

to all easements, conditions, restrictions, etc., as set out in the Plat, Exhibit "B"), all of which are declared and agreed to be in furtherance of a plan for the development and improvement of the said Property, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or legal entity acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

The following words when used in this Declaration shall have the following meanings:

Section 1. "Association" shall mean and refer to Airways Gardens Property Owners Association, Inc., a non-profit, non-stock corporation incorporated under the laws of the State of Mississippi, its successors and assigns. The Association's Charter and By-Laws are attached hereto marked Exhibits "C" and "D", respectively, and made a part hereof.

Section 2. "Declarant" shall mean Freeburg Properties LLC with offices at 70 E. Chickasaw Pkwy, Memphis, Tennessee 38111, its successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

Section 3. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 4. "Lot" shall mean and refer to the plots of land designated with Numbers 1 and 1A, 2 through 7, inclusive, and Numbers 9, 10A, 11A and 12 through 17, inclusive as shown on Exhibit "B" attached hereto. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all said Lots, save and except only those particular Lots which Declarant conveys or has conveyed in fee simple title by recordable deed after the recording of the original Declaration. Ownership of a Lot hereunder shall include an undivided pro rata interest in the Common Area owned by the Association.

Section 5. "Member" shall mean and refer to every person who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 7. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 8. "Property" or "Properties" shall mean that real property known as Airways Gardens Commercial Subdivision and described in Exhibit "A" attached hereto, but specifically excluding Lot 8 which has been previously conveyed, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 9. "Common Area" shall mean all real property and improvements thereon owned by the Association for the common use and benefit of the Members of the Association. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is to consist of the detention basin located in Airways Gardens Commercial Subdivision as shown on the Plat and the drainage pipe connected thereto and running along the east boundary of Airways Gardens Commercial Subdivision.

ARTICLE I.
PROPERTY

Section 1. Property Subject to Declaration. That certain real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration located in DeSoto County, Mississippi, and which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. Detention Basin and Drainage Pipe. The detention basin and drainage pipe associated therewith within Airways Gardens Commercial Subdivision are private and have not been dedicated to any municipality or other governmental body. So long as they remain private, the responsibility for payment of maintenance and repair expenses for said detention basin and drainage pipe shall remain the responsibility of the individual Lot Owners, and be paid for by assessments levied by the Association as provided herein.

ARTICLE II.
THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owners of a fee or undivided fee interest of any Lot within the Property shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within Airways Gardens Commercial Subdivision. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to votes proportionate in number to his proportionate interest in the entire Property based on each Lot's square footage.

Section 3. Secured Parties. No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered as Owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association.

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided a quorum exists), shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the By-Laws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them present at any meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management

accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 5. Proxies. A Member may appoint any other Member or the Developer or any other person permitted by law or by the By-Laws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's By-Laws.

Section 6. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

ARTICLE III. PROPERTY RIGHTS

Section 1. Purpose of Detention Basin. The detention basin and the connected drainage pipe is intended to provide drainage for the Airways Gardens Commercial Subdivision and the rights and obligations associated therewith as set forth herein shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Charter and By-Laws, to borrow money for the purpose of improving the detention basin and drainage pipe which the Association is to maintain;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or mortgage shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes hereof has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer.

Section 2. Ingress and Egress Easement. The Association, its agents, employees, successors and assigns shall have an easement for ingress and egress over and through the thirty (30) foot landscape easement extending along the east boundary of the Property as is necessary or appropriate for ingress and egress to the Common Area for maintenance, improvement and repair, including but not limited to regular grass cutting.

Section 3. Structures. No structures shall be constructed on the Common Area.

ARTICLE IV. MAINTENANCE AND REPAIR

Section 1. Association responsibilities. The Association shall provide and pay for all maintenance and repair expenses for the Common Area including, but not limited to cutting the grass around the detention basin, seeding or resodding and repairs to the rip rap, as needed. The real property taxes on the Common Area, if any, shall also be paid for by the Association

ARTICLE V.
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, 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 to the Association: (1) annual assessments or charges; (2) special assessments for maintenance and repair to the detention basin and drainage pipe; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Annual Assessments and in Charges of the Association. Each Member of the Association shall pay to the Association an annual sum (herein sometimes referred to as "assessments" or "carrying charges") equal to the Members' proportionate share based on the square footage of its Lot of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and improvement of the detention basin and drainage pipe and any other item the Association may be responsible for

Except as provided in Section 11 of this Article VI, the Board of Directors of the Association shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By-Laws. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a letter signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Section 3. Special Assessments. In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be

cast. A meeting of the appropriate Members shall be duly called for this purpose, written notice of which shall be sent to Members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or Property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne pro rata by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

Section 5. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, including attorneys' fees, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Lot, and description of the Lot. Said notice shall be signed by a member of the Board and recorded in the Office of the Chancery Court Clerk of DeSoto County. The personal obligation of the Member to pay such assessment shall however, remain his personal obligation for the statutory period, and a suit to recover a money judgment for non-payment of any such assessment and other charges, of collection levied pursuant to this Declaration or the By-Laws, of any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Mississippi, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to said Member; in either of which events, the Association may collect from the said Member interest, costs and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the Common Area or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment which the laws of the State of Mississippi allow. Any such sale shall be made after first advertising the sale of the property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of DeSoto, State of Mississippi, giving notice of the time and place of such sale and by written

notice of the time and place of such sale to the Owner of the Lot at his last known address. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and By-Laws; and the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien by whatever means available, including the power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and By-Laws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Declaration and By-Laws or at law or in equity.

The Association may notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 7. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness

secured by, any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure.

Any such delinquent assessments which are extinguished pursuant to the foregoing provisions may be reallocated and assessed to all Owners as a common expense, including the purchaser at foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to the recordation of such amendment unless the holder thereof shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded first mortgage secured by a Lot in Airways Gardens Commercial Subdivision may provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but the failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified or diminished by reason of, such failure.

Section 10. Uniform Value of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 11. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots upon conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The assessment shall be fixed by the Board of Directors as set out in Section 2 of this Article VI.

ARTICLE VI RESTRICTIVE COVENANTS

Section 1. Commercial Use. Lots 1 and 1A, 2 through 7, inclusive, and Lots 9, 10A, 11A and 12 through 17, inclusive, shall not be used except for commercial purposes.

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the businesses within Airways Gardens Commercial Subdivision, and to provide for the protection of the values of the entire development, the use of the Lots shall be in accordance with the following provisions:

- (a) Said property is hereby restricted to commercial use.
- (b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Plat attached hereto as Exhibit "B".
- (c) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said Lots.

(d) No billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof.

(e) All rubbish, trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(f) No obnoxious or offensive trade or activity shall be carried on upon any Lot in this planned development nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within Airways Gardens Commercial Subdivision.

(g) No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the street or between the curb and property lines.

(h) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the By-Laws authorized to adopt such rules.

ARTICLE VII. INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a Thirty Thousand Dollar (\$30,000.00) minimum property damage limit.

Premiums for all insurance of the Common Area shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost of the improvements. The deductible shall be paid by the party who would be responsible for the repair in the absence of the insurance.

Cost of insurance coverage obtained by the Association for the Common Area and other improvements for which the Association is responsible shall be included as an Assessment as defined in Article VI.

The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(iv) that any "other insurance clause" in any policy exclude individual Owners' policies from consideration; and

(v) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Directors best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

ARTICLE VIII. MORTGAGEE'S RIGHTS

Upon request, the Association shall make available to any Lot Owner and lender, and to any holder, insurer or guarantor of any first mortgage, current copies of this Declaration, the By-Laws, and other rules concerning the affairs and management of Airways Garden, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

Upon request, the Association shall furnish to any holder of a first mortgage a financial statement for the Association's immediately preceding fiscal year.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and Lot number or address, any mortgage holder, insurer or guarantor will be entitled to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;
- (b) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- (c) a lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Owners' Association;
- (d) any proposed act that requires the consent of a specified percentage of mortgage holders.

The consent of at least sixty-seven percent (67%) of the votes and the consent of the Declarant, as long as it owns any land subject to this Declaration, and the approval of the eligible holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes subject to a mortgage appertain, shall be required to terminate the Association.

The consent of at least sixty-seven percent (67%) of the votes and of the Declarant, as long as it owns any land subject to this Declaration, and the approval of eligible holders of first mortgages on individual Lots to which at least fifty-one percent (51%) of the votes subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, By-Laws, or Charter of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments, assessment liens, not including subordination of said lien; (iii) reserves for maintenance and repairs to the Common Area; (iv) insurance or fidelity bonds; (v) responsibility

for maintenance and repair of the Property; ; (vi) any provisions included in the Declaration, By-Laws and Charter of Incorporation which are for the express benefit of holders, guarantors or insurers of first mortgages on residential units, which provisions do not set out a required number of votes to amend the particular provision

ARTICLE IX. GENERAL PROVISIONS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. Any amendment must be properly recorded to be effective. During the first eight (8) years from the date of the recording of this Declaration, any amendment must also be approved by the Declarant.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF EIGHT (8) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION TO COMPLY WITH THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF AIRWAYS GARDENS COMMERCIAL SUBDIVISION.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records on the Association at the time of such mailing.

Section 3. Enforcement. The Declarant, the Association, or any Member, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 4. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 5. Waiver. No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 6. Gender, Etc. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused these presents to be signed by the officer duly authorized so to do as of the day and year first above written.

FREEBURG PROPERTIES LLC

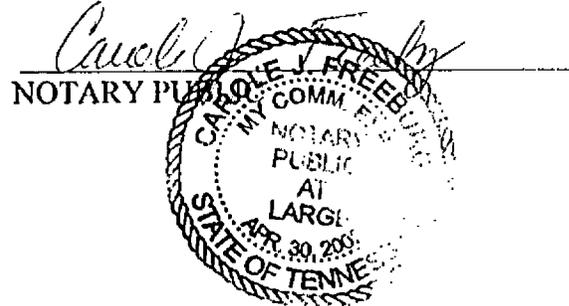
By: *[Signature]*
Philip H. Freeburg, Assistant Chief Manager

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me the undersigned Notary Public of the State and County aforesaid personally appeared Philip H. Freeburg, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Assistant Chief Manager of Freeburg Properties LLC , a Tennessee limited liability company, the within named bargainor, and that he as such Assistant Chief Manager, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Assistant Chief Manager.

WITNESS my hand and seal at office, in Memphis, Shelby County, Tennessee this
11th of July, 2001.

My Commission Expires:
My Commission Expires April 30, 2002





SMITH ENGINEERING & SURVEYING

891 RASCO ROAD EAST
SOUTHAVEN, MISSISSIPPI 38677

LAND SURVEY · LAND DEVELOPMENT · ROADS · SEWER SYSTEMS · WATER SYSTEMS · SITE DESIGN · CONSTRUCTION

BEN SMITH, P.E., R.L.S.
PRESIDENT

(601) 393-3340
FAX (601) 393-0714

LEGAL DESCRIPTION OF A 19.81, MORE OR LESS, ACRE TRACT OF LAND BEING KNOWN AS LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7, LOT 9, LOT 10A, LOT 11A AND STORMWATER DETENTION BASIN OF THE FIRST REVISION OF AIRWAYS GARDENS COMMERCIAL SUBDIVISION, BEING LOCATED IN SECTION 30, TOWNSHIP 1 SOUTH, RANGE 7 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, AND BEING FURTHER DESCRIBED AS THE FOLLOWING TWO TRACTS:

TRACT 1

BEGINNING AT A POINT, SAID POINT BEING NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 2648.13 FEET AND SOUTH 90 DEGREES 00 SECONDS 00 MINUTES EAST 53 FEET OF THE SOUTHWEST CORNER OF SECTION 30, TOWNSHIP 1 SOUTH, RANGE 7 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, THENCE NORTH 00 DEGREES 05 MINUTES 02 SECONDS EAST 663.90 FEET, THENCE ALONG A CURVE WITH A RADIUS OF 35 FEET, AN ARC LENGTH OF 55.15 FEET A DELTA ANGLE OF 90 DEGREES 17 MINUTES 05 SECONDS, AND A TANGENT OF 35.17 FEET; THENCE NORTH 89 DEGREES 38 MINUTES 32 SECONDS WEST 168.14 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 584.0 FEET, AN ARC LENGTH OF 15.47 FEET, A DELTA ANGLE OF 01 DEGREE 31 MINUTES 10 SECONDS AND A TANGENT OF 7.74 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 584.0 FEET, AN ARC LENGTH OF 112.95 FEET, A DELTA ANGLE OF 11 DEGREES 04 MINUTES 51 SECONDS, AND A TANGENT OF 56.65 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 584.0 FEET, AN ARC LENGTH OF 72.01 FEET, A DELTA ANGLE OF 7 DEGREES 03 MINUTES 52 SECONDS AND A TANGENT OF 36.05 FEET; THENCE NORTH 70 DEGREES 41 MINUTES 59 SECONDS EAST 322.93 FEET, THENCE SOUTH 00 DEGREES 00 MINUTES 14 SECONDS WEST 798.46 FEET, THENCE SOUTH 89 DEGREES 16 MINUTES 45 SECONDS WEST 705.86 FEET TO THE POINT OF BEGINNING OF TRACT 1 CONTAINING 11.39, MORE OR LESS, ACRES.

AND

TRACT 2

COMMENCING AT THAT SAME SOUTHWEST CORNER OF SECTION 30, TOWNSHIP 1 SOUTH, RANGE 7 WEST; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 2648.13 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 53 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 45 SECONDS EAST 705.86 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 14 SECONDS EAST 870.52 FEET TO THE POINT OF BEGINNING OF TRACT 2, THENCE SOUTH 70 DEGREES 41 MINUTES 59 SECONDS WEST 346.77 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 516 FEET, AN ARC LENGTH OF 54.34 FEET, A DELTA ANGLE OF 06 DEGREES 02 MINUTES 00 SECONDS, AND A TANGENT OF 27.19 FEET; THENCE ALONG A CURVE TO THE RIGHT AND HAVING A RADIUS OF 516.00 FEET, AN ARC LENGTH OF 122.70 FEET, A DELTA ANGLE OF 13 DEGREES 37 MINUTES 29 SECONDS, AND A TANGENT OF 61.64 FEET; THENCE NORTH 89 DEGREES 38 MINUTES 32 SECONDS WEST 50.20 FEET; THENCE NORTH 02 DEGREES 51 MINUTES 51 SECONDS WEST 199.92 FEET; THENCE SOUTH 89 DEGREES 39 MINUTES 41 SECONDS EAST 57.11 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 36 SECONDS EAST 518.06 FEET, THENCE SOUTH 89 DEGREES 52 MINUTES 56 SECONDS EAST 503.24 FEET, THENCE SOUTH 00 DEGREES 00 MINUTES 14 SECONDS WEST 622.46 FEET TO THE POINT OF BEGINNING OF TRACT 2 CONTAINING 8.42, MORE OR LESS, ACRES.

SAID TRACT 1 AND TRACT 2 HEREIN DESCRIBED CONTAINING 19.81, MORE OR LESS ACRES, BEING SUBJECT TO ALL CODES, RULES AND REGULATIONS, SUBDIVISION COVENANTS, EASEMENTS AND RIGHT OF WAYS OF RECORD

August 31, 1999

JV/sar

LEGAL'S 1ST REVISION AIRWAYS GARDENS COMMERCIAL SD

OWNER'S CERTIFICATE
 I, Charles F. Lewis, owner of AIRWAYS GARDENS COMMERCIAL SUBDIVISION, do hereby certify that the plat of the subdivision and the plat of the lots and blocks are correct and true to the original survey and that the same have been recorded in the public records of the county of Southaven, Mississippi, and that the same are now a part of the public domain of the State of Mississippi and that the same are now a part of the public domain of the State of Mississippi and that the same are now a part of the public domain of the State of Mississippi.

PLAT OF THE LOTS AND BLOCKS
 I, Charles F. Lewis, owner of AIRWAYS GARDENS COMMERCIAL SUBDIVISION, do hereby certify that the plat of the lots and blocks is correct and true to the original survey and that the same have been recorded in the public records of the county of Southaven, Mississippi, and that the same are now a part of the public domain of the State of Mississippi and that the same are now a part of the public domain of the State of Mississippi.

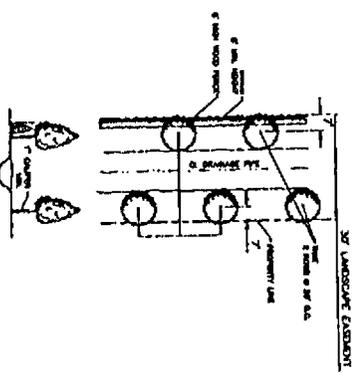
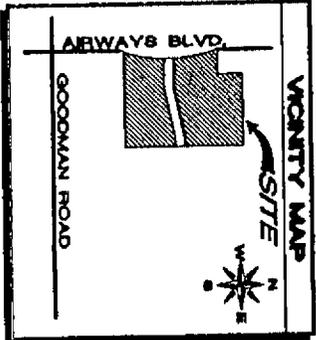
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AIRWAYS GARDENS COMMERCIAL SUBDIVISION



OWNER'S CERTIFICATE
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2ND REVISION OF FINAL PLAT AIRWAYS GARDENS COMMERCIAL SUBDIVISION

SEES MOTT
 79 ALLEN STREET
 SOUTHAVEN, MISSISSIPPI 38686
 NOVEMBER, 2000
 SCALE: 1" = 300'



BR0396PS0223

The undersigned, pursuant to Section 79-4-2.02 (if a profit corporation) or Section 79-11-137 (if a nonprofit corporation) of the Mississippi Code of 1972, hereby executes the following document and sets forth:

1. Type of Corporation

→ Profit Nonprofit

2. Name of the Corporation

→ Airways Gardens Property Owners Association, Inc.

3. The future effective date is
(Complete if applicable)

[Empty box]



→ 4. FOR NONPROFITS ONLY: The period of duration is years or perpetual

5. FOR PROFITS ONLY: The Number (and Classes) if any of shares the corporation is authorized to issue is (are) as follows

Classes	# of Shares Authorized	If more than one (1) class of shares is authorized, the preferences, limitations, and relative rights of each class are as follows:
→ [Empty box]	[Empty box]	[Empty box] (See Attached)
→ [Empty box]	[Empty box]	

6. Name and Street Address of the Registered Agent and Registered Office is

→ Name Taylor Buntin

→ Physical Address 1607 State Line Road West

→ P.O. Box 241

→ City, State, ZIP5, ZIP4 Southaven, MS 38671-

7. The name and complete address of each Incorporator are as follows

→ Name D. B. Bridgforth

→ Street 1607 State Line Road West

This page conforms with the duplicate original filed with the Secretary of State.
Eric Clark
Secretary of State



⇒ City, State, ZIP5, ZIP4

⇒ Name

⇒ Street

⇒ City, State, ZIP5, ZIP4

⇒ Name

⇒ Street

⇒ City, State, ZIP5, ZIP4

⇒ Name

⇒ Street

⇒ City, State, ZIP5, ZIP4

⇒ 8. Other Provisions See Attached

9. Incorporators' Signatures (please keep writing within blocks)

This page conforms with the duplicate original filed with the Secretary of State.
Eric Clark
Secretary of State

BK0396PS0224

EXHIBIT "D"
AMENDED AND RESTATED BY-LAWS
OF
AIRWAYS GARDENS PROPERTY OWNERS ASSOCIATION, INC.

These By-Laws of Airways Gardens Property Owners Association, Inc. are hereby amended and restated to modify Section 2.2 regarding voting rights so that said section is consistent with the Declaration of Covenants, Conditions and Restrictions as provided by Section 10.4 hereof.

ARTICLE I.

Section 1.1. Name. The name of the corporation is AIRWAYS GARDENS PROPERTY OWNERS ASSOCIATION, INC. Its principal place of business is 70 East Chickasaw Parkway, Memphis, Tennessee 38111.

ARTICLE II.

The following sections of this Article II shall apply to membership in the Association:

Section 2.1. Eligibility. The Owner or Owners of a Lot in Airways Gardens Commercial Subdivision, who have become such in compliance with all of the requirements and conditions contained in the Declaration of Covenants, Conditions and Restrictions, including these By-Laws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the owner of each Lot which is unsold by it. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 2.2. Voting Rights. The Owner or Owners of a Lot shall be entitled to vote at all meetings of the Association. Each Owner of a Lot or Lots shall be entitled to votes proportionate in number to his proportionate interest in the entire Property based on each Lot's square footage. Where two or more persons own a Lot, the votes allocated to that Lot shall be cast by the one authorized by such two or more Owners, and in the event of the failure of such authorization, no vote shall be recorded for that Lot. Where only one of two or more Owners of a Lot is present in person at a meeting, such one shall be presumed to be authorized by all Owners of said Lot and shall be entitled to cast the vote with respect to that Lot.

ARTICLE III

Section 3.1. Place of Meeting. Meetings of the membership shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 3.2. Annual Meetings. The annual meetings of the Members of the Association shall be held at such time and on such date as designated by the Board. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 4.5 of Article IV of these By-Laws. The Members may also transact such other business of the Association as may properly come before them.

Section 3.3. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by Members representing at least twenty percent (20%) of the total number of votes outstanding having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 3.4. Notice of Meetings. It shall be the duty of the Secretary to give written notice of each annual or special meeting to each Member of record. Such notice shall state the purpose of the meeting as well as the time and place where it is to be held. Notice shall be personally delivered or mailed postage prepaid by first class U.S. mail to each Member of record, at his address as it appears on the membership book of the Association, if any, or if no such address appears, at his last known address, at least ten (10) days but no more than ninety (90) days prior to such meeting. Notice by either such method shall be effective as of the date of personal delivery or the date mailed. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 3.5. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total vote entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 3.6. Adjourned Meetings. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 3.7. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of Members representing a fifty-one percent (51%) majority of the total votes entitled to be cast shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Charter of Incorporation, or the Declaration, or of these By-Laws, a different vote is required, in which case such express provision shall govern and control. No Members shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in the payment due the Association.

Section 3.8. Proxies. Any Member may appoint any other Member or the Developer or any other person permitted by law or by these By-Laws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by these By-Laws.

Section 3.9. Action Without Meeting. Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with the statute, the Declaration or these By-Laws, such meeting and vote may be dispensed with if all Members who would have been entitled to vote upon such action consent in writing to such action being taken.

ARTICLE IV.

Section 4.1. Number and Qualification. The affairs of the Association shall be governed by the Board of Directors composed of at least three (3) persons and not more than five (5) persons, a majority of whom (after the second annual meeting of Members) shall be Members of the Association.

Section 4.2. Initial Directors. The initial Directors shall be elected by the Developer and need not be Members of the Association.

Section 4.3. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the commercial subdivision and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

To provide for:

(a) Care and upkeep of the detention basin and drainage pipe connected thereto and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.

(b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of Airways Gardens Commercial Subdivision and to provide services for the community in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of Airways Gardens Subdivision, all of which shall be consistent with the law and the provisions of these By-Laws and the Declaration.

Section 4.4. Nomination. Nomination for election to the Board of Directors shall be made from the floor at the annual meeting. The Nomination Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 4.5. Election and Term of Office. The term of the initial Directors shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of the Members, the Members shall determine the number of Directors consistent with these By-Laws, who shall constitute the Board of Directors to serve until the first annual meeting. The term of office of each Director thereafter shall be for a period of one (1) year and until their successors shall have been elected and hold their first meeting.

Section 4.6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the

majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by the Members at the next annual meeting.

Section 4.7. Removal of Directors. At a regular meeting, or special meeting duly called for such purpose, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 4.5 of this Article.

Section 4.8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the first annual meeting of the Members, no remuneration shall be paid to any Director who is also a Member of the Association for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 4.9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 4.10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least six (6) days prior to the day named for such meeting.

Section 4.11. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time and place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

Section 4.12. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present and remain present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 4.13. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At such meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 4.14. Action Without Meeting. Any action of the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

ARTICLE V.

Section 5.1 Designation. The principal officers of the Corporation shall be a President, Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Prior to the first annual meeting of the Members, the officers of the Association need not be Members of the Association.

Section 5.2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 5.3 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officers may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors or any special meeting of the Board of Directors called for such purpose.

Section 5.4. President. The President shall be the chief executive officer of the Association. In the event he is also a member of the Board of Directors, he shall preside at all meetings of the Members and of the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5.5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 5.6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association; he shall have custody of the seal of Association, if any; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 5.7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VI.

Section 6.1. Liability and Indemnification of Officers and Directors. The Association shall indemnify every officer and Director of the Association against any and all expense, including counsel fees, reasonably incurred by or imposed upon any officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association to which he may be made a party by reason of being or having been an officer or Director of the Association, whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association or Airways Gardens Commercial Subdivision (except to the extent that such officers or Directors may also be Owners of Lots within the subdivision), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right or indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director of the Association or former officer or Director of the Association may be entitled.

ARTICLE VII.

Section 7.1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, and operate the affairs of the Association and, for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for, the following:

- (a) The cost of such insurance as the Association may effect.
- (b) The cost of providing such legal and accounting services as may be considered necessary to the operation of Airways Gardens Commercial Subdivision.
- (c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members shall be deemed necessary or proper.
- (d) The cost of the maintenance or repair of any portion of the Common Areas in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Areas or to preserve the appearance or value of Airways Gardens Commercial Subdivision or is otherwise in the interest of the general welfare of all Owners of the Lots.
- (e) All other items which are listed as responsibilities of the Association are found in the Declaration of Covenants, Conditions and Restrictions.

Section 7.3. Right of Entry. For the purpose solely of performing any of the repairs or maintenance required or authorized by these By-Laws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any lot at any hour considered to be reasonable under the circumstances.

ARTICLE VIII.

Section 8.1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 8.2. Books and Accounts. Books and accounts of the Association shall be kept under the discretion of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting airways Gardens Commercial Subdivision and its administration and shall specify the maintenance and repair expenses incurred. That amount of any assessment required for payment or any capital expenditures of the Association shall be credited upon the books of the Association to the "Paid-in-Surplus" account as a capital contribution by the Members.

Section 8.3. Reports. The Association shall furnish its Members, and the holders of first mortgages requesting same within ninety (90) days from the date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 8.4. Inspection of Books. The books and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage or any Lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as Members.

Section 8.5. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

ARTICLE IX.

Section 9.1. Amendments. These By-Laws may be amended by the affirmative vote of Members representing a majority (unless the Declaration calls for a greater number with respect to a particular clause) of all votes entitled to be cast at any meeting of the Members at which a quorum is present and which is duly called for such purpose. Amendments may be proposed by the Board of Directors or by petition signed by Members representing at least thirty percent (30%) of the total number of votes entitled to be cast. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

ARTICLE X.

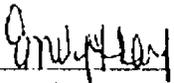
Section 10.1. Notices. Unless another type of notice is herein or elsewhere specifically provided for, any and all notices called for in the Declaration of these By-Laws shall be given in writing.

Section 10.2. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 10.3. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 10.4. CONFLICTS. THESE BY-LAWS ARE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREOF, EXCEPT THOSE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATION. IN THE EVENT OF ANY CONFLICT BETWEEN THESE BY-LAWS AND THE DECLARATION, THE PROVISIONS OF THE DECLARATION SHALL CONTROL, AND IN THE EVENT OF ANY CONFLICT BETWEEN THE AFORESAID DECLARATION AND ANY OF THE LAWS OF THE STATE OF MISSISSIPPI, THE PROVISIONS OF THE STATUTE SHALL CONTROL.

Section 10.5 The corporation shall have no corporate seal.



Secretary