



**DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOR**

**NEW BIRMINGHAM, A PLANNED COMMUNITY**

**THIS DECLARATION**, made this 15<sup>th</sup> day of May, 1997 by South Side Local Development Company (hereinafter referred to as the “Grantor”);

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of all the parcels of real property in the City of Pittsburgh, Pennsylvania, County of Allegheny, Commonwealth of Pennsylvania described as Development Area I and Development Area II in Exhibit “A” attached; and

**WHEREAS**, Grantor intends to acquire all of the real property in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania described in Exhibit “A” as Development Area III; and

**WHEREAS**, the Grantor desires to create in that real property a planned community of high environmental quality in accordance with the New Birmingham Standards (as hereinafter defined) to be known as New Birmingham, A Planned Community (“New Birmingham”); and

**WHEREAS**, the Grantor intends to develop New Birmingham in three parts, the first of which is depicted on Exhibit “A” as Development Area I and is owned by Grantor as of the date hereof; the second of which is depicted on Exhibit “A” as Development Area II and is owned by Grantor as of the date hereof; and the third of which is depicted on Exhibit “A” as Development Area III and is to be acquired by Grantor subsequent to the date hereof pursuant to that certain “Contract for Disposition” between Grantor and the Urban Redevelopment Authority of the City of Pittsburgh (“URA”) dated July 17, 1996.

**WHEREAS**, the Grantor desires to provide for the preservation and enhancement of the property values and amenities in said community and for the maintenance of New Birmingham and the improvements included therein, and to this end, intends to subject the real property owned by it to the covenants, restrictions, conditions and restrictions hereinafter set forth, each and all of which are for the benefit of said real property and the owners thereof, and;

**WHEREAS**, the Grantor has deemed it desirable for the efficient preservation of the values and amenities of New Birmingham to create a corporation to which will be delegated and assigned the powers of owning, maintaining and administering the “Common Elements” and

“Limited Common Elements” (as hereinafter defined) and enforcing the covenants and restrictions herein set forth and collecting and disbursing the assessments and charges hereinafter created, and

**WHEREAS**, Birmingham Homes Association (hereinafter sometimes referred to as the “Association”) is a nonprofit corporation incorporated under the laws of the Commonwealth of Pennsylvania for the purpose of exercising the functions described in the foregoing paragraph;

**NOW THEREFORE**, the Grantor declares that Development Areas I and II as herein defined shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions and reservations (sometimes hereinafter referred to as the “ovenants and estrictions”) hereinafter set forth and Grantor reserves the right to subject Development Area III as herein defined to the covenants and restrictions:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1** “Act” shall mean Pennsylvania Uniform Planned Community Act (Act No. 1996-180)

**Section 1.2** “Association” or shall mean and refer to Birmingham Homes Association, a Pennsylvania nonprofit corporation, its successors and assigns. “Board of Directors” shall mean the then duly constituted Board of Directors of the Association.

**Section 1.3** “Birmingham Homes Association Standards” shall mean the Use, Construction, and Restoration Standards, for Development Areas I, II, II which are attached as Exhibit “E”.

**Section 1.4** “Board of Directors” shall mean the then duly constituted Board of Directors of the Association.

**Section 1.5** “By-Laws” shall mean and refer to the By-Laws of the Association.

**Section 1.6** “Common Elements” shall mean Common Facilities and Controlled Facilities.

**Section 1.7** “Common Facilities” shall mean any real estate within New Birmingham which is owned by the Association.

**Section 1.8** “Controlled Facilities” shall mean any real estate within New Birmingham, whether or not a part of a Unit, that is not a Common Facility, but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association.

**Section 1.9** “Declaration” shall mean this entire document and all of the provisions hereof, as the same may be amended from time to time.

**Section 1.10** “Development Area I” shall mean the land owned by Grantor and described in Exhibit “A” hereto, together with all right, title and interest of Grantor from each property line to the center of all abutting streets and alleys.

**Section 1.11** “Development Area II” shall mean the land owned by the Grantor and described in Exhibit “A” hereto, together with all right, title and interest of Grantor from each property line to the center of all abutting streets and alleys.

**Section 1.12** “Development Area III” shall mean the land acquired by the Grantor and described in Exhibit “A” hereto, together with all right, title and interest of Grantor from each property line to the center of all abutting streets and alleys.

**Section 1.13** “Development Areas” shall mean collectively Development Area I, Development Area II, and Development Area III.

**Section 1.14** “Grantor” shall mean South Side Local Development Company.

**Section 1.15** “Limited Common Elements” shall mean Limited Common Facilities and Limited Controlled Facilities.

**Section 1.16** “Limited Common Facility” shall mean a portion of the Common Facilities allocated by or pursuant to the Declaration for the exclusive use of one or more, but fewer than all of the Units.

**Section 1.17** “Limited Controlled Facility” shall mean a portion of the Controlled Facilities, other than Controlled Facilities which are themselves part of a Unit allocated by the Declaration for the exclusive use of one or more but fewer than all of the Units.

**Section 1.18** “Member” shall mean each owner of a Unit.

**Section 1.19** “Unit” shall mean a physical portion of New Birmingham designated for separate ownership or occupancy and a portion of which may be designated by the Declaration as part of the Controlled Facilities.

**Section 1.20** “Unit Owner” shall refer to the Grantor or each record owner of a Unit which has been subjected to the provisions of the Declaration, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.21** “Voting Member” shall mean each Member who is a Unit Owner who has made at least one payment of an assessment pursuant to Section 5.3 and is current in such payments. When more than one any Units and the acquisition of Development Area III will not alter the voting interest of the share of the assessments of Unit Owners.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.1 The Property.** Immediately after the recording hereof by the Grantor, the real property located in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania and herein defined as Development Area I and Development Area II is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. New Birmingham shall contain thirty-two (32) Units and Common Elements consisting of lots 1 through 32, lots 5.1, 6.1, 21.1, 22.1 have air rights parcels containing a portion of the abutting townhouse structure and lots 1A, 5A, 10A, 17A, 21A, 22A and 26A each containing one part of a divided duplex detached garage to server the associated Unit which are identified on Exhibit "A". Grantor has the obligation to purchase Development Area III from the URA and to improve Development Area III as landscaped open space and convey Development Area III to the Association. Declarant reserves the right to add Development Area III to New Birmingham. The obligation of Declarant to convey Development Area III to the Association shall be binding upon Declarant and its successors whether or not its successors succeed to any special Declarant right relative thereto, subject to Declarant's right not to add or to withdraw Development Area III contained herein. Grantor shall have the right for one (1) year after the recording of this Declaration to acquire, own, develop or manage Development Area III in its as landscaped open space for New Birmingham and neither the Association or any Unit Owner shall have any rights, title or interest in Development Area III unless it is subjected to this Declaration. Until Development Area III is subjected to the Declaration, Declarant shall be responsible for all real estate taxes and other expenses associated with ownership, improvement and maintenance of Development Area III. After the completion by Grantor of the improvements to Development Area III, Grantor will convey by fee simple special warranty deed Development Area III at no expense to the Association. Declarant reserves the right to withdraw Development Area II and/or Development Area I from New Birmingham and convey or dedicate either to both the City of Pittsburgh or other public agency if the City of Pittsburgh or other agency agrees to maintain Development Area I and/or Development Area III as open space for public enjoyment. Declarant reserves the right to not add Development Area III to New Birmingham if the ownership thereof is retained by the City of Pittsburgh or the URA. Development Area III will not contain any Units and the acquisition of Development Area III will not alter the voting interest of the share of the assessments of the Unit Owners.

## **ARTICLE III**

## **BIRMINGHAM HOMES ASSOCIATION**

**Section 3.1 Incorporation of Association.** Birmingham Homes Association has been incorporated under Pennsylvania General Nonprofit Corporation Law.

**Section 3.2 Board of Directors.** The Board of Directors shall manage and direct the business of the Association except as otherwise specifically provided by this Declaration or the By-Laws.

**Section 3.3 Election of Board of Directors.** The initial Board of Directors will be appointed by the Grantor. Other than directors serving on the first Board of Directors, there shall be elected no less than three (3) or more than seven (7) directors (“Directors”). Voting Members shall be entitled to elect the Directors. Except for the Directors appointed by the Grantor, all Directors must reside within the Development Area and be a Voting Member. Except as herein stated, the Board of Directors shall be elected in the manner and serve such terms as are provided in the By-Laws.

**Section 3.4 Votes of Voting Members.** The Grantor shall be entitled to one vote for each Unit it owns in Development Areas I, and II. Each Voting Member other than the Grantor shall be entitled to one vote for each Unit owned by such Voting Member.

### **Section 3.5 General Powers and Duties of the Association.**

a. The Association shall:

- (i) set the amount of the General Annual Assessments;
- (ii) collect and disburse assessments for the purposes herein provided; and
- (iii) prepare an annual operating budget and an annual financial report, available to Members.

b. As funds are available, the Association shall:

- (i) maintain and repair the Common Facilities by providing services including, but not limited to grass cutting, weeding, tree trimming, tree replacement, shrub trimming, shrub replacement, spray treatments for grass, shrubs and trees, signage, and private street lighting; and
- (ii) maintain, repair, and administer the parking spaces in the Limited Common Facilities; and
- (iii) maintain and administer the Common Facilities and the Limited Common Facilities and manage and administer the Controlled Facilities and Limited Controlled Facilities.

- c. At its discretion, the Association may;
- (i) determine priorities for the expenditure of available funds;
  - (ii) enforce these covenants and restrictions;
  - (iii) provide for security within the Common Elements;
  - (iv) provide general services such as but not limited to general cleanup, snow removal, bulk trash removal, lighting, and special landscaping or improvements in the Common Facilities and Limited Common Facilities, and public rights-of-way located within New Birmingham.
  - (v) undertake any other actions authorized by the Act and deemed necessary or appropriate to the promote the recreation, health, safety and welfare, and to enhance the environment, of the residents of New Birmingham;
  - (vi) purchase liability, property and other insurance for the Common Facilities and Limited Common Facilities;
  - (vii) employ or contract with third parties for the performance of any of the duties to be performed or services to be provided by the Association; and
  - (viii) provide landscape maintenance and other general services for the benefit of the individual Unit Owners at the cost of such individual Unit Owners.

## ARTICLE IV

### COMMON ELEMENTS

**Section 4.1 Obligations of the Association.** New Birmingham consists of Units and Common Elements which includes the Common Facilities, Controlled Facilities, Limited Common Facilities and Limited Controlled Facilities. The Association, subject to the rights and obligations of the Members set forth in this Declaration, as it may be amended and/or supplemented from time to time, or as set forth in any deed, shall have the right to and shall be responsible for the exclusive management and control of the Common Elements.

The Common Facilities include the Franklin Court parklet and the sidewalk abutting its northerly boundary located in Development Area I as well as Franklin Court and the sidewalk abutting its northerly boundary located in a part of Parcel A-2.1; as well as Franklin Way and the walkways that connect Franklin Way to South 16<sup>th</sup> and South 17<sup>th</sup> Streets, all of which are located within Parcel A-2.1. The Common Facilities may additionally include Development Area III consisting of the Merriman Court Street Island when it is added to New Birmingham by the Declarant. The Common Facilities will be maintained, repaired, replaced, managed, insured

and regulated by the Association at the expense of the Association in good, clean, attractive and sanitary condition, order and repair. Six surface parking spaces situated along the southernly side of Franklin Way will be owned and maintained by the Association but are dedicated to the exclusive use of the owners of the Units located on lots 2, 3, 4, 7, 8, and 9 and they are therefore deemed to be Limited Common Facilities. Maintenance, repair, replacement of parking areas that are Limited Common Facilities will be by the Association.

Certain portions of the Common Facilities contain structural supports for improvements that constitute parts of Units that are located within air rights parcels identified as lots 5.1, 6.1, 21.1, 22.1 and are Limited Common Facilities and an easement shall exist for the use of such Limited Common Facilities. With regard to structural supports that are Limited Common Facilities, cross easements shall exist with respect to such structural supports benefitting the Unit Owners thereof and such Unit Owners shall be responsible for the maintenance, repair, and replacement of the portions of such facilities that are attached to his or her Units. In the instances where any disrepair of or damage to such structural supports is attributable to the action or inaction of any one Unit Owner such Unit Owner shall be solely responsible for correcting the damage or disrepair and where such a facility is damaged in a consequential fashion from a condition contained exclusively within one Unit to which such a facility is attached that Unit Owner shall be responsible for correcting the damage to the affected facility.

The Controlled Facilities include the exterior facades, roof surfaces, flues, vents, windows, exterior doors, stoops and porches, and all related appurtenances of the individual townhouses and detached garage structures as well as the yards, patios, courtyards, walkways, fences, any surface parking spaces, and other planted or landscaped parts of the lots contained within the Units. The Controlled facilities also include the public sidewalks and the planted portions of the public rights-of-way abutting the Units and the Common Facilities. Certain Controlled Facilities may be Limited Controlled Facilities in that more than one Unit Owner but fewer than all Unit Owners may have some form of interest in or responsibility for the use or maintenance of the facility. The Association shall control and regulate the Controlled Facilities but shall not be responsible for the maintenance, management, repair, replacement, of such facilities or providing insurance on such facilities.

The Association will not have a separate assessment for Limited Common Facilities or Limited Controlled Facilities.

**Section 4.2 Members' Rights of Enjoyment.** Subject to the provisions hereof, every Member shall have a right of enjoyment in the Common Facilities, and every Member may delegate the right of enjoyment in the Common Facilities to such Members' Family.

**Section 4.3 Extent of Members' Easements.** The Members' easements of enjoyment created hereby shall be subject to the following rights of the Association:

- a. to establish reasonable rules and regulations as shall either be set forth in, or provided for in, by the By-Laws and any rules and regulations adopted by the Association for:



- (i) the use of the Common Elements; and
  - (ii) the purpose of denying, limiting, or permitting access to or enjoyment of the Common Elements by person(s) other than Members.
- b. to suspend the right of a Member (and all persons to whom such rights may have been delegated by such Member) to use any portion of the Common Facilities for any period during which an assessment against such Member's Unit or real property remains unpaid for more than thirty (30) days after written notice.
- c. to suspend the right of a Member (and all persons to whom such rights may have been delegated by such Member) to use any portion of the Common Facilities for any other infraction of this Declaration or the By-Laws, which remains uncorrected after the last day of a reasonable period for correction established by the Association, such period to be stated in a written notice to the Member together with a statement of the infraction complained of and the manner of its correction;
- d. to dedicate or transfer all of any part of the Common Facilities to any non-profit organization, public entity or agency, authority or utility for any of the foregoing purposes subject to the approval by a vote of at least sixty-seven percent (67%) of the votes of the Voting Members.

**Section 4.4 Regulation of Use.** The use of the Common Elements by Members and others shall be subject to the provisions of the By-Laws and any rules and regulations adopted by the Association.

**Section 4.5 Limited Common Facilities.** Each Owner of Units 2, 3, 4, 7, 8, and 9 will be assigned one (1) parking space by the Grantor in the Limited Common Facilities along the southerly side of Franklin Way for their respective exclusive right of enjoyment. The designated parking space shall not be changed by the Association with the consent of the Unit Owner.

## **ARTICLE V**

### **COVENANT FOR MAINTENANCE ASSESSMENT**

**Section 5.1 Creation of the Lien of Assessments.**

a. The Grantor hereby covenants, and each Unit Owner (whether or not it shall be so expressed in the Deed to such Unit Owners property) is deemed to covenant and agree, to pay the Association the following: (i) The Initial and Reconveyance Assessments provided for in Section 5.2; (ii) the Annual General Assessments provided for in section 5.3; and (iii) Special Assessments provided for in Section 5.4 hereof;

b. All Assessments, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon any real property against which each such assessment is made; provided, however, that any such lien shall be subordinate and junior to any prior recorded mortgage or deed of trust on the land which is subject to any such assessment lien. No Unit Owner may waive or otherwise avoid liability for the assessments provided herein by non-use of the Common Facilities or by abandonment of such Unit Owner's real property.

**Section 5.2 Initial and Reconveyance Assessment.**

a. The Grantor and each original Unit Owner shall pay an Initial Assessment and each subsequent Unit Owner shall pay a Reconveyance Assessment simultaneously with the receipt of the Deed for the Unit.

b. Grantor shall pay an Initial Assessment of \$100.00 for each Unit, each original Unit Owner shall pay an Initial Assessment of \$100.00 and each subsequent Owner shall pay a Reconveyance Assessment of \$200.00.

c. The Initial and Reconveyance Assessments shall be used exclusively to establish and supplement the operating fund of the Association.

**Section 5.3 Annual General Assessment.**

a. The Annual General Assessment levied by the Association shall be used exclusively in the exercise and fulfillment by the Association of its powers and duties as set forth in Section 3.5 hereof.

b. Each Unit Owner by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay Annual General Assessments to the Association. Until changed as herein provided, the Annual General Assessment for each fiscal year of the Association shall be set by the Board of Directors of the Association, subject to the following;

- (i) The initial Annual General Assessment shall not exceed Four Hundred Ninety-Two Dollars (\$492.00) for each Unit, which amount shall be subject to change as provided for herein.
- (ii) There shall be no Annual General Assessment with respect to vacant land.

c. Upon approval of a simple majority of the Directors, the amount of the initial Annual General Assessment may be changed; however, only upon approval of sixty seven percent (67%) of the Voting Members shall the amount of the Annual General Assessment for a Unit exceed Eight Hundred Dollars (\$800.00), adjusted annually from the date hereof to reflect percentage changes in the Consumer Price Index.

d. The Board of Directors shall establish the amount of the Annual General Assessment based upon the total amount of the annual budget established by the Board of Directors for the Association and allocated on an equal basis (1/32) to each of the thirty-two (32) Unit Owners. The Annual General Assessment shall be paid on a monthly basis in advance commencing upon the date of the recording of the Deed for the Unit, except as otherwise provided herein.

e. The first monthly payment of the Annual General Assessment on any property shall be adjusted pro rata according to the number of days remaining in the month from the date on which the Annual General Assessment commences for such property.

**Section 5.4 Special Assessments.** The Association may levy in any fiscal year a Special Assessment (which may, in the discretion of the Board be payable over a period not to exceed the balance of such fiscal year and the five next succeeding fiscal years) for the purpose of defraying, in whole or part: (i) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities and Limited Common Facilities, including equipment, fixtures, and personal property related thereto; and/or (ii) the cost of any other activity within the powers and duties of the Association as set forth in Section 3.5 hereof; provided that any such Special Assessment shall have the approval of a simple majority of the Voting Members. All Special Assessments relative to the Limited Common Facilities shall be borne exclusively by and shared equally by those Owners having a right of enjoyment with respect hereto. As provided for under Section 3.5 (c)(viii) hereof, the Association may elect to provide landscape maintenance and other general services to the benefit of the private property of one or more individual Owners and may levy a Special Assessment therefor which Assessment shall be borne by the individual beneficiaries of such services and in a manner and amount which shall be determined in the reasonable discretion of the Board based on the cost of such services. All other Special Assessments shall be pro-rated among Unit Owners in the manner set forth in Section 5.3(d) hereof with respect to the Annual General Assessment.

**Section 5.5 Notices of Assessments.** Notices of assessments shall be given by mail, addressed to the last known or usual post office address of the holder of legal title of the assessable property and deposited with the United States Postal Service with postage prepaid and said notice shall be considered given when mailed.

**Section 5.6 Collection of Assessments and Lien therefor.** Every assessment authorized hereunder (whether an Initial Assessment, Annual General Assessment, or a Special Assessment) shall become a lien upon the real property to which it relates if it remains unpaid thirty (30) days after the date it is due; provided, however, that any such lien shall be subordinate and junior to any prior recorded mortgage or deed of trust on the land which is subject to any such assessment lien. Such lien shall be so declared by the Association by instrument in writing, executed, acknowledged and recorded in the office of the Recorder of Deeds for Allegheny County, Pennsylvania, in the manner provided for conveyances affecting real estate. All assessments shall bear interest at the rate of fifteen percent (15%) per annum, beginning thirty (30) days after the date of recording thereof as aforementioned. At the request of any Unit Owner whose assessment(s) has or have been paid, the Association shall execute and deliver an instrument acknowledging the payment and satisfaction of such of the assessments relating to the property of such Unit Owner as have been paid, and the Unit Owner may record same at his/her expense. Whenever any assessment is delinquent for a period of ninety (90) days after the filing and recording thereof as aforementioned, the Association may take any legal steps necessary or appropriate for the collection there, including the institution and prosecution of a suit, and the delinquent Unit Owner shall be liable for the reasonable attorney's fees and court costs incurred by the Association in the collection thereof, which said fees and costs together with interest above provided for, shall be superior to any and all other charges, liens, or encumbrances which may hereafter arise or be imposed upon the property whether arising from or imposed by judgement or decree or any agreement, contract, mortgage or other instruments, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

**Section 5.7 Annual Budget** The Association shall adopt an annual budget for each fiscal year, which shall provide for allocation of expenses in such manner that the obligations imposed by the Declaration will be met. A copy of each annual budget shall be mailed to each member prior to the commencement of each fiscal year and within (30) days after the date of such budget is adopted.

**ARTICLE VI**  
**CONTROL OF ARCHITECTURE AND USE**

**Section 6.1 Purpose.** In accordance with the provisions of the Declaration, Birmingham Association Standards, and the By-Laws, the Association shall regulate the external design, appearance, use, location, and maintenance of real property in Development Areas I, II, III and of improvements thereon in such a manner so as to preserve and enhance values, to maintain a harmonious relationship among structures and the vegetation and topography.

**Section 6.2 Architectural Control.**

a. No improvements, alterations, repairs, changes of paint colors, excavations or other work which in any way materially alters the exterior appearance of any real property from its natural or improved state shall be made or done without the prior approval of sixty-seven percent (67%) of the Voting Members of the Association, except as otherwise expressly provided in the By-Laws. No sign, antenna, satellite dish, solar panel, awning, light, building, fence, wall, residence or other structure shall be commenced, erected, externally improved or altered, or otherwise affected without the prior written approval of the Association. Neither shall there be any change in the grade of any property without the prior written approval of the Association. Neither shall there be any change in the grade of any property without the prior written approval of sixty-seven (67%) of the Voting Members of the Association.

b. In the event that the Association fails to approve, modify, or disapprove in writing an application within forty-five (45) days after plans and specifications have been submitted in writing to it, in accordance with procedures established by it, approval will be deemed granted.

c. The Board of Directors may appoint an Architectural Review Committee or Board to administer the architectural control provided for in this Section 6.2 which Committee or Board shall operate in the manner and with the authority determined by the Board of Directors.

**Section 6.3 Control of Use.**

a. **Restriction** All real property and improvements thereon within New Birmingham shall be used and maintained in accordance with this Declaration, Birmingham Homes Association Standards, and the By-Laws. In addition, the following restrictions on use and maintenance shall apply:

- (i) All real property within New Birmingham shall be used, improved, and devoted exclusively to residential use as such term may be defined from time to time in the Code of the City of Pittsburgh.

- (ii) No Unit may be rented or contracted to be rented within one (1) year following any purchase thereof. For purposes of this subsection, and occupancy of a Unit by a Non-Unit Owner shall be deemed a “lease” or a “rented Unit”, notwithstanding whether the Non-Unit Owner compensated the Unit Owner for said occupancy, except as otherwise provided herein. Any occupancy of a Unit by an individual who resides with the Unit Owner shall not be deemed a rental (but shall be subject to the limitation of occupancy set forth in Subparagraph (vii) below. Further any occupancy of a Unit by the Unit Owner’s siblings, children, grandchildren, parents, or grandparents, shall not constitute a rental.”
- (iii) Each parcel of real property within the Development Areas shall contain no more than one Unit.
- (iv) No nuisance of any other activity, use, structure, improvement, or personal property detrimental to any other real property in the vicinity thereof or to its occupants shall be permitted to exist or operate upon any real property. The determination that a nuisance exists shall be at the discretion of the Board of Directors, which shall cause the Association to notify an offending Unit Owner or occupants of its determination. Not later than ten (10) days after receiving such notice, a Member may file written objections with the Association. If such objections are filed, the determination of the Board must be approved by a majority vote of the Voting Members. Only pursuant to such approval, the Association may take appropriate action to abate the nuisance. If no objections are filed within the permitted time, the Association may take action to abate the nuisance without a vote of the Members.
- (v) No large animals shall be kept or maintained with the Development Areas other than domestic dogs, cats, and pets maintained exclusively within the Unit. No Owner shall run a kennel or be engaged in breeding for the profit within Development Areas. Not more than two (2) pets shall be kept or maintained at any Unit.
- (vi) No Unit Owner shall park or permit any tenant or guest to park any recreational vehicle, boat, truck or other vehicle other than a passenger car or pickup truck overnight in the Parking Areas or in front of or on the property owned by such Unit Owner. No Unit Owner shall park or permit any tenant or guest to park or locate

any abandoned or unlicensed vehicle in the Parking Areas or in front of or on the property owned by such Unit Owner.

- (vii) The occupancy of a Unit shall be limited to one unrelated person per bedroom.
- (viii) No Unit Owner may lease a parking facility or space which is part of a Unit or contained in the Limited Common Facilities to anyone who is not a Member without written consent of the Association.

b. **Temporary Non-Compliance.** The Association may issue renewable temporary permits of one year or less in duration to exempt property from any prohibitions express or implied by this Section 6.3, provided that the Association shows good cause for such permit and acts in accordance with guidelines and procedures approved by a majority vote of the Voting Members.

c. **Maintenance.** Each Unit Owner shall keep all property within the Development Areas owned by such Unit Owner, and all improvements thereon free of debris and in good repair in accordance with Birmingham Homes Association Standards, including but not limited to the seeding, watering and mowing of lawns, the pruning and cutting of all trees and shrubbery and the painting (and other appropriate external care) of all buildings or other improvements, all in a manner and with such frequency as is consistent with good property management and so as not to detract from the overall value and quality of New Birmingham and the health and safety of its residents. In the event a Unit Owner shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after thirty (30) days written notice to the Unit Owner as provided in the By-Laws, shall have the right to enter upon said property to correct any violation of this subsection stated in such notice. All costs related to such correction, repair or restoration shall become a Special Assessment upon such property in the discretion of the Association, which shall notify the Unit Owner in writing in the event of the imposition of any such Special Assessment.

d. **Fines.** The Association may levy reasonable fines against Unit Owners for violations of the Declaration, By-Laws and rules and regulations of the Association after the Unit Owners have received reasonable notice thereof and an opportunity to object to the fines at a hearing.

**ARTICLE VII**  
**GENERAL PROVISIONS**

**Section 7.1 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land unless the Association (acting by a vote of at least eighty (80%) of the votes of the Voting Members) terminates this Declaration by executing an appropriate instrument and recording such instrument.

**Section 7.2 Amendment.** All amendments to this Declaration shall be by instrument of record executed on behalf of the Association pursuant to approval by a vote of at least sixty-seven percent (67%) of the votes of the Voting Members. However, no amendments shall be made which shall adversely effect present or future owners and occupants of properties within the Development Areas, whether by levying of inequitable assessments or by restrictions that that unreasonably restrict access to either the public improvements or the Common Elements

**Section 7.3 Enforcement.** The Association, any Unit Owner or Grantor shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

**Section 7.4 Severability.** The covenants, restrictions, conditions, reservations, and rules and regulations provided or provided for herein shall be considered as, and are hereby declared to be, independent of each other, and in the event any of them shall be held unenforceable or invalid, or shall otherwise fail, the validity or binding effect of the others shall not thereby in any way be affected. If any covenant, restriction, condition or reservation hereof would be valid and binding if construed only as a By-Law adopted by the Association pursuant hereto, it shall be constructed as such a By-Law.

**Section 7.5 Exhibits.** The following Exhibits are attached hereto and incorporated herein by this reference:

EXHIBIT A – Description of the Development Areas

EXHIBIT B – Description of the Common Facilities

EXHIBIT C – Plan showing Subdivision Plan of the Development Areas



EXHIBIT D – Plan showing Limited Common Facilities

EXHIBIT E – Birmingham Homes Association Standards