization of the business, or
- (v) such other criteria that Founder may determine to be in the best interest of the development.

c. Prior to entering into any contract to sell or lease all or any part of a Parcel in the Commercial District, the Owner thereof shall give notice to the Founder specifying

- (i) the name of the proposed buyer or tenant,
- (ii) the location of the Parcel being conveyed,
- (iii) the nature of the proposed business,
- (iv) the experience of the business operator in such business,
- (v) the reputation of the business owner,
- (vi) the capitalization of the business, and
- (vii) such other information as the Founder may specify.

Within ten (10) days after the receipt of all such information in form satisfactory to the Founder, the Founder shall wither approve or disapprove such transfer. In the event of approval, then the Parcel may be sold or leased to such proposed buyer or tenant and the business commenced in the Community. In the event of disapproval, then the Parcel may not be sold and the business may not be opened in the Community.

d. Certain uses Prohibited. Notwithstanding the above section b., prior to the Turnover Date, the following businesses are prohibited in the Community, unless owned or operated by the Founder or an Affiliate of the Founder:

- (i) real estate sales or brokerage officers for any type of real estate,
- (ii) property management companies,
- (iii) apartment rental services,
- (iv) any similar type of business.

e. No Commercial or Residential Structure, Parcel, or any portion thereof shall be used for any noxious or offensive activity nor for any purpose prohibited by law or ordinance or which may become a nuisance, in the reasonable judgment of the Directors.. Notwithstanding the foregoing, by acceptance of a deed for their Parcel, whether or not the same is expressed in the deed, the Owners acknowledge that the Community shall consist of entertainment-related activities, restaurants, places that serve alcoholic beverages, commercial, and retail sales establishments and an organic farm and the presence of such activities and the odors, noise, and lights associated with such activities shall not be deemed to be nuisances or noxious or offensive activities.

f. Maintenance of Parcels. The maintenance and repair of all Parcels and all Improvements situated thereon or therein, including, without limitation, all lawns, shrubbery, landscaping and the grounds on or within a Parcel, shall be the sole responsibility of the Owner of such Parcel. The Owner of each Parcel shall, in addition to the foregoing maintenance requirements, maintain, if required by the Board, any portion of the Commons (or green space or right-of-way within the Common Roads)

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lying between the property line of such Owner's Lot and the curb of the adjacent Common Road.

g. Other Restrictions Affecting Parcels. The Design Code and the Rules and Regulations set forth other terms, provisions, covenants, conditions, and requirements which shall be applicable to all, or only portions of, the Parcels within the Community. The design Code or the Rules and Regulations may regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks) and other matters affecting the attractiveness or safety of Parcels.

h. Rules and Regulations. The initial Rules and Regulations are attached to and included in the bound volume of documents provided to all initial Parcel purchasers. The Rules and Regulations do not need to be recorded to be effective, but shall be available from the office of the Founder and at other places in the Community and will be provided to the Owners or posted in the Town Center or some other conspicuous place in the Community. By this reference, the Rules and Regulations, as the same may be amended from time to time, are incorporated into and made a part of this Declaration. At all times prior to the occurrence of the Turnover Date, the Rules and Regulations are subject to modification and amendment, from time to time and at any time, solely by the action of the Board of Directors and without any prior notification to, or approval by, any of the Owners. The Board shall also have the right to adopt additional rules and regulations which shall be incorporated into and form a part of the Rules and Regulations, including, without limitation, the right to approve rental and sales agents, contractors, and subcontractors who do business within the Community. Following the occurrence of the Turnover Date, any proposed modifications or amendments to the Rules and Regulations or any additional rules and regulations which the Board desires to adopt shall:

(i) be submitted to all Owners in writing or otherwise posted in a conspicuous place within any of the Commons and

(ii) be subject to review and discussion by the Owners at either a town meeting or any annual or special meeting of the Owners.

i. Compliance and Permits. Each Owner shall maintain his Parcel and Dwelling in compliance with all applicable zoning ordinances and regulations of the City and Saline County, Arkansas. To the extent that the City or any other governmental authority shall require permits for the erection of any improvements upon a Parcel, including, without limitation, fences, decks or other structures or improvements, the Owner of such Parcel shall be responsible for obtaining the same.

j. Approved Receptacles. No trash, rubbish, garbage, trash can or other receptacle therefore, other than those receptacles approved by the Board within which such Parcel is located, shall be placed on any Parcel outside of a Dwelling or in a Commercial District.

k. No Fuel Tanks. No tank, bottle or container of fuel for the purpose of heating any Dwelling shall be erected, placed or permitted above the surface level of any Parcel, except as may be required by the Founder or an affiliate of the Founder in the construction of a Dwelling.

l. No Temporary Structure as Residence. No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Parcel at any time as a temporary or permanent residence.

m. Signs. Except as is permitted of the Founder and its Affiliates, no signage of any kind shall be displayed to the public view on any Parcel except in compliance with the Code and approval of the Architectural Review Board, as provided in this Declaration.

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n. Lot Maintenance. Each Owner shall maintain its Parcel in a attractive manner, including, without limitation, maintenance of lawns and shrubbery. No Owner shall permit the lawn upon such Owner's Parcel, whether grass, legume or ivy, to grow in excess of six (6) inches in height. The foregoing requirement regarding lawn maintenance shall not apply to any Builder or Founder prior to the sale of the Parcel at retail to an Owner other than a Builder.

o. Limitation on Pets/Livestock. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel other than as permitted under the Code. Notwithstanding the foregoing, dogs, cats, domesticated rodents, birds, non-venomous reptiles, or other household pets may be kept, provided with the exception of the Commercial District, they shall not be kept, bred, or maintained for any commercial purposes. Each Owner shall comply with all ordinances, zoning, and regulations of the City relating to the supervision, control, responsibility and maintenance of animals and/or pets in residential areas and shall maintain control of their pets at all times.

p. Insurance. Nothing shall be done or kept on any Parcel that will increase the rate of, or result in cancellation of, insurance for any other Parcel or its contents, without the prior written consent of the Board.

q. Soliciting. The Board may regulate or prohibit soliciting within the Community.

r. Age Restriction. With respect to Senior Housing at least eighty percent (80%) of the occupied units shall be occupied by at least one person who is over 55 years of age or older, and all Permanent Occupants must be at least 18 years of age or older.

A surviving or divorced spouse who is a Permanent Occupant under the age of 55 years and who was the spouse of an occupant 55 years of age or older will be allowed to remain as an Occupant.

The Founder may not rent or sell a Unit unless at least one person who will occupy the Unit is 55 years of age or older. The Board shall have the right to require prior age verification from all prospective Occupants.

Notwithstanding anything to the contrary contained herein, the Founder and any Affiliate of the Founder shall have the right, but not the obligation, to sell up to twenty percent (20%) of the Units in which there will be no occupant who is 55 years of age or older, provided that such sales do not conflict with any federal, state, or local law.

The Founder and, after the Turnover Date, the Board shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of or use of common facilities by persons under 18 years of age.

Prior to entering into a contract to sell or lease any Senior Housing Parcel, the Owner shall (i) notify in writing any real estate agent or broker of the age restrictions contained in this Declaration; (ii) obtain a copy of each proposed buyer's or tenant's drivers license, birth certificate or other proof of age issued by a governmental entity (the "Age Document"); and (iii) verify that the proposed tenant or buyer meets the age restrictions contained in this Declaration. In addition, the Owner shall immediately hand deliver or send a copy of the Age Document to the Board by certified mail so that the Board may update its records and verify compliance with the age restrictions contained in this Declaration. At the closing of the sale or entering into the lease, the new Owner or Occupant, as the case may be, shall immediately register with the Board such Owner's/Occupant's name, age, and address and confirm their understanding of the age restrictions set forth in this Declaration.

The Board or Directors may, from time to time, in its sole discretion, survey the Owners of each Senior Housing Parcel to determine the age of all Occupants to verify compliance with the requirements of this Declaration. Each Owner must respond to any such survey by truthfully disclosing the names and ages of all Occupants, including

Owner, of each Parcel owned by such Owner. Failure to respond to any such survey within the time frames set forth in the survey shall be a violation of the covenants of this Declaration and (i) subject the Owner to a fine of \$25.00 per day for each day such survey is not returned and (ii) entitle the Board to exercise any and all remedies reserved herein, at law or in equity, including, without limitation, seeking an order of mandamus to require such disclosure. The Owner against whom any such action may be brought shall be liable for the fine, any and all attorney's fees incurred by the Board in connection therewith, together with costs of suit.

s. Enforcement

(i) Owner's Responsibility. Each Owner and such Owners' Occupants shall conform and abide by the covenants contained in this Declaration and all of the Rules and Regulations. Each Owner shall be responsible for assuring such compliance and any violation by an Owner's Occupants may be considered to be a violation by the Owner.

(ii) Remedies of Board. In addition to the other rights and remedies provided elsewhere in this Declaration, the Rules and Regulations, or the Code, in the event of any violation of any of the provisions of this Declaration, the Rules and Regulations, or the Code by any Owner or Occupant, then the Board of Directors shall have the power and right, at its option, to (i) impose monetary fines which shall constitute Individual Parcel Assessments and relating to which a lien may be filed if such monetary fine is not paid within thirty days of assessment, (ii) suspend an Owner's right, if any, to vote in the Board, and (iii) suspend or terminate the privilege of such Owner and such Owner's Occupants to use all or any of the recreational facilities, if any, which constitute part of the Commons. Any action to be taken by the Board pursuant to this Section shall be subject to the satisfaction of the terms and provisions set forth below.

(iii) Notice, Hearing, and Fines. In the event any Owner or Occupant is believed to be in violations of this Declaration, the Rules and Regulations, or the Code, then the Board shall not impose a fine, suspend voting rights, or suspend or terminate any other rights pursuant to Section q. (ii) above unless written demand to cease and desist from such alleged violation shall be served upon the Owner responsible for such violation setting forth the information required by the terms and provisions of this Section on q. (iii) and providing such Owner the opportunity to appear before and be heard by the Board. Such demand shall be personally delivered or sent by certified mail, postage paid, to the last known address of such Owner. Any notice required by this Section q. shall specify.

(a) The alleged violation.

(b) The action required to abate such violation.

(c) The time period of not less than five (5) days during which the violation may be abated and corrected by such owner without further sanctions if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Rules and Regulations, or the Code may result in the imposition of sanctions; and

(d) The date, which shall be no earlier than five (5) days from the date of such written notice, and the time and place at which such Owner may appear before the Board to be heard, except that this provision shall not apply, and the Owner shall not be entitled to a hearing unless specifically requested by them in writing, relating to a violation occasioned by nonpayment of a General Assessment or Special Assessment, or,

following a finding of a violation in a case in which the Owner was provided notice and opportunity to respond to the allegation of violation, (irrespective of whether the Owner responded and/or appeared), an Individual Parcel Assessment.

Each day an infraction continues shall be considered a separate infraction subject to fine. However, the primary goal of this provision is not to punish but to conciliate and resolve problems. The Board may suggest improve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Board. The foregoing procedure shall only be applicable to the enforcement right specified in Section q. (ii) above and shall not apply to the Exercise of any other rights or remedies specified in any other section or provision of this Declaration, the Rules and Regulations, or the Code.

(iv) Corrective Action for Parcel Maintenance. If the Board determines after notice that any Owner has failed to maintain any part of such Owner's Parcel (including any Building or yard, shrubbery, landscaping, and any part of such garden structure, or other Improvements thereto) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, the Rules and Regulations, or the Code, then the Board shall also have the right (but not the obligation) without liability to enter upon such Parcel to correct, repair, restore, paint, and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. All costs and expenses paid or incurred by the Board in connection therewith shall constitute an Individual Parcel Assessment against the Owner of such Parcel.

## General Design Requirements

### Code Mechanics

#### Amendments

The Urban and Architectural Codes may be amended and updated as required. Such amendments shall apply to any application for Design Review prior to Schematic Design Review.

#### Arrangement

This code addresses both issues of general architectural syntax and specific architectural vocabulary. It also addresses both materials and configurations. It is divided into sections (Massing & Walls, Doors & Windows, Porches & Balconies, Eaves & Roofs and Attachments & Sitework.) Within each section, the general syntax issues are listed before the specific architectural vocabulary issues, and materials are addressed before configurations. This code only addresses exterior materials and configurations, except when interior items affect the exterior.

#### Inclusions & Prohibitions

These standards generally operate on the basis of inclusions, specifying materials and configurations that are allowed in Midtown. Some items, however, are so egregious that they are specifically excluded from Midtown. Such items are listed under the heading of "Prohibited" at the end of each section. Prohibited items are not eligible for inclusion by warrant or exception by the Town Architect.

#### Settings

These Standards refer to three settings of architecture: Organic (or Vernacular), Median, and Refined (Classical.) These settings are part of the sliding scale of the Classical/Vernacular Spectrum. The Organic setting is the most relaxed and least expensive, while the Refined setting is most composed and is often the most expensive. Refined architecture is generally more appropriate in more urban parts of the Transect, while Organic architecture is generally more appropriate in more rural parts of the Transect.

### **Design Review**

1. All plans for building construction within Midtown shall be subject to Design Review by the Town Architect prior to commencement of any construction. Applications for Design Review and construction shall be as set forth in the Design Review Process.
2. The Town Architect shall review all applications for conformance with the Urban and Architectural Codes. In addition, the Town Architect shall review any and all aspects of architectural design that affect the character of Midtown, including but not limited to building placement, form, and massing; and exterior details, materials, and color.
3. Building elements, fixtures, and materials specifically noted herein as subject to approval by the Town Architect shall be drawn and/or noted in submitted plans at the appropriate phase of the Design Review Process. Failure to do so may result in re-submittals and delay of the approval process.
4. Based upon such review, the Town Architect shall approve, approve with stipulations, or reject applications for construction. Applications may be withdrawn at any time without prejudice.
5. Buildings within Civic Sites shall be exempt from the Urban and Architectural Code but shall be subject to Design Review by the Town Architect.
6. Some items within these standards indicate conditions that, while not required, are "preferred." The Town Architect may, at the Town Architect's sole discretion, require the preferred condition in instances when not enough previous designs have employed the preferred condition, either within the vicinity of the project being reviewed, or in all of Midtown.
7. Fully-articulated Classical Orders shall be reserved for Civic Sites. Simplified classical building wall elements, including but not limited to pilasters, entablatures, lintels, pediments, cornices, and related moldings, are permitted subject to approval of Town Architect. Such elements shall be made of wood, stucco, or stone or precast concrete.

### **Variances**

Variances to the Architectural Code may be applied for in the Design Review process and may be granted based on architectural merit as determined by the Town Architect. Variances shall not be approved based on existing precedents nor shall approved variances be considered precedents for future applications.

## **Additional Standards**

### **Governmental Regulations**

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The Urban and Architectural Codes and their enforcement through Design Review are intended to regulate the aesthetic character of Midtown. All applications for building construction are required to conform with applicable building and life safety ordinances and applicants shall be responsible for obtaining all necessary permits and approvals from local regulatory agencies. In any case where building or life safety ordinances are in conflict with the Urban and Architectural Codes of Midtown, such ordinances shall take precedence and the Town Architect shall be notified of the conflict.

### **Design Standards**

This Code is meant to work cooperatively with Traditional Construction Patterns, which is a syntax code applicable to any American architectural vocabulary. References to Traditional Construction Patterns formatted as "TCP~77" refer to the pattern number in the book. References to Traditional Construction Patterns formatted as "TCP page 48" refer to the page number in the book.

### **Green Standards**

Buildings should be built of Green, or Sustainable, building materials whenever they are available at reasonable cost. Sustainable materials can correspond to the following criteria: produced locally or salvaged, recycled and/or recyclable; rapidly renewable; durable; containing a low embodied energy; manufactured in a less environmentally hazardous or toxic manner; for wood, certified in accordance with the Forest Stewardship Guidelines for environmentally responsible forest management; for refrigerants and fire suppression devices, not containing CFCs or Halon gas. Common sustainable materials include cementitious siding, cellulose insulation, gluelam beams, and fly ash concrete.

Healthy Buildings: Indoor air quality should be improved through the following techniques: specify paints, adhesives, finishes, and flooring products with low or no VOCs (Volatile Organic Compounds); specify carpeting and cabinets with low formaldehyde content; install airtight ducts; design ventilation systems that result in an air change effectiveness (E) greater than or equal to 0.9; air-seal buildings and keep water away from foundations and walls to prevent moisture, radon, and soil gases from entering.

### **Material Standards**

Arm's Length Rule: Substitute materials may be used for materials noted in this code, but their appearance must be indistinguishable from the original at arm's length or less, and their performance must exceed that of the original if they are to be used below the second floor. See TCP page 75.

Eyes Only Rule: Substitute materials used at or above the second floor must be indistinguishable from the original at a distance of 10 feet. See TCP page 75.

### **Utilities**

Owners/Architects are responsible for verifying location of existing site utilities prior to design/construction. Re-location of utilities, if required, shall be the Owner's responsibility and at Owner's cost.

## **Massing & Walls**

### **General Massing Configurations**



Place outdoor spaces to the South of the buildings that use them, then connect the building to the outdoor space with a porch that shades the building in summer where practical. This is the single most important pattern in this entire code, and should be followed in all cases where site conditions allow, which generally should be nearly all building sites in t2, t3, and t4, and some in t5.

Buildings shall be oriented parallel to a straight principal frontage line or on a line tangent to a curved frontage line. Lots shall have their principal frontage determined by the Town Architect. Principal frontage lines should be confirmed with the Town Architect if necessary. Exceptions on irregularly-shaped lots shall be reviewed by the Town Architect.

1. Compose the building of simple masses. See TCP~1.
2. When buildings are composed of more than a single volume, arrange the volumes to clearly indicate where the most public functions in the building are and where the front door is. See TCP~2.
3. Compose buildings vertically to include a cap, a shaft and a base. See TCP~6.
4. Create buildings using as many thin wings as possible. Wings should be one room deep whenever possible. Make wings long east to west where possible.
5. Locate windows to the outdoors in detached buildings on at least two sides of every room that people will sit in where possible.
6. Use buildings, their wings, fences, walls, and plant material to create positive outdoor spaces around buildings.
7. Divide habitable outdoor space into a series of garden rooms, each with its own distinct character, notably different from adjacent garden rooms, and never longer than 2:1.
8. Arrange bedrooms so that they catch the first morning sunshine whenever possible.
9. Place storage and utility rooms on the north face of the building whenever possible.
10. Reduce the length of the western wall, reduce west-facing openings, and shade openings with deciduous foliage to block the hot, low afternoon sun in summer.

### **Midtown Massing Configurations**

Strong preference should be given to symmetrical gabled roofs due to their simplicity. Buildings may be composed of up to three primary gables with lower-sloped ancillary roofs, but preference should be given to only two and especially only one gable with as few ancillary roofs as is feasible.

The minimum floor-to-floor height of residential buildings shall be 11 feet on the street level and 10 feet on all levels above the street level. The minimum floor-to-floor height of commercial and mixed-use buildings shall be 16 feet on the street level and 12 feet on all levels above the street level. A floor-to-floor height of 19 feet on the street level is preferred because it allows a mezzanine.

1. Compose Principal Buildings of t2 and t3 buildings with a Wraparound Porch, Engaged Porch, or as a simple Eave Front building with or without a porch.
2. Compose Principal Buildings of t4 buildings as single- or double-barrel shotguns or as Five-Bay blocks that are either hipped or eave-front.
3. Compose t5 and t6 buildings as large blocks that may either have a flat front, a balcony front or a gallery front. Galleries and balconies should project over the sidewalk and are strongly preferred over flat front buildings. t5 and t6 buildings may either have a gabled roof or a front parapet with a monopitch roof to the back.

4. Elevate the first floor of all residential buildings above grade as required to achieve the porch heights illustrated in Appendix B. More classical buildings should be elevated higher.
5. Courtyards or patios within attached building types shall be a maximum of 6 inches below adjoining gallery or interior finish floor.

### **General Wall Materials**

1. No more than two wall materials should be visible on any exterior wall, not counting the foundation wall or piers. See TCP~8.
2. Exterior trim shall be lowland cypress, redwood, cedar, cellular PVC, or fiber-reinforced cementitious boards. Trim should be sized appropriately to its location. See TCP~13. Running (horizontal) trim must be mitered at exterior corners; cementitious boards may be used as running trim only if they can be successfully mitered.
3. Colors for all exterior materials (siding, trim, brick, stone, mortar, stucco, etc.) should be selected appropriate to the building style and to local precedent from the Midtown Color Scheme, a copy of which is attached as an Addendum to this Architectural Code. See TCP~14.

### **General Wall Configurations**

1. Compose the exterior elevations of buildings using simple rational proportions (1:1, 2:1, 3:2, 4:3) and harmonious irrational ones (the Golden Mean (1.618...) and the square root of 2 (1.4142...)) See TCP~3.
2. Allow the face (entry) of the building to reflect the bilateral symmetry of the human face to a recognizable degree. See TCP~4.
3. Compose columns and openings on more classical buildings in a manner that is either regular or that reflects some other rational ordering system. See TCP~5.
4. Masonry veneer walls should be detailed exactly as masonry bearing walls, especially at openings. See TCP~16.
5. Brick Contractor should attempt to make course exactly to both the top and the bottom of all wall openings. See TCP~17. The face of stud of frame walls should align with face of masonry of foundation walls below. See TCP~18.
6. Heavier materials should be located below horizontal joints. Vertical joints between different materials should occur only at inside corners. See TCP~19.

### **Midtown Wall Materials**

Build most walls in t2, t3, and t4 of wood frame finished in wood or cementitious siding. Build walls in t5 of heavy masonry or concrete, finished with stucco or a masonry veneer, unless the building is freestanding, in which case it may be constructed of wood frame and finished in wood or cementitious siding. Detail thick walls with interior splays to diffuse light at the edge of windows and doors.

1. Siding materials allowed are: lowland cypress, redwood, cedar, cellular PVC, and cementitious fiber-reinforced plank siding equal to Hardi-Plank. See TCP~9.
2. Stone veneer shall be natural stone laid in horizontal coursing. Stone veneer is permitted in t2 and t3.
3. Brick is permitted in all Transect Zones. See TCP~11. Modular or standard size face brick is permitted. Brick may be painted with lime-wash paint.

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4. Mortar shall be selected from Midtown standard mortar colors established by the Town Architect.
5. Masonry walls may be finished with hardcoat stucco, which should be smooth or steel-troweled only. Synthetic stucco is not permitted. See TCP~12. All control joints shall be concealed on exterior stucco. Stucco shall be applied to temporary grounds at all corners and projections. Permanent beads or stops are strictly prohibited. Architects are advised to note as such in final building plans and to notify builder prior to stucco application.
6. Parapet copings shall be made of stucco, concrete, or stone.
7. Mechanical and non-mechanical wall vent openings visible from public thoroughfares and/or larger than 24 square inches net free area shall be made of wood louvers.

### **Midtown Wall Configurations**

Minimum wall height is 10 feet on the first floor of residences and 9 feet on all levels above. Minimum wall height is 14 feet on the first floor of commercial buildings and 10 feet on all levels above. See TCP~15.

Articulate the base of exterior walls using simple water table offsets and/or color on masonry walls and brick or stucco on masonry foundations on walls finished in siding.

### **Prohibited**

1. Foam-applied moldings and trim
2. Plastic or metal stucco beads or stops
3. Stucco control joints
4. Queen-size or engineer-size brick
5. Doors & Windows

### **General Door & Window Materials**

Residential doors visible from public thoroughfares should be built of wood. Commercial doors may also be hollow steel frame or extruded aluminum. In no case except for residential garage doors should metal doors be stamped to resemble wood doors, unless they are indiscernible from wood at arm's length. See TCP~20.

Residential windows should be built of wood. Vinyl-coated wood, aluminum-coated wood, and solid PVC windows may also be used, but only if they are indiscernible from wood at arm's length and if the configuration of the sash and frame are indiscernible from traditional wood window construction. Commercial windows may also be extruded aluminum or hollow steel frame. See TCP~21.

1. Storefronts should be built of wood, custom metalwork, extruded aluminum, or hollow steel frame. See TCP~22.
2. Shutters should be built from lowland cypress, redwood, cedar, or cellular PVC. See TCP~23.
3. Brick jack arches should be built of gauged brick. See TCP~24.
4. Bay window jambs should be trimmed with a single vertical jamb casing that extends from the window sash to the corner of the bay. See TCP~25.
5. Brick mold shall be 3 inches wide minimum (except on Federal style buildings, where 2 inch brick mold may be used) and may be either flat or back-banded. It may only be used on masonry or concrete walls. See TCP~26.

6. Muntins should divide panes into true divided lights. The only acceptable window grilles are those that are adhered to both sides of the glass with a spacer in between to be indiscernible from true muntins. See TCP~27.

### **General Door & Window Configurations**

1. All doors shall be side-hinged except for garage doors, which may be sectional. See TCP~28.
2. Operable windows shall be single-hung, double-hung, triple-hung, or casements. See TCP~28.
3. The style of the exterior doors and windows should match the style of the building. See TCP~29.
4. Garage doors should be no wider than 9 feet if they are visible from public thoroughfares other than rear lanes or alleys. See TCP~33.
5. Bay windows either should extend to the ground or should be supported by visible brackets of appropriate size. See TCP~34.

### **Proportions**

1. Windows should be vertically proportioned or square. See TCP~31.
2. Window panes should be vertically proportioned or square. Vertically proportioned window panes should be similarly proportioned throughout an entire building. See TCP~32.
3. Windows may be grouped in horizontally proportioned openings.

### **Casing**

1. Door and window casing on all except masonry or concrete walls shall not be narrower than 3-1/2 inches wide. See TCP~37.
2. Casing on masonry or concrete walls shall not be less than 3 inches wide except as noted elsewhere in these Standards. See TCP~37.
3. Mullion casing shall never be narrower than 3 1/2 inches regardless of location. See TCP~37.
4. Masonry wall materials shall never be visible between a door or window and its casing. See TCP~37.
5. Head casing at front entry door should be equal to or wider than jamb casing, and should not be less than one-sixth of the opening width. See TCP~38.
6. The sill should act as a visual base to a window. See TCP~44.
7. Casing should never be picture framed at the sill. See TCP~44.

### **Masonry Openings**

1. Flat masonry lintels should not be narrower than one-fifth of the opening width. See TCP~39.
2. Arch thickness should not be less than one-sixth of the opening width. See TCP~40.
3. Every arch must be supported immediately below the arch. See TCP~40.
4. The side faces of jack arch keystones should converge at the same radius point as the ends of the jack arch. See TCP~41.

5. The end of jack arches shall slope at the same angle throughout a building. That angle shall be between 22.5° and 30° from vertical. See TCP~41.
6. Eave trim should never intersect an arch except to touch the top of a keystone. See TCP~42.
7. Keystones should never be used as a part of picture-framed casing. See TCP~43.
8. Lintels with square ends should never include a keystone. See TCP~43.

### **Entry Surrounds**

See TCP~30 for more detailed information on entry surrounds. Entry surrounds are a major part of the face of the building, and they should be detailed carefully according to the style of the building as one of its most expressive parts.

1. No other element on the building should be more classical (refined) than the entry surround.
2. Entry surrounds should include at least two posts, a beam, and a door. The beam may include a cornice, or it may be expressed as a full classical entablature.
3. Posts should usually be attached to the wall as pilasters and may be expressed as classical rectangular or rounded pilasters as well as square posts.
4. Entry surrounds may also include either sidelights, a transom, or both.
5. The elements above should be connected with single pieces of flat casing that run from one element to another.
6. No casing within an entry surround should be narrower than 4 inches nominal (1x4.)
7. Siding within entry surrounds is prohibited unless the door is recessed further than 12 inches, in which case siding may be used, but only if it is of a more refined sort than that used elsewhere on the house. In no case can lap siding be used; the minimum acceptable siding is V-groove tongue and groove, although smooth-face tongue and groove is preferable.
8. All materials within the borders of the entry surround should be more refined than those of ordinary walls.
9. Entry surrounds shall sit proud of the primary wall surface, overlapping the primary wall material all around.

### **Shutters**

1. Shutters should be exactly one-half the width of the sash they are covering. See TCP~35.
2. All shutters shall be installed with hinges, dogs, and any other hardware required to be fully operable. See TCP~35.
3. Shutters should be louvered, paneled, or constructed of boards as appropriate to the style of the building. See TCP~35.

### **Storefronts**

1. Storefront glazing shall occupy no less than 69% of the total frontage of the ground floor from 29 inches to 80 inches above the sidewalk.
2. Storefront glass shall be clear.
3. Storefront sashes may be square or vertical in proportion.
4. Storefront sashes are not required to have muntins.

5. Storefront base shall be built of wood and may be 8 inches to 24 inches tall except at restaurants, where the base may be up to 29 inches tall.
6. Storefront awnings, lights and signs may encroach into setbacks and across property lines except not onto adjacent private properties.

### **Palladian Windows**

1. See TCP~36 for more detailed information on Palladian windows.
2. Palladian windows shall be composed of a single circle-head window with two smaller square-head sidelights.
3. Palladian window surrounds shall be equal to the classical refinement of the entry surround.
4. The sidelights shall be four panes high, and they can either be executed either as a double-hung window that is two panes high in each sash or as a fixed single sash.
5. The central window shall be five panes high below the circle head portion. The pane height of the central window shall be identical to the sidelight pane height.
6. The central window may be three, four, or five panes wide. The sidelights may be one or occasionally two panes wide. The pane width in the sidelights should match the pane width of the central window.
7. The classical order of the columns and the entablature should match the highest order found elsewhere in the building.
8. The Palladian window surround shall include four pilasters: Two shall flank the outsides of the sidelights, while the other two shall occur between the sidelights and the central window. These pilasters shall be mounted directly against the window casing. The pilasters may be square or half-round.
9. The springline of the arch shall occur at the top of the cornice of the entablature.
10. The extrados of the arch shall not occur outside the base width of the inner pilasters.
11. If the Palladian window is set in a masonry wall, the entire surround shall be set proud of the primary wall surface, overlapping the primary wall material all around.

### **Midtown Door & Window Materials**

1. Doors shall be wood with glazing and/or panels. Panels may be flat, V-grooved, or raised. Double doors are allowed.
2. Masonry lintels shall be either cut limestone, precast stone, gauged brick jack arches, or classical wood surrounds that project beyond the surface of the masonry wall. If exterior wall finish is stucco, lintel is not required to be visible on the most organic buildings.
3. Masonry arches shall be multiple brick rowlocks, gauged brick, cut limestone, or classical wood arches that project beyond the surface of the masonry walls.

### **Midtown Door & Window Configurations**

Use vertically-proportioned windows for all except special windows in a building, as determined by the Town Architect. Organic windows should have a sash height:width proportion of 1:1 to 5:4. Median windows should have a sash height:width proportion of 5:4 to 4:3. Refined windows should have a sash height:width proportion of 4:3 to 3:2. Most windows on a given floor should be the same size, with special-sizes used only sparingly. Larger or smaller special-size windows should still have the same sash proportion as the standard windows on that level. Upper level windows may use a slightly shorter proportion than street-level windows.

1. Organic windows should be divided into two vertically proportioned panes per sash. Median windows should be divided into four or six vertically proportioned panes per sash. Refined windows should be divided into six, nine, or twelve vertically proportioned panes per sash.
2. Build doors of stile-and-rail construction with more glass in organic doors and more panels in refined doors.
3. Span larger openings in masonry walls with arches. The most important openings in a building may also be spanned with arches, even if the opening is not larger than a single door.
4. Shutters are permitted but not required. If used, they should be used on all windows readily visible from the street.
5. Either sheathe garage doors to resemble carriage house doors or build actual carriage house doors when garage doors may be seen from public thoroughfares other than rear lanes or alleys.
6. Transoms are allowed only over doors and may be horizontally proportioned.
7. Doors and windows shall be installed in masonry walls so that the outside face of door panel or outside face of sash is recessed at least 4 inches from the outside face of wall.
8. Window and door muntins shall be traditionally profiled at exterior and interior faces, and shall be no greater than 7/8 inches in width. Muntin edge profile shall match sash edge profile.
9. Sides of bay windows shall return to the building wall at a 45° or 90° angle.
10. Gates in building walls may be made of wood and/or metal. Decorative metal work is subject to approval of Town Architect.
11. Driveway gates are permitted for driveways or parking courts accessed from a street. Gates shall be inswinging, made of wood or ornamental iron, and shall not exceed 10 feet in width.
12. Walls except at storefronts or sunrooms shall have no less than 5 percent glazing and no more than 15 percent glazing unless approved by the Town Architect based on architectural merit.
13. One window is required at each habitable level of a building on both side walls within 8 feet of the corners of the building at the frontage. Permanently shuttered openings may be substituted to meet the requirement of up to ¼ of these windows.

#### **Prohibited**

1. Plastic shutters
2. Flush-mounted or projecting windows

3. Glass block visible from a public way
4. Metal security grille or bars on doors or windows.

### **Porches & Balconies**

The term "Porch" is used here to also include stoops, galleries, arcades and colonnades.

#### **General Porch & Balcony Materials**

1. Columns should be built of materials that encourage proper column designs. See TCP~45.
2. Extruded aluminum and wood "house columns" are not permitted.
3. Porch beam casings should be built of materials that reflect the structural nature of the beams, which means that the grain or texture of the casing material should be horizontal. See TCP~46.
4. Porch ceilings should be finished in wood or stucco unless the ceiling is omitted, in which case porch rafters and decking shall be painted. See TCP~47.
5. If framing is exposed, decking shall either be thicker than the roof fasteners or if metal roofing is used, metal joint roofing joints may be aligned with rafters so that in either case, no fasteners shall be visible from porch. See TCP~47.
6. Balconies should be constructed of wood or metal. See TCP~48.
7. Railings may be built of wood, metal, or stone. See TCP~49.
8. The railing material should in no case be heavier in appearance than the primary elements of the porch or balcony. See TCP~49.

#### **General Porch & Balcony Configurations**

1. Design porches and their frontages, and set their elevations according to the charts shown in Appendix B.
2. Porches & galleries should be at least 8 feet deep unless limited by sidewalk width. Balconies should be no more than 3 feet deep maximum. There are no intermediate acceptable settings between a porch width and a balcony width.
3. The face of the beam or entablature should always align with the face of post or the face of the top of the column. See TCP~50.
4. Intercolumniation (the height of the column divided by the horizontal distance between column centerlines) shall be 1.0 or greater. See TCP~52.
5. The beam at the top of porch columns which supports the porch roof should be visible from both the inside and the outside of the porch. See TCP~53.
6. Railings should have both top and bottom rails, with bottom rails clearing the floor. See TCP~54.
7. Balusters should be centered on the rails. See TCP~54.
8. Balusters shall be spaced at less than 4 inches clear opening. See TCP~54.
9. Balconies should project no more than 3 feet from the face of the building and should be visually supported by brackets. See TCP~55.

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10. Square columns should be used for most vernacularly oriented styles. While not classically correct, their capital and base trim should nonetheless appear to be supporting the load just as much as their classical counterparts do. See TCP~56.
11. Column bases should never protrude beyond the edge of the porch flooring. Ideally, the outer edge of the base should align with the face of the pier or foundation below. See TCP~57.
12. Square columns wider than 12 inches should be built of frames and panels unless they are classically correct manufactured columns. See TCP~58.
13. Triglyphs shall be centered over columns except in the Greek Doric order, where they shall be slid to the end of the frieze at outside building corners. See TCP~59.
14. Additional triglyphs should be equally spaced between the ones that are centered over columns. See TCP~59.
15. Seams between beam faces and beam bottoms should be located on the underside of the beam. See TCP~60.

### **Entablatures**

1. Classical entablatures shall be composed of three parts: the cornice, the frieze, and the architrave, from uppermost to lowermost. The cornice is composed of three parts: the cymatium, the corona, and the bed, from uppermost to lowermost. See TCP~51.
2. The classical cornice should always project a dimension equal to its height. See TCP~51.
3. The frieze may be plain, elaborately ornamental, or almost anything in between. See TCP~51.
4. The architrave should never be taller than the frieze and should usually be plain. See TCP~51.

### **Midtown Porch & Balcony Materials**

Fill spaces between piers with a lighter material if they are filled at all. They may be left open if desired. If filled, simple horizontal or vertical board infill may be used on more vernacular buildings, lattice may be used on median buildings, and pierced masonry infill may be used on the most refined buildings. Louver infill may be used on all buildings.

1. Posts and columns shall be wood (square posts, with or without chamfered corners, turned posts, or classical columns) Wood posts shall be 4x4 minimum and shall be #1 Common grade pressure-treated pine or better. Classical columns may be redwood or Perma-Cast.
2. Porch beams shall be lowland cypress, redwood, cedar, or #1 Common grade pressure-treated pine, or shall be galvanized structural steel or stone if supporting masonry. Build porch beams in t2, t3, & t4 of solid timbers that match column or post thickness. Build t5 & t6 beams of steel shapes, solid stone or heavy timber.
3. Porch & balcony floors shall be wood for all balconies and when porches are raised, or concrete with optional masonry pavers when the porch is at grade. Tongue & groove 1x4 flooring is preferred on raised floors. Synthetic tongue & groove flooring materials that pass the test of the Arm's Length Rule are also acceptable, as are 5/4x6 treated wood floorboards on the lowest habitable level only.

4. Porch ceilings, if used, shall be tongue & groove boards or flat sheets with 1x4 minimum batten strips spaced no greater than 32 inches OC in either direction. Porch ceilings may be omitted on all except the most classical buildings, exposing porch rafters and underside of porch roof or floor deck above. Roofing fasteners shall not be visible.
5. Railings shall be lowland cypress, redwood, cedar, #1 Common grade pressure-treated pine, or synthetic shapes. Synthetic railings must pass the test of the Arm's Length Rule and must have the prior approval of the Town Architect.
6. Screen doors shall be wood with black or silver screen. Construct screen doors of minimum 2x stock, with stiles 2x4 minimum and rails 2x6 minimum. Use galvanized rod cross-bracing with turnbuckles to allow for adjustment.
7. Stoops shall be built of concrete faced with stucco or masonry to match the foundation wall of the building. The floor surface of stoops may be stone or brick pavers.
8. All wood visible from a public way shall be primed and painted.

#### **Midtown Porch & Balcony Configurations**

1. Build porches on organic buildings with low-pitched secondary roofs that shed down from the primary roof. Carve porches on refined buildings out of building mass sheltered by the primary roof.
2. Support main level wood porch columns with heavy masonry piers or columns.
3. Provide simple square pilasters supporting the ends of porch beams where they intersect median and refined buildings. Organic buildings should not typically have pilasters.
4. Chamfer all square posts, terminating the chamfers with a termination not used on both adjacent buildings.
5. Build wood railings very simply, with thin square balusters in all but the most refined railings.
6. Principal building roofs in t5 zone may be flat with parapet only if the flat roof is occupiable and accessible from an interior room as a roof garden or roof terrace. Roof terraces and gardens meeting these requirements may also be used in t3 and t4 at the discretion of the Town Architect. Roof terraces shall be no less than 8 feet deep in any dimension.
7. Piers and arches shall be made of stuccoed concrete/masonry and shall be no less than 16 inches in thickness.
8. No bracket used to support a balcony shall extend below the head casing of doors or windows in the floor below.
9. Wood columns or posts shall be no less than 6 inches x 6 inches nominal dimension and shall be constructed of a single timber (no built-up wood columns or posts) except in the most classical buildings, which may have paneled columns.
10. Galleries and Arcades shall be at least 8 feet deep, and may extend to within 1 foot of the curb. The interior passage shall be a minimum of 12 feet high.

#### **Prohibited**

1. Unroofed wood decks when visible from a public thoroughfare.
2. #2 or worse pressure-treated wood when exposed to view
3. Storage of grilles or bicycles on balconies, galleries, or porches exposed to public view

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4. Vinyl is not permitted in any part of porch or balcony construction. See TCP~46.

## Eaves & Roofs

### General Eave Materials

1. The eave return cap should be built of continuous, un-seamed metal flashing. Because it is not meant to be seen, there is no need to build it of copper or similarly expensive materials. See TCP~61.
2. The trim immediately below the cornice shall not be a crown mold. In most cases, it should be a bed mold or similar shape. See TCP~62.
3. Exposed gutters and downspouts should be copper, galvanized steel, or aluminum. See TCP~63.
4. All parts of the eaves, including the fascia and the soffit, should be built to reflect either stone construction or wood construction. Materials may include stucco, but never vinyl components or aluminum sheets. See TCP~64.

### General Eave Configurations

1. Eaves should be as continuous as possible, both horizontally and vertically. See TCP~65.
2. Eave overhangs should be appropriate to the style of the building. See TCP~66.
3. Exposed rafter tails should not exceed 6 inches in height. See TCP~66.
4. The more classical (refined) a building is, the more likely it should have closed eaves. The more vernacular (organic, or relaxed) a building is, the more likely it should have open eaves with exposed rafter tails. See TCP~66.
5. Eaves at open gables (where there is no horizontal cornice across the bottom of the pediment) shall be trimmed in such a manner that the corona, or fascia, returns around the corner and dies into the wall without an excess triangle attached to the raking fascia. (the "Pork Chop Eave.") See TCP~67.
6. The slope of the eave return cap shall be no greater than 2:12, with 1:12 being preferred. See TCP~67.
7. The corona, or fascia, of the raking and bottom cornices should occur in the same plane. See TCP~67.
8. The cymatium, or crown, should occur only on the raking cornice. See TCP~67.
9. Vernacular brackets should extend at least to the fascia, if not slightly beyond. Their height is often as great as their depth. Classical corbels and modillions should extend to the drip of the soffit. Their height is usually one-third to one-half of their depth. See TCP~69.
10. Dentils should usually be small cubic or vertically rectangular blocks and should be located just below the corona as a part of the bed moldings. See TCP~70.
11. Dentils should be 6 to 7.5 percent of the height of the entablature. See TCP~70.
12. Dentils should be square in plan or square in side elevation if they are not cubes. See TCP~70.
13. Triglyphs should be composed of three vertical parts. See TCP~71.
14. A frieze board of some sort shall be installed below every eave, from the highest classical to the simplest vernacular. See TCP~72.

15. The frieze should never be picture-framed around a porch beam or other obstruction. See TCP~72.

### **Midtown Eave Materials**

Eave trim shapes and boards shall be lowland cypress, redwood, cedar, cellular PVC, or fiber-reinforced cementitious boards. Running (horizontal) trim must be mitered at exterior corners; cementitious boards may be used as running trim only if they can be successfully mitered.

Rafter tails may be #1 Common grade pressure-treated pine or better rafter tails scabbed onto primary trusses or rafters, or rafter tails may be extensions of the rafters themselves for all except plumb-cut rafters, since these have less weather protection than square or under-cut rafters. Lowland cypress, redwood, or cedar may be used if the budget allows.

### **Midtown Eave Configurations**

1. Square-cut rafter tails should be used on the most organic buildings and may overhang up to 24 inches. Shaped rafter tails should be used on median buildings, may overhang up to 16 inches and may be plumb-cut, undercut, scroll-cut, or some combination thereof. Closed eaves should be used on more refined buildings. The amount of the overhang of closed eaves may not exceed the height of the cornice, measured from the top of the cornice to the bottom of the bed molding.
2. Enrich eaves with ornament based on the building's location on the Classical/Vernacular Spectrum, from vernacular (organic) stepped brick to classical (refined) entablatures.
3. Rainwater falling on roofs may be collected for use in irrigation, water features & **possibly** interior greywater use. Store rainwater in foundation cisterns. Pump to a smaller pressure tank anywhere in the building or a gravity tank placed high in the building.
4. Gravity tank may be exposed to view if it is treated as a proper architectural element deserving of being viewed.

### **Prohibited**

1. Pre-cast cornice moldings
2. Rectangular gutters and leaders

### **General Roof Materials**

1. Metal roofing panels should be flat between the primary ribs, with no striations or pencil ribs. See TCP~73.
2. Tile roofing materials may include classically-configured clay tiles, concrete tiles or metal tiles. See TCP~75.
3. Bulbed ridge caps should be used with 5V metal roofing. Standing seam ridge caps should be of the lowest profile possible. See TCP~76.
4. Dormer jamb materials shall not include siding, but shall rather be a solid casing assembly from the window to the outside corner of the dormer wall. See TCP~81.
5. Masonry walls may be used for a dormer face only when the masonry forms a parapet at the top of the dormer. See TCP~82.

### **General Roof Configurations**

1. Bay roofs should be distinct from the primary roof, and they should normally return on themselves at each end. In almost no case should they be a shed continuation of the main roof. See TCP~78.

2. Skylights are strongly discouraged because floorless dormers let in less heat in summer, more heat in winter, and cost less than the best skylights, which are most likely to be relatively leak-free. If skylights must be used, they shall be flat. See TCP~80.
3. Dormer roof trim, beginning at the window head, shall be composed of a head casing, a soffit, and a corona, or fascia, at a minimum. A cymatium, or crown, may be added, but only on the raking cornice. Siding shall never be used anywhere above a dormer window head except in the tympanum of a gable-front dormer. See TCP~83.
4. The body of a single-window dormer should be vertically proportioned or square. Dormer windows should be proportioned similar to or slightly shorter than typical windows in the floor below. See TCP~84.
5. The dormer roof width, measured to the widest extent of the eaves, shall be no less than 15% wider than the dormer body width and no greater than 30% wider than the dormer body width. See TCP~85.
6. Towers, lanterns, cupolas, and belvederes shall sit on a low base and be trimmed at the corners to resemble pilasters surrounding glazed or louvered openings and supporting a beam and roof above. They shall include no siding, except possibly below the sill height. See TCP~86.

### **Midtown Roof Materials**

5v Crimp metal roofing shall be the strongly preferred roofing material of Midtown. Flat-panel standing seam roofing is an upgrade. Other upgraded roofing materials permitted are slate or synthetic slate, wood shingles, wood shakes, and asphalt shingles. Natural finish on metal roofing is strongly preferred because of its significant cooling benefits.

1. Slate shingle roofing is permitted. Synthetic slate is permitted if it passes the test of the Arm's Length Rule.
2. Overlapping two-piece clay pan tiles are permitted (but not required) on civic buildings only.
3. See TCP~76 for metal ridge caps. Ridge caps for other roofing material shall be composed of the primary roofing material configured as per industry standards. In other words, a cedar shake roof shall be capped with cedar shakes, for example, with hidden cap flashing recommended by industry standards.
4. Ridge vents are strongly encouraged. They shall be a type that can be concealed under allowable ridge caps; exposed ridge vents are not permitted.

### **Midtown Roof Configurations**

1. Roof slopes shall be appropriate to the style of the building, and shall be approved by the Town Architect.
2. Build vertically proportioned, simple dormers in a relatively narrow range of expression on the Classical/Vernacular Spectrum. Dormers may have hipped or gabled roofs.

## **Attachments & Sitework**

### **General Attachment Materials**

1. Chimney flues should be clay tile or galvanized metal left natural or painted black. See TCP~87.
2. Chimneys, when visible, should be sheathed in brick, stone, or stucco. See TCP~88.

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3. Signs should be constructed of wood or metal, or they may be painted on building walls or windows where allowed by the Town Architect. See TCP~89.
4. Externally lit signs are strongly preferred, and shall be lit with full-spectrum bulbs in gooseneck fixtures. Internally lit signs shall be illuminated with neon tubes or full-spectrum bulbs. The light source of internally lit signs should not be covered with vinyl, acrylic or similar faces, but should instead be exposed. Backlit awning signs are not permitted. See TCP~89.
5. Awnings should be constructed of canvas on a light metal frame. See TCP~90.

### **General Attachment Configurations**

1. Roof penetrations on sloped roofs shall not be permitted where readily visible from rights-of-way. All roof penetrations should match the color of the roof. See TCP~98.
2. Chimneys may be constructed for the purpose of venting non-combustion gases (plumbing vents, dryer vents, etc.)
3. Awnings may be either sloped rectangles without end panels or curved or sloped shapes with end panels, as is appropriate to the building style. In no case shall awnings contain bottom panels. See TCP~99.
4. Outbuildings should be equipped with outside lights facing the alley or lane. See TCP~100.
5. Exterior lights at rear building entries and service areas shall be vaportite fixtures with frosted globes, 60 watts maximum. All other exterior building light fixtures visible from a public way shall be incandescent, 40 watts maximum, and shall be subject to approval by Town Architect.
6. Landscape lighting visible from a public way shall be subject to approval of Town Architect. Uplighting is prohibited except in Civic Zones.

### **Chimneys**

1. Chimney height should be appropriate to the style of the building, but shall in any case meet code-required minimum heights. See TCP~91.
2. Chimney detailing should be appropriate to the materials used; stucco chimneys should generally be simpler than brick or cut stone chimneys. See TCP~92.
3. Chimneys should extend to the ground and have a projecting cap. See TCP~93.

### **Signs**

1. Band Signs are permitted in t4, t5, and t6. They may extend the entire width of the building and are limited to 36 inches tall. The bottom of a band sign may not be more than 12 feet above the sidewalk. They shall be externally lit. See TCP~94.
2. Board Signs are permitted in t3, t4, t5, and t6. They shall be attached to some part of the building they serve (most commonly the wall). An establishment may have Board Signs or a Band Sign, but not both on a single Frontage. The cumulative square footage of all Board Signs on one Frontage of an establishment shall be limited to the width of the Frontage in feet multiplied by 2. No single Board Sign shall be larger than 6 square feet if the bottom of the sign is located 8 feet or less above the Sidewalk, 9 square feet if the bottom of the sign is 8 feet to less than 12 feet above the Sidewalk, or 12 square feet if the bottom of the sign is located at the maximum height of 12 feet above the Sidewalk. If lit, they shall be externally lit except that no lighting is permitted in t3. See TCP~94.

3. Window Signs are permitted in t5 and t6. They shall consist of neon tubing on the interior side of the glass or paint or vinyl applied directly to the glass. Neither shall be mounted on an opaque signboard. The height of any window sign is limited to one-third the height of the glass in the sash where the sign is installed, excluding muntins. The width of any window sign is limited to 90% of the width of the glass in the sash where the sign is installed, excluding muntins. There is no limit to the number of windows in which window signs may be installed in a building. See TCP~94.
4. Incised Wall Signs are permitted in t4, t5, and t6. They shall consist of letters incised into a smooth surface of the building that is more refined than the principal wall material. See TCP~94.
5. Painted Wall Signs are permitted in t5 and t6. They shall consist of lettering and/or graphics painted directly onto a wall. Painted Wall Signs may occur only on brick or stucco wall surfaces that are either perpendicular with the street or set back at least 50 feet from the edge of pavement if parallel with the street to allow for equal viewing by pedestrians and motorists. They may not be installed by right, but only by exception of the Town Architect for architectural merit. See TCP~94.
6. Blade Signs are permitted in t4, t5, and t6. They shall consist of painted or vinyl lettering and/or graphics on a signboard projected from a wall by a supporting structure or hanging by chains or other means from an overhanging architectural element. The bottom of the Blade Sign shall be between 9 feet and 12 feet above the sidewalk except when located below or within 6 feet of an overhanging architectural feature such as an awning or gallery, in which case the top of the Blade Sign may be located at the bottom of the projecting architectural feature. The Blade Sign shall be 32 inches tall maximum. Blade Signs projecting from the wall may project a maximum of 5 feet. Blade Signs hung from an overhanging architectural element should be centered on that element. Blade Signs shall be no more than 4 feet wide. In addition to these size limitations, no Blade Sign shall exceed 6 square feet in t4 or 9 square feet in t5 or t6 except that no Blade Sign underneath an overhanging architectural feature shall exceed 4 square feet in any Transect Zone. Bracket or other suspension shall match the style of the sign and shall not be computed as part of the allowable size of the sign. If lit, the Blade Sign must be front-lit with gooseneck lights attached to the supporting structure. See TCP~95.
7. Corner Signs are permitted at corners of blocks in t5 and t6. They shall consist of painted or vinyl lettering and/or graphics on a signboard or sign box projected from the corner of a building. They may project perpendicular from one side of the building or at a 45° angle to the corner. Corner Signs may be constructed of either wood or metal. They shall be lit either with gooseneck lights or with surface neon tubing due to their prominent location on the block. The Corner Sign shall be mounted a minimum of 12 feet from the sidewalk, measured to the bottom of the sign. The height of the Corner Sign shall not exceed the first-story wall height. The Corner Sign shall be mounted a maximum of 12 inches away from the exterior wall of the building and shall be a maximum of 3 feet wide. See TCP~95.
8. The Rooftop Sign is meant to be viewed from great distances and is permitted only by Warrant in locations where a major business such as a large hotel may be viewed at great distances such as across a major body of water. The size of the Rooftop Sign shall be established by the Town Architect using industry standards of text legibility at the intended viewing distance. The Attached Board Sign may be installed on a very low roof, but as long as it complies with all Board Sign requirements, it shall be considered a Board Sign rather than a Rooftop Sign. See TCP~95.

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9. Hybrid Projecting Signs are permitted in t5 and t6. They are similar to Attached Signs, but they also project out from the surface of the building more than 1 foot. One Hybrid Projecting Sign is permitted per establishment. It shall consist of painted or vinyl lettering and/or graphics on a signboard. The signboard may be either a flat plane or a curved or otherwise formed surface. The Hybrid Projecting Sign may be attached to any part of a building, but most commonly to a wall. Because it projects more than 1 foot from the wall, it must include a supporting structure which shall not be computed as part of the allowable size of the sign. An establishment may have a Hybrid Projecting Sign only if it does not have any Board Signs on the same Frontage. The square footage of the sign board of the Hybrid Projecting Sign shall be limited to 6 square feet if the bottom of the sign is located less than 8 feet above the Sidewalk, 9 square feet if the bottom of the sign board is located 8 feet to less than 12 feet above the Sidewalk, or 12 square feet if the bottom of the sign board is located 12 feet or more above the Sidewalk. For Hybrid Projecting Signs located more than 12 feet above the Sidewalk, the allowable size of the sign board may be increased by the percentage that the bottom of the sign board is above the sidewalk. Because of the increased visual impact of the Hybrid Projecting Sign, the allowable size of the sign board shall be reduced by 10% for every foot of projection of any part of the sign board or supporting structure from the wall greater than 4 feet. See TCP~95.
10. Text-free symbols such as barber poles or pawn shop signs are permitted in t3, t4, t5, and t6. Text-free symbols shall not exceed 2 square feet if flat or 3 cubic feet if three-dimensional in t3. Text-free symbols shall not exceed 4 square feet if flat or 6 cubic feet if three-dimensional in t4. Text-free symbols shall not exceed 6 square feet if flat or 9 cubic feet if three-dimensional in t5 and t6. The top of a Text-Free Symbol shall not be located more than 14 feet above the sidewalk. See TCP~95.
11. Pylon Signs are permitted only by Warrant in t4, t5, and t6. Pylon Signs in walkable places should be Warranted only in cases where an establishment is not close enough to the public thoroughfare to allow an Attached Sign (Band, Board, Window or Wall signs) of some type that is readable from the thoroughfare. It shall consist of painted or vinyl lettering and/or graphics on a wood or metal sign board supported by a structure attached to the ground. The structure may consist of a single sign pole, a double sign pole, or a trussed sign tower. Double or trussed structures shall be detailed lightly so that the aggregate width of all structural members does not exceed 8 inches at any given location below the bottom of the sign board. Pylon Signs shall be located adjacent to the sidewalk or pathway leading to the establishment they represent. The bottom of the signboard shall not be more than 12 feet above the closest Sidewalk. The height of the signboard shall not exceed 3 feet, and its width shall not exceed 4 feet. If lit, the Pylon Sign must be front-lit with gooseneck lights attached to the supporting structure. See TCP~96.
12. Special Ground Signs are permitted in Transect Zones t5 and t6. They may either consist of A-frame double sign boards or of some sort of sculptural elements with attached sign boards. A typical Special Ground Sign incorporating a sculptural element is a sculpture of a chef holding a chalkboard onto which is written a restaurant's special menu items. The Special Ground Sign is meant to be used adjacent to or on the Sidewalk. Lettering should be small since people are intended to walk right up to the sign to read it. The Special Ground Sign is limited to 5 feet in height and should be portable if placed on a Sidewalk. One Special Ground Sign is permitted per establishment. See TCP~96.



13. Awning Body Signs are permitted in t4, t5, and t6. They shall consist of painted or vinyl lettering and/or graphics painted or adhered directly onto awnings. The awning should be installed with its bottom edge no more than 10 feet above the Sidewalk. Awning Body Signs that occupy the end of the awning may fill the entire end of the awning. Awning Body Signs that occupy the flat shed side of an awning may occupy up to one-third of the flat shed side of the awning except as follows: The cumulative square footage of all Awning Body Signs on one Frontage of an establishment shall be limited to the width of the Frontage in feet multiplied by 2. No single Awning Body Sign shall be larger than 9 square feet. See TCP~97.
14. Awning Fringe Signs are permitted in Transect Zones t4, t5, and t6. They shall consist of painted or vinyl lettering and/or graphics painted or adhered directly onto the bottom fringes of awnings. The Awning Fringe Sign may fill the entire height and width of the fringe up to a maximum fringe height of 9 inches. See TCP~97.
15. One Address Number no more than 6 inches in height shall be attached to a building in proximity to the principal entrance or at a mailbox.

**Midtown Attachment Materials**

1. Wood sign boards are preferred, but metal signs may be accepted by the Town Architect based on merit at the Town Architect's sole discretion.
2. Traditional retractable awnings are strongly encouraged.

**Midtown Attachment Configurations**

1. Chimneys must be capped. Clay tile chimney pots may be used when flues are masonry. Metal flue caps shall be concealed with arched masonry hoods or inverted-V slate hoods over each flue cap.
2. In-ground swimming pools are permitted within private lots and/or courts provided they are not readily visible from a public way. Fountains and water basins are permitted without limitation by Transect Zone, but the design and location within the property are subject to review by the Town Architect.
3. Chimneys shall step back to a 32 inches maximum square flue within 48 inches above or below the eave.
4. Chimneys, wall buttresses (16 inches minimum thickness), planters, fountains, basins, benches, and related civic amenities are allowed to encroach in required setback areas along pedestrian frontages. Decorative elements related to such features are subject to approval of Town Architect.
5. Flagpoles less than 6 feet long may be mounted at an angle to porch columns or posts and building walls. Freestanding flagpoles are permitted on public property only.

**Prohibited**

1. High pressure sodium, or metal halide exterior light sources on residential properties
2. Eave or wall-mounted floodlights
3. Window air conditioning units
4. Above-ground pools (except those of the inflatable variety)

**Prohibited at Frontages**

1. Clothes drying apparatus

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2. Air conditioner equipment
3. Utility or gas meters
4. Solar panels
5. Antennas
6. Satellite dishes
7. Garbage containers
8. Bird baths or statuary (except that of museum quality which may be located in front and side yards)
9. Synthetic fauna and flora
10. Permanent grills
11. In-ground swimming pools
12. Firewood (except on porches)
13. Rock gardens and vegetable gardens

#### **General Sitework Materials**

Fences should be built entirely of wood, or of metal in a cast-iron style, possibly with masonry or stucco piers and base. Colors should match local precedent or standard. See TCP~101.

Sidewalk materials should be appropriate to the building's location in the urban/rural transect. See TCP~103.

#### **General Sitework Configurations**

1. All fences must be approved by the Town Architect.
2. Fences and walls must be composed of individual panels no taller than 40 inches, although 36 inches is preferable. Hedges may violate height limits in every zone because of being made of living material. See TCP~104 through TCP~108.
3. Yard equipment such as HVAC equipment, utility meters, clotheslines, satellite dishes, play equipment, hot tubs and the like should not be visible from public rights-of-way. See TCP~108.
4. Trash containers should be located within permanent enclosures when not within an alley or lane. See TCP~108.

#### **Frontage Fences**

1. Frontage fences should be of a different design from those on the two adjacent lots on the same side of the street and the three closest lots on the opposite side of the street. See TCP~104.
2. t1 and t2 frontage fences shall be built of rustic materials that may be 48 inches to 60 inches tall because they often have to restrain animals. Each board is seen as a single panel, so horizontal rail fences do not violate the 40 inches panel height limitation. See TCP~104.

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3. t3 frontage fences shall be no more than 36 inches tall, and may retain the character of more rural board or hedgerow fences, or they may be constructed of pickets. See TCP~104. Dog boards are preferred; they keep small dogs from crawling under the fence and act as a visual base. It is installed tight down to the ground. Fence pickets should overlap the dog board and be tacked to it occasionally to strengthen the picket panel. See TCP~104.
4. t4 frontage fences shall be no more than 48 inches tall if composed of 3 panels or more, nor more than 40 inches tall if built of 1- or 2-panel (picket and dog board) designs. They may step back up to 18 inches from the sidewalk, leaving a band of earth for annual flowers or ground cover. They may step farther back from the sidewalk at gates, either on an angle or at a right angle, leaving a paved area for potted plants or other welcoming objects.
5. t5 and t6 frontage fences shall be built tight to the sidewalk and may be masonry and/or metal. They may be as tall as 80 inches if the top panel is made of thin iron pickets that allow uninterrupted view or 60 inches tall if entirely solid. The 40 inches maximum panel height shall be measured at the shortest picket where picket tops arch up or down in a panel. See TCP~104.

#### **Neighbors' Fences**

1. Neighbors' fences may be up to 18 inches taller than frontage fences, but must taper down to the height of the frontage fence where they meet. See TCP~105.
2. Neighbors' fences may be built with a slightly less elaborate design than the frontage fence. See TCP~105.

#### **Private Yard Fences**

1. Private Yard Fences may be up to 72 inches tall. See TCP~106.
2. Private Yard Fences may not be constructed in front of the front wall of the building when screening the front of the private yard or in front of the side face of the building when screening the side of the private yard from a side street. See TCP~106.
3. No continuous 1x, Slot Fencing shall be allowed (conventional private fencing), all fencing shall be partitioned.

#### **Garden Walls**

1. Garden Walls may be up to 96 inches tall in t3 and t4 and up to 120 inches tall in t5 and t6. See TCP~107.
2. Garden Walls may not be constructed in front of the front wall of the building. See TCP~107.
3. Exterior surfaces of Garden Walls may not be entirely flat, but must be articulated in a manner appropriate to the style of the building. See TCP~107.
4. Garden Walls should be constructed of brick, stone, or a stucco finish on a masonry structure. See TCP~107.
5. Gates in garden walls shall be made of wood in paneled, board-and-batten, or picket construction, or may be made of metal picket construction. Decorative cut-outs and picket patterns are subject to approval of Town Architect.

#### **Lane or Alley Fence**

1. Lane or Alley Fences must be solid below a height of 54 inches and must incorporate a 1x8 minimum dog board. See TCP~108.
2. If extended above 54 inches, Lane or Alley Fences must be built of open, lattice- or trellis-type design. See TCP~108.

### **Midtown Sitework Materials**

1. Fences may be wood (lowland cypress, redwood, cedar, or Common grade pressure-treated pine) or metal (wrought iron, cast iron or cast aluminum) in t2 through t4, but may only be metal (wrought iron, cast iron or cast aluminum) in t5 and t6. Masonry fence bases may be made of any materials permitted for landscape walls.
2. Paving materials used outside a frontage fence or wall on private property shall match public sidewalk material. Sidewalks and terraces inside frontage fence or wall shall be concrete pavers, cobblestone over sand bed, or pea gravel, and shall be installed in a pervious fashion to allow rainwater infiltration. Paving may also be poured concrete, although pervious paving is preferred.
3. Concrete pavers shall be one color only. Edge restraints shall be concrete curbs or steel banding flush with paving. All paving materials and configurations are subject to approval of Town Architect.
4. Exterior stairs shall be made of brick or concrete/masonry. Flooring at steps and landings shall be made of exposed concrete, stone pavers, or brick pavers. Tile and brick selection is subject to approval of Town Architect. t5 stairs may also be built of metal.

### **Midtown Sitework Configurations**

1. Garden walls shall be 8 inches minimum in thickness and piers shall be 12 inches minimum in thickness.
2. Garden walls and piers may be capped with a coping made of stucco, concrete, or stone. Wall tops without a coping may be flat, beveled, or rounded in section. Piers may be capped with finials subject to approval to Town Architect.
3. Garden wall bases may be articulated with projected stucco or stone facing. Stone facing shall be 3-½ inches minimum in thickness or shall be flush with stucco above.
4. Driveways at street frontages shall be no wider than 10 feet at the property line.
5. Radiused corners at driveway entries shall not exceed 5 feet, although it is preferable to fill in the radius with paving in front of the frontage wall.
6. Terminal fence posts (corners, property line corners, openings, ends, etc.) shall be taller and wider than other fence posts.
7. All private properties at Midtown should give a gift to the street that either refreshes, shelters, delights, directs, entertains, informs, or reminds people, or gives them a place to rest.

Walks shall be built flush with the ground.

### **Prohibited**

1. Pre-cast or foam applied moldings and trim at garden walls
2. Applied moldings at gates
3. Wood decking at walks

4. Stamped, painted, or stained pavers (mineral stains are permitted where pavers are not visible from a public way).

## Appendix A

### Colors

All building colors visible from a public way shall be subject to approval of Town Architect. Color chips of all selections subject to approval shall be submitted and keyed to relevant building elevations at Construction Document Review. A pre-approved color palette shall be made available at the Town Architect. Color selections not on the pre-approved palette may be submitted for review. General guidelines for building colors are as follows:

1. Building and garden walls shall be in the approved wall color range, in flat finish.
2. Roof tiles (Civic Buildings only) shall be in the approved roof tile color range.
3. Building trim, including door and window frames, brick molds, and sills, shutters, eave fascias, wood columns and beams, incidental wood siding, gates, railings, and fences shall be painted a single accent color, in semi-gloss finish.
4. Entry doors or gates may be painted a secondary accent color in a gloss finish, subject to approval of Town Architect.
5. Concrete pavers shall be one color only in off-white, grey, or beige range. Mineral stains are permitted where pavers are not visible from a public way.

## Appendix B

### Porch Principles

People sit on porches only if they feel comfortable. People walking by on the sidewalk will stop and talk to them only if the people on the porches seem accessible enough. The Appendix, especially the three charts, indicate the ranges of space within which these seeming conflicts can be resolved. Only by getting this right can a t4 or t3 zone be a neighborhood rather than a warehouse for unacquainted residents. Porch height should be as established by the diagrams in the next column.

### ARTICLE IX EASEMENTS

“The trouble with the rat race is that, even if you win, you’re still a rat” Lily Tomlin

1. Encroachment Easement. Should any portion of any Dwelling, including the roof, as constructed on any Parcel by the Founder or any Builder overhang or encroach on an adjacent Parcel or on any Commons and such encroachment is the result of unintentional placement, settling or shifting of any Improvements, then the Owner of the overhanging or encroaching Dwelling shall have an easement on such adjacent parcel or Commons, as the case may be to permit the overhanging or encroaching portion of such construction to remain in the same state and location as when said Dwelling was first occupied for residential use. Such easement shall be appurtenant

to and shall pass with title to the Parcel on which said improvements were constructed.

2. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plats. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Parcel and all improvements for which a public authority or utility company is responsible. Every utility easement on each Parcel shall constitute an easement for utility purposes to serve any other Parcel or Commons. If any utilities and connections therefore serving a Parcel are located in part on a Parcel other than the Parcel being served by such utilities and connections, the utility company, the Owner of the Parcel being served, and contractors and employees of such company or Owner shall have the right and easement to enter upon the Parcel in which the utility line or connection is located for the repair, maintenance and replacement of such line and/or connection.
3. Construction Easement. Until the Turnover Date, the commons and that portion of each Parcel not occupied by a Dwelling shall be subject to an easement allowing the Founder and/or its employees, agents, contractors, and subcontractors to enter upon, over, across, and through the Commons and Parcel for the purpose of construction on adjoining Parcels, Commons and streets, including, without limitation, installing improvements therein and adjusting grades and slopes to facilitate storm water drainage.
4. Easement for Side Yard Wall and Common Fence Encroachments. The founder does hereby establish and declare a permanent and perpetual reciprocal appurtenant easement for encroachments of up to 12 inches (measured from the common property line of all Parcels) for any Side Yard Wall or Common Fence constructed on any Parcel. The foregoing encroachment easement is created in order to allow encroachments by any Side Yard Wall or Common Fence constructed on any Parcel onto the adjoining Parcel (subject to a maximum encroachment of 12 inches).
5. Easements for Encroachments Within and Between Commercial Structures. With respect to all Parcels located containing any Commercial Structures, the Founder does hereby declare and establish a permanent and perpetual reciprocal appurtenant easement for encroachments of up to 12 inches (measured from the common property line of Parcels containing such Commercial Structures) by which the Building on one Parcel may encroach onto the adjacent Parcel to the extent such encroachments results from the unintentional placement, settling, or shifting of a Building on a parcel containing such Commercial Structure.
6. Reservation of Easements or Founder and Others to Facilitate Access, Development and Maintenance. The Construction of the Community is intended to follow design principles that allow interconnectivity of streets with neighboring communities. The Fonder hereby establishes and reserves for itself, its Affiliates, the Association , the City, each public utility company and their respective agents, employees, representative, invitees, successors, and assigns, the following easements which may be assigned for the benefit of other properties within the Regulating Plan Area and all

other properties owned by the Founder, any Affiliate of the Founder, or their assigns that are adjacent to or reasonably near the Community (including property separated from the Community by public road) whether or not such properties are developed as part of the Community:

- a. Common Ways. A permanent and perpetual non-exclusive easement over, across, though, under, and upon all Common Ways for the use of the same vehicular pedestrian purposes, along with a permanent and perpetual non-exclusive easement for appropriate use of any pedestrian or bicycle paths thereon.
- b. Utility Easements A permanent and perpetual non-exclusive easement over, across, though, under all of the Community (including all Parcels and Commons therein) for ingress, egress, and the installation, replacement, repair, and maintenance of any and all public and private utility and service systems to serve property within and outside of the Community, provided, however, no employee, agent or contractor of such utility company or City shall be permitted to encroach upon any Building or other established Improvement on a Parcel and any disturbance of the Lot caused by such utility company shall be promptly repaired and the Lot restored to its preexisting condition. These systems include, but are not limited to, water, sanitary sewer, irrigation systems, drainage, telephone, electricity, gas, television, security, cable or communication lines, pipes, wiring, conduit, machinery equipment, and any other apparatus. By virtue of this easement the Founder, any Affiliate of the Founder and their respective successors or assigns, may install and maintain facilities and equipment, excavate for such purposes, and affix and maintain wires, circuits, and conduits on any Parcel and any of the Commons: However, the exercise of this easement must not unreasonably disturb and Owner's right of quiet enjoyment of any Building on such Owner's Parcel.
- c. General Access. A permanent and perpetual non-exclusive easement over, across, though, under all of the Community for the purpose of a) providing ingress to and from such real property in connection with performing (i) any inspections of the same to determine compliance with the terms and provisions of this Declaration and (ii) any of the duties of the Founder, the Association, the Architectural Review Board, or any of their respective agents, employees, representatives, invitees, successors and assigns, hereunder and under the Design Code; b) mowing, removing, clearing, cutting, or pruning underbrush, weeds, stones, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance within the Community; c) exercising any of the rights and remedies granted or created by this Declaration, including, without limitation, the right and remedies of the Association set forth created or reserved in this Declaration; provided, however, that the foregoing easement shall not impose any duty or obligation on the Founder, the Association or the Architectural Design Review Board to perform any of the foregoing actions.
- d. Waterfront Parcels. A Permanent and perpetual non-exclusive easement thirty (30) feet in width upon that part of any Parcel lying directly adjacent to any take or water features within the Community (but excluding from such easement any part containing a Commercial or Residential Structure) for the purposes of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stones, or other unsightly growth and removing trash therefore so as to maintain reasonable standards of health, fire, safety, and appearance, within the Community; provided however that the reservation of the foregoing easement shall not impose any duty or obligation upon the Founder or the Association to perform or undertake any of the forgoing actions.

- e. Sidewalks and Signage. A permanent and perpetual non-exclusive easement over, across, though, and upon a strip of land ten (10) feet in width on each Parcel lying parallel to and running along the exterior boundary of each parcel and any Common Ways that are directly adjacent to and abut such Parcel for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signage, and related Improvements; provided, however that neither the Founder nor the Association shall have any obligation to construct any of the foregoing Improvements.
- f. Encroachments. A permanent and perpetual non-exclusive easement over, across, though, and upon all Parcels for minor encroachments which may result from any Improvements which have been constructed on the Commons.

7. Easements between Parcels

- a. Generally. The design for the Community is intended to maximize land usage and senses of community by providing parks and open space while offering small, private yards for individual use. As provided by the Design Code, certain Buildings within may be attached or may be placed on or near the property line of a Parcel. The easements in this Section are intended to provide guidelines for reasonable cooperation between neighbors. The Board may make rules for maintenance and use of easement areas and share Improvements that shall be applied uniformly to all Parcels similarly configured within such District. No easements for light, air or view shall be deemed to be created or exist in favor of any Owner or such Owner's Parcel.
- b. Subdivision. Parcels may not be subdivided or separated into smaller lots nor may any portion of a Lot be separately conveyed, except by the Founder or with the specific consent of the Architectural Review Board. However, this shall not prohibit corrective deeds or similar corrective instruments. The Founder may redefine Parcels at any time by dividing or combining Parcels or portions of Parcels and adjusting the boundary of any Parcel. The Founder shall also have the right to modify subdivision plats to make adjustments to Parcel boundary lines with the consent only of those Owners whose Parcel boundaries are to be changed.
- c. Structural Party Walls. The Owner of each Parcel upon which the exterior wall of a Building has been constructed on the property line of such Parcel does hereby grant to the Owner of the adjacent Parcel the permanent and perpetual right and easement to maintain the utilize the exterior wall of any such Building which forms a party wall between the two Parcels for both vertical and lateral support and the construction and attachment thereto of another Building. 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 Lot and is situated on the property line of a Parcel. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner of each building that abuts such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Parcel or the party wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.
- d. Exterior Walls and Fences. An exterior wall which supports a Building on any one Parcel or which encloses a courtyard on one Parcel which has been constructed along the property line of such Parcel and any fence constructed along he property line of any Parcel (collectively, an "Abutting Wall or Fence") shall

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not be considered a party wall or subject to the provisions of Article IX. Section 7.c. above unless and until the Owner of the adjacent Parcel elects to construct and attach another Building thereto. To the extent the party wall easement created and granted pursuant to Section 7.c. above is not exercised by the Owner of the adjacent Parcel, then the provisions of this Section 7.d. shall be applicable to the use of the Abutting Wall or Fence. The Owner who constructs an Abutting Wall or Fence along the property line of such Owner's Parcel does hereby grant to the Owner of the adjacent Parcel the permanent and perpetual right and easement to erect and maintain on and along the Abutting Wall or Fence trellises, landscaping, and other landscaping-related improvements as well as attaching to such Abutting Wall or Fence additional walls or fencing subject to the following terms and conditions:

(i) If any such trellises, landscaping, or other landscaping-related improvements or any additional walls or fencing are attached to such Abutting Wall or Fence, then the Owner of the adjacent Parcel installing the same shall 1) be responsible for any damage to the Abutting Wall or Fence caused by or resulting from such landscaping or other landscaping-related improvements or any additional walls or fencing attached to such Abutting Wall or Fence;

(ii) be solely responsible for routine, non-structural maintenance and repair (including painting) of that portion of the Abutting Wall or Fence which fronts any portion of such Owner's Parcel; and 3) any such landscaping-related improvements or additional fencing or walls installed on or adjacent to the Abutting Wall or Fence shall not block the view from any windows of the Building which constitutes part of the Abutting Wall or Fence or be allowed to grow along or onto any windows or roofing on any such Building which Constitutes part of such abutting wall or Fence; and

(ii) Notwithstanding anything provided to the contrary in this Section 7.d., in the event the Owner of the Building or fence which constitutes an Abutting Wall or Fence elects to make any structural alterations or repairs to the Building or fence which constitutes and Abutting Wall or Fence, such Owner shall be entitled to make such alterations and repairs, and to otherwise enter upon the adjoining Parcel to undertake the same including, if reasonably necessary or required for such structural repairs, removing any and all landscaping or other landscaping-related improvements and any additional fences or walls which the adjoining Owner may have constructed or installed on or attached to the Abutting Wall or Fence.

e. Yard Easements. To allow most efficient use of a Parcel while complying with any applicable setback requirements, a portion of a Parcel along a Parcel line may be subject to and easement for use by the adjoining Parcel Owner. Such easements may be designated on the recorded subdivision plat, in the Design Code or on the deed from the Founder to the first Owner of such Lot other than the Founder, Such use easements may be up to five feet (5') wide and shall run along a boundary line, but shall not encroach upon more than one boundary line (other than corner Parcels which may be subject to two (2) use easements along both a side Parcel line and either the front or rear Parcel line of such corner Parcel.) Subject to regulation under the Design Code, the beneficiary of such and easements shall have the use and maintenance responsibility for the easement area and may place air-conditioning

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equipment, fences, decks or patios and other fixtures (but not a primary structure or building) upon the easement area.

ARTICLE X  
INSURANCE: DAMAGE OR DESTRUCTION

“One dark night, when people were in bed, Mrs. O’Leary lit a lantern in her shed. The cow kicked it over, winked its eye, and said, “There’ll be a hot time in the old town tonight!” Popular song lyrics

Each Dwelling and Commercial Structure and other Improvements located in the Community shall be insured against loss or damage by fire and other hazards as are covered under standard fire and casualty coverage insurance policies. The Board of Directors shall from time to time establish rules and regulations governing the obtaining and maintenance of such insurance either by the Owners or by the Association, as the Association shall determine in its sole discretions, and each Owner shall comply with such rules and regulations. In all events, the obtaining and maintenance of such insurance shall be governed by the following:

1. Each Dwelling and Commercial Structure and other Improvements located in the Community shall at all times be insured in an amount equal to the full replacement cost thereof.
2. Regardless of how such insurance is purchased or by whom, the Association shall at all times be named as an additional insured and a copy of each policy or Certificate of Insurance, including any renewal or additional policy, shall be delivered to the Association.
3. Each policy shall provide that the insurer waives any right of subrogation against the Association and the Directors thereunder, their respective employees, agents, or contractors, and any other party.
4. Each policy shall provide that the same shall not be canceled, terminated, or amended without thirty (30) days prior written notice to the Board of Directors hereunder.

In case of fire or other casualty covered by such insurance, the insurance proceeds shall be applied to reconstruction or repair of the improvements. The affected Dwelling or Commercial Structure and Improvements shall be restored to substantially the same condition in which the same existed prior to the fire or other casualty, with the same vertical and horizontal dimensions as before. The Owner thereof shall deposit a bond or cash security with the Association in such amount as it shall specify to ensure prompt completion of the restoration and repair and the completion of the same in the manner required under this Declaration. The Board shall promulgate such Rules and Regulations as it shall desire with respect to such bond or security.

If and Owner fails to obtain and maintain insurance in compliance with the provisions, the Association shall have the right, following written demand upon such Owner to provide insurance in compliance herewith and failure of such Owner to obtain such insurance within ten (10) days of such written demand, to obtain and maintain such insurance for the Dwelling, Commercial Structure, or Improvements of such Owner. Notice shall be in writing and either personally delivered or sent by Certified Mail, postage pre paid, to the last known address of the Owner: notice shall be deemed given upon such personal delivery or upon such deposit in the United States mail.

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If the Association hereunder shall determine that such insurance shall be obtained and maintained by it in the case of a specific Dwelling, Commercial Structure, or other Improvements as hereinabove authorized or if the Association shall determine that such insurance shall be obtained and maintained by it for each Dwelling and Commercial Structure and other Improvements in the Individual Parcel Assessment as provided hereinabove and as part of such Assessment the same shall constitute and obligation of the Owner and shall be a lien on the Parcel to which assessed and the same shall become due and payable in all respects as provided in Article VII hereof, provided that the limitations in the amount of the annual assessment as set out in said Article VII shall not apply to the assessments for insurance premiums as authorized in this Article. The Association, when establishing the assessment for such insurance premiums may utilize the estimated premium charges for such insurance but shall, thereafter, make such adjustments as are necessary to reflect the actual premium charge.

#### ARTICLE XI GENERAL PROVISIONS

“For the support of this declaration we mutually pledge to each other our lives, our fortunes, and our sacred honor,” Thomas Jefferson (1743-1826), U.S. President. “Jefferson’s ‘original Rough draught’ of the Declaration of Independence” (1776). The Papers of Thomas Jefferson. Vol. 1, Pl 427 ed. Julian Pl Boyd, et al (1950).

1. Enforcement. The Association, the Directors, any Owner, the Founder, or any Builder shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, easements, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Founder, any Builder, the Directors, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.
3. Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Community, for a term of fifty (50) years from the date this Declaration is recorded, after which the said covenants and restrictions shall be automatically extended for successive periods of twenty (20) years each unless an instrument signed by the then Owners having seventy-five Percent(75%) of the votes in the Association has been recorded agreeing to terminate this Declarations as of the end of any such period. No such agreement of termination shall be effective unless made and recorded six (6) months in advance of the effective date of such termination.
4. Amendment. Prior to the Turnover Date, this Declaration may be amended by a vote of two-thirds of the Directors with the concurrence of the Founder. Thereafter, this Declaration may be amended by (i) a vote of two-thirds of the Directors or (ii) a vote of a majority of the Owners, provided , any amendment that affects the Commercial Districts shall be approved by Owners having a majority of the votes within such Commercial Districts. Any such amendment before or after the Turnover Date may provide more or less restrictive terms and create less or greater burdens on any Owner, Lot, or Parcel, so long as the required vote as set forth herein is obtained and, if applicable, has the concurrence of the Founder,. Any such amendment shall be valid upon recordation in the Office of the Recorder of Deeds for the County of Saline County, Arkansas. Notwithstanding the foregoing, so long as the Founder or any Affiliate of the Founder



**EXHIBIT "A"**  
**MIDTOWN BRYANT**

PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE/4 NE/4), PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NE/4 SE/4), PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE/4 SE/4) AND PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (SW/4 SE/4), ALL IN SECTION 9; PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW/4 SW/4) OF SECTION 15; AND PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER (NE/4 NE/4), PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE/4 NE/4), AND PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NE/4 SE/4), ALL IN SECTION 16; WITH ALL THE ABOVE BEING IN TOWNSHIP 1 SOUTH, RANGE 14 WEST, IN SALINE COUNTY, ARKANSAS, AND ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SAID NE/4 NE/4 OF SECTION 16, A FOUND 2 1/2" ALUMINUM CAP IN THE PAVEMENT OF HILLTOP ROAD; THENCE, ALONG THE NORTH LINE OF THE NE/4 NE/4, N88°58'44"W 394.97 FEET TO THE POINT OF BEGINNING; THENCE LEAVING THE NORTH LINE, ALONG A LINE PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 16, S02°34'40"W 2247.92 FEET TO THE NORTH LINE OF THE PAUL BULLOCK TRACT AS DESCRIBED IN SALINE COUNTY DEED BOOK 387, PAGE 003; THENCE LEAVING THE PARALLEL LINE AND FOLLOWING THE PERIMETER OF THE PAUL BULLOCK TRACT FOR THE FOLLOWING COURSES: N88°53'52"W 149.75 FEET TO A SET 5/8" REBAR AND CAP; THENCE S02°36'17"W 400.00 FEET TO A SET 5/8" REBAR AND CAP ON THE NORTH LINE OF THE NE/4 SE/4 OF SECTION 16; THENCE, ALONG THE NORTH LINE OF THE NE/4 SE/4, S88°53'32"E 544.90 FEET TO A FOUND 2 1/2" ALUMINUM CAP AT THE NORTHWEST CORNER OF THE SAID NW/4 SW/4 OF SECTION 15; THENCE LEAVING THE SOUTH LINE OF THE PAUL BULLOCK TRACT S64°15'57"E 256.15 FEET TO A SET 5/8" REBAR AND CAP; THENCE S30°59'30"E 151.78 FEET TO A SET 5/8" REBAR AND CAP; THENCE S85°09'25"E 206.33 FEET TO A SET 5/8" REBAR AND CAP; THENCE ALONG A NON-TANGENT CURVE TO THE SOUTH, CONCAVE TO THE EAST, WITH A RADIUS 1890.00 FEET AND A LENGTH OF 497.49 FEET, FOR A CHORD OF S14°18'20"E 496.06 FEET TO A SET 5/8" REBAR AND CAP ON THE NORTH LINE OF THE STONEYBROOK SUBDIVISION, PHASE 3, AS DEPICTED ON A PLAT FILED AS SALINE COUNTY DOCUMENT 05-28843; THENCE LEAVING THE CURVE, ALONG THE NORTH LINES OF STONEYBROOK PHASE 3 FOR THE FOLLOWING COURSES: S64°40'06"W 403.50 FEET TO A FOUND 5/8" REBAR AND CAP; THENCE S25°19'54"E 65.35 FEET TO A FOUND 5/8" REBAR AND CAP; THENCE N88°51'44"W 1154.87 FEET TO A FOUND 5/8" REBAR AND CAP ON THE EAST LINE OF COMMONWEALTH DRIVE; THENCE N58°03'43"W 69.85 FEET TO A FOUND 5/8" REBAR AND CAP ON THE WEST LINE OF COMMONWEALTH DRIVE; THENCE N88°51'38"W 153.18 FEET TO A FOUND 5/8" REBAR AND CAP AT THE NORTHEAST CORNER OF THE PELTON, ET AL TRACT AS DESCRIBED IN SALINE COUNTY BOOK 234, PAGE 462; THENCE, LEAVING THE NORTH LINE OF STONEYBROOK PHASE 3, N88°51'38"W 330.00 FEET TO A SET 5/8" REBAR AND CAP AT THE NORTHWEST CORNER OF THE PELTON TRACT AND ON THE WEST LINE OF THE NE/4 SE/4 OF SECTION 16; THENCE, ALONG THE WEST LINE OF THE NE/4 SE/4, N03°02'37"E 929.01 FEET TO A FOUND 1/2" REBAR AND CAP AT THE SOUTHWEST CORNER OF THE SE/4 NE/4 OF SECTION 16; THENCE N02°43'23"E 1336.64 FEET TO A FOUND FENCE CORNER POST AT THE SOUTHWEST CORNER OF THE NE/4 NE/4 OF SECTION 16; THENCE N02°24'32"E 1309.85 FEET TO A SET 5/8" REBAR AND CAP IN HILLTOP ROAD AT THE SOUTHEAST CORNER OF THE SW/4 SE/4 OF SECTION 9; THENCE N88°58'44"W 1348.12 FEET TO A FOUND 2 1/2" ALUMINUM CAP IN HILLTOP ROAD AT THE SOUTHWEST CORNER OF THE SW/4 SE/4 OF SECTION 9; THENCE, ALONG THE WEST LINE OF THE SW/4 SE/4, N02°26'23"E 822.04 FEET TO A SET 5/8" REBAR AND CAP IN MILLER ROAD; THENCE LEAVING THE WEST LINE N89°43'25"E 444.91 FEET TO A SET 5/8"

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REBAR AND CAP WHICH LIES 4.67' SOUTH FROM AN EXISTING FENCE POST; THENCE N02°03'54"E 465.39 FEET TO A SET 5/8" REBAR AND CAP ON THE NORTH LINE OF THE SW/4 SE/4; THENCE, ALONG THE NORTH LINE OF THE SW/4 SE/4, N89°43'25"E 126.07 FEET TO A FOUND 1/2" REBAR AND CAP AT THE NORTHWEST CORNER OF THE CITY OF BRYANT TRACT AS DESCRIBED IN SALINE COUNTY DOCUMENT 1997-10432; THENCE LEAVING THE NORTH LINE, ALONG THE PERIMETER OF THE CITY OF BRYANT TRACT FOR THE FOLLOWING COURSES: S01°17'55"E 99.70 FEET TO A FOUND 1/2" REBAR AND CAP; THENCE S89°42'44"E 100.02 FEET TO A FOUND 1/2" REBAR AND CAP; THENCE N01°08'50"W 100.68 FEET TO A FOUND 1/2" REBAR AND CAP ON THE NORTH LINE OF THE SW/4 SE/4; THENCE LEAVING THE CITY OF BRYANT TRACT, ALONG THE NORTH LINE OF THE SW/4 SE/4, N89°43'25"E 635.47 FEET TO A FOUND 1/2" PIPE AT THE SOUTHWEST CORNER OF THE NE/4 SE/4 OF SECTION 9; THENCE, ALONG THE WEST LINE OF THE NE/4 SE/4, N02°30'44"E 1212.64 FEET TO A FOUND 1/2" REBAR AND CAP ON THE SOUTHERLY LINE OF AN EXISTING FIRST ELECTRIC RIGHT OF WAY; THENCE LEAVING THE WEST LINE, ALONG THE SOUTHERLY LINE OF THE RIGHT OF WAY, N78°30'41"E 1072.25 FEET TO A SET 5/8" REBAR AND CAP; THENCE LEAVING THE SOUTHERLY LINE OF THE FIRST ELECTRIC RIGHT OF WAY S02°02'43"W 306.59 FEET TO A SET 5/8" REBAR AND CAP; THENCE S89°04'17"E 331.73 FEET, PASSING AT 291.77 FEET A SET 5/8" REBAR AND CAP ON THE WEST LINE OF LOMBARD ROAD, TO THE EAST LINE OF THE NE/4 SE/4 OF SECTION 9 IN LOMBARD ROAD; THENCE, ALONG THE EAST LINE OF THE NE/4 SE/4 OF SECTION 9, S02°02'43"W 1126.22 FEET TO A FOUND 1/2" REBAR AND CAP IN LOMBARD ROAD AT THE NORTHEAST CORNER OF THE SE/4 SE/4 OF SECTION 9; THENCE, ALONG THE NORTH LINE OF THE SE/4 SE/4, N89°29'36"W 346.13 FEET TO A SET 5/8" REBAR AND CAP AT THE NORTHWEST CORNER OF THE EAST QUARTER OF THE SE/4 SE/4; THENCE LEAVING THE NORTH LINE, ALONG THE WEST LINE OF THE EAST QUARTER OF THE SE/4 SE/4, S01°40'36"W 667.10 FEET TO A FOUND 1/2" REBAR AND CAP AT THE NORTHEAST CORNER OF THE HOLT TRUST TRACT AS DESCRIBED IN SALINE COUNTY DOCUMENT 06-005696; THENCE N88°37'00"W 167.18 FEET TO A FOUND 1/2" REBAR AND CAP AT THE NORTHWEST CORNER OF THE HOLT TRUST TRACT; THENCE N87°08'56"W 167.49 FEET TO A FOUND 1/2" REBAR AT THE NORTHEAST CORNER OF THE WOLF TRACT AS DESCRIBED IN SALINE COUNTY DOCUMENT 04-011378; THENCE N89°53'39"W 329.90 FEET TO A FOUND 5/8" REBAR AT THE NORTHWEST CORNER OF THE WOLF TRACT; THENCE S02°20'32"W 660.26 FEET TO A SET 5/8" REBAR AND CAP IN HILLTOP ROAD AT THE SOUTHWEST CORNER OF THE WOLF TRACT ON THE SOUTH LINE OF THE SE/4 SE/4 OF SECTION 9; THENCE, ALONG THE SOUTH LINE OF THE SE/4 SE/4, S88°58'44"E 615.01 FEET TO THE POINT OF BEGINNING, ENCLOSING 192.032 ACRES, AND SUBJECT TO THE EXISTING RIGHTS OF WAY OF LOMBARD, HILLTOP AND MILLER ROADS, AND ALSO SUBJECT TO EXISTING EASEMENTS AND RIGHTS OF WAY OF RECORD.



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In Doc Book 08 Page 85630

at 8:49 OCT 02 2008 o'clock A M  
BY Doug Kidd DOUG KIDD, CIRCUIT CLERK DC