

**RESTRICTIVE COVENANTS
TO
KENSINGTON PLACE, 1ST ADDITION**

KNOW ALL MEN BY THESE PRESENTS, that McLemore, Inc., (hereinafter referred to as the "Developer") as the owner of the real property of that certain Subdivision situated in the County of Mobile, State of Alabama, described as follows:

KENSINGTON PLACE, 1ST ADDITION, according to plat thereof recorded in Map Book 111, Page 70, in the Office of the Judge of Probate of the Probate Court of Mobile County, Alabama.

(hereinafter sometimes referred to as "Property") do hereby amend, fix, establish and declare the following Restrictive Covenants relating to the use and development of all lots in said Subdivision. These Restrictive Covenants shall be recorded in the Office of the Judge of Probate of Mobile County, Alabama.

RESTRICTIVE COVENANTS

1. **PROPERTY COVERED:** The real property which is and shall be held conveyed, transferred, sold, used and occupied subject to the liens, charges, rights, limitations, conditions, covenants, reservations, easements and restrictions with respect to the various portions thereof set forth in the various clauses and paragraphs of this declaration and the restrictive covenants contained herein, are ALL ALOTS@ contained within the Property. ALots@ are the numbered parcels of property shown on the recorded plats of the above referred property, known as Kensington Place, 1st Addition, containing lots 1 through 18.

2. **PURPOSE OF DECLARATION:** The purpose of this Declaration is to insure the best use and most desirable development and improvement of the Property for residential purposes only; to protect the Developer and future owners of Lots against such improper use of the Property as to depreciate the value of their Lot; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereon of poorly designed structures or structures built of improper or unsuitable materials; and, to prevent abusive offensive, unsightly, or other improper use of said Lots; and in general to protect and enhance the value of investments made by purchasers of Lots therein.

3. **USE:** All lots in the tract shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any residential building Lot other than one detached single family dwelling not to exceed two and one-half (2 1/2) stories in height, and a private garage for not more than three cars, and other out-buildings incidental to residential use. Open carports are not allowed. Any variations to the above must be approved in writing by the Architectural Control Committee.

4. **DWELLING REQUIREMENTS:** The ground floor of the main structure, exclusive of one-story open porches and garages, shall not be less than 2400 square feet of heated and air conditioned space in the one-story structure and 1600 square feet in the case of a one and one-half or two story structure and 2000 square feet in the case of a two and one-half story structure. All material and workmanship must be substantially equal

to or exceed the minimum Mobile County building requirements and applicable building codes.

5. **ARCHITECTURAL CONTROL:** No building, outbuilding or fence shall be erected, placed, or altered on any Lot in this subdivision until building plans, specifications, and plot plan showing the location of such building or fence have been approved in writing as to conformity and harmony of external design with existing structures in the subdivision and as to location of the building or fence with respect to topography and finished ground elevation, by a committee composed of John M. Howard, Andrew H. Adams and W. Lindsay Walker. In the event said committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required and this covenant will be deemed to have been fully complied with. Neither the members of such committee, nor its designated representative, shall be entitled to any compensation for services pursuant to this covenant. The Developer reserves the specific right and authority to appoint all members of the Committee until such time as the Developer has sold and conveyed all Lots within the Subdivision. However, upon the occurrence of the Developer and its Affiliated Builders' selling all the lots, the Committee shall be appointed by the Board of Directors for the Association (as hereinafter defined).

The quality and attractiveness of every improvement must meet the standards of the Committee. The Committee is hereby granted broad discretion in judging the compatibility of proposed improvements. The Committee shall have the right to accept, modify, or refuse to approve any plans or specifications or landscape plans which are not reasonably suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and landscape plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effects of the building or other structure as planned, on the outlook from the adjacent or neighboring property, and Buyer, his Purchaser, successor or assigns, shall abide by the decision of the Committee on all plans whether submitted by Buyer, its Purchaser, successor or assigns, or any other person or entity.

With respect to all matters which are, by the terms of this instrument, to be decided by the Committee, the decision of the Committee shall be final and binding on all parties. No changes or deviations in or from such plans, specifications or plan, as approved, shall be made without the prior written consent of the Committee.

In the event said Committee fails to approve or disapprove such plans, specifications and plot plan within thirty (30) days after same have been submitted to it, such approval will not be required, but such Lot shall be and remain in all other respects, subject to these covenants. If such plans and specifications are disapproved, written notice of such disapproval shall be given to the submitting Lot owner in person or by U. S. Mail, addressed to the Lot owner at the address furnished by him with the plans and specifications. Such notice will set forth the elements disapproved and the reasons therefor but need not contain any suggestions as to corrective measures to be taken.

Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit owners to construct, erect or install improvements which are in variance from the covenants, restrictions or architectural standards which are provided in this Declaration or the applicable restrictive covenants. In any case,

however, such variances must, in the Committee's sole discretion, blend effectively with the general architectural style and design of the community and must not detrimentally affect the integrity of the Property, nor harmony with the natural surroundings. Written requests for variances shall be deemed to be disapproved if the Committee has not expressly and in writing approved such request within thirty (30) days of the submission of such request. No member of the Committee shall be liable to any owner for any claims, causes of action or damages arising out of the grant of any variance to an owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any owner shall not constitute a waiver of the Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other owner.

THE FOLLOWING ARE REQUIRED OR DISALLOWED:

WINDOWS: No mill finish aluminum windows shall be allowed.

FOUNDATION: Concrete or concrete block shall not be exposed as a result of a slab or pier foundation. They must be faced or covered to Grade or below Grade with Brick, Stucco or other exterior materials acceptable to the Committee. No open or exposed piers permitted around perimeters of structure with pier foundation. Enclosures to be same construction as main exterior walls of structure.

ELEVATION: First floor elevation at the front of the house must be a minimum of 8" off finished grade on a Lot sloping down from the street, if Lot is level or sloping up from the street, the elevation must be located a minimum of 8" off finished grade, unless otherwise approved by the Committee.

DOORS: Storm doors are not allowed on the front of the house.

SIDEWALK: Lot owners shall construct sidewalks at their own expense with the same standards as would be applicable to sidewalks located within the City of Mobile, Alabama, and in all events, the location, dimensions and other features of such sidewalks shall be subject to the prior written approval of the Committee. Sidewalks shall be constructed within one (1) year of lot purchase. Sidewalks shall have a width of 48", no more and no less, and shall have a minimum thickness of 4". Control joints to be placed at 48" intervals and lumber control joints and asphalt impregnated fiberboard shall not be allowed.

CHIMNEYS: Externally exposed wood burning fireplace chimneys shall either be constructed of or faced with brick or other approved material.

DRIVEWAYS: All driveways will have a minimum width of nine (9) feet and shall be surfaced with concrete, brick or other similar hard surfaced material. No asphalt driveway will be permitted.

6. BUILDING LOCATION: No building shall be located on any Lot nearer to front Lot line or nearer the side street line than the minimum building set back lines, except that on corner Lots, one side of the house may be set back a lesser amount with the written approval of the Architectural Control Committee. No building shall be located on any Lot nearer than eight (8) feet to the side Lot line; however, in no event shall the total sideline location be less than twenty (20) feet (sum of two (2) sides). Example: If one side equal eight (8) feet, the other side must be a minimum of twelve (12) feet. No building

shall be located on any Lot nearer than ten (10) feet to the rear Lot line. For the purpose of this covenant, eaves, steps, porches and garages are considered as part of the building. The Architectural Control Committee shall have the power by majority vote to grant exceptions to these locations as it deems appropriate.

7. **CONSTRUCTION PERIOD:** Each Lot owner shall be responsible for maintaining the structural integrity of the asphalt wing-gutter in front of the individual Lot during building construction. Construction equipment access to the Lot should be limited to the permanent driveway location; thereby confining wing-gutter damage to the driveway location. Wing-gutter repair must be effected during driveway installation. The Builder on each Lot shall comply with all ADEM regulations and hold the Developer harmless for any violation of ADEM rules or damage the Builder may cause. The Builder shall take all proper precautions to keep litter and debris out of the streets and drainage ways and be responsible for correcting any infractions. The Builder or Developer assumes no responsibility for wing-gutter damage after completion of construction of the home. See #5 above for Driveway requirements.

8. **LOT AREA AND WIDTH:** No residential structure shall be erected or placed on any Lot, which has area of, or width of, less than as shown on the recorded maps of said subdivision, except a subdivision submitted to and approved in writing by the City of Mobile Planning Commission. Any re-subdivision shall be subject to the approval of a majority of the Architectural Control Committee, as set out in Paragraph 5. An owner may construct a residence on two adjoining lots providing the minimum building setback line requirements are satisfied.

9. **SEWAGE DISPOSAL:** No cesspool or other individual sewage system shall be constructed or utilized on the Property, other than the sewage collection tank, pump and accessories included and installed by South Alabama Utilities. . All homes shall be required to contract with and connect to available South Alabama Utilities Water and Sewer System.

South Alabama Utilities and/or its designated contractor, successor, agent, servant, assignee, and its and their employees, has a utility easement for the installation, operation, and maintenance of water and sewer services as noted on the recorded subdivision plat, and also an easement, right, and full permission to come onto any lot in the subdivision for any reason related to the installation, operation, and maintenance of the sewer collection system located on and provided for the benefit of the lot. No object, structure, or thing may be constructed on or placed over, on top of, or near the utility easement, or the sewer collection system, consisting of the septic tank, septic tank pump, and septic tank lines, in such a way as to impede installation, operation, or maintenance efforts. Any object, structure, or thing so constructed or placed may be modified or removed by South Alabama Utilities and the cost of said modification or removal shall become a lien on the lot until paid by the lot owner. The lot owner is prohibited from installing a garbage disposal and from discharging grease into the sewer collection system. The sewer collection system is excepted from the property description and shall remain the property of South Alabama Utilities. This covenant is a running covenant, benefitting the lot, the other lots in the subdivision, the lot owners, and all successors, grantees and assigns.

10. **GARBAGE AND REFUSE DISPOSAL:** No Lot shall be maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be

kept in a clean sanitary condition. No homeowner shall use any portion of his Lot for the collection or storage of trash, garbage, old parts, old equipment, or other unsightly articles. Construction dumpsters are for construction dumping only. Dumping of household items is not permitted and may be subject to fine.

11. **CONCEALMENT OF EQUIPMENT:** No air conditioning or heating unit, blower, tower, condenser, water well, garbage can, wood pile, storage pile or other equipment or apparatus shall be erected, placed, constructed, operated or permitted to remain on any lot unless concealed from view from any adjacent Lot or street by a hedge, planting or other enclosure in conformity with the general architecture of the main structure and approved by the Committee.

12. **OUTDOOR LIGHTING:** No mercury vapor lights or other outside lights shall be permitted on any Lot without the prior written approval of the Committee. Committee approval of outside lighting can later be withdrawn if it creates a nuisance to neighbors.

13. **NUISANCES:** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance, or nuisance, to the neighborhood. No Lot shall be allowed for such activities as parking trailers, inoperable motor homes, cars, or trucks not in use or for repairs of same. Parking of all vehicles shall be limited to the paved areas in yard. Parking on grass is not permitted without written approval of Architectural Control Committee. Exterior clothes hanging apparatus are not allowed unless such location is approved in writing by the Architectural Control Committee.

14. **TEMPORARY RESIDENCE:** No trailers, basement, tent, shed, shack, storage shed, garage, or other outbuildings, including mobile homes, erected temporarily or permanently, shall be used as a residence. Mobile trailers, mobile homes, campers, and/or trailers and boats may be kept on the premises, only if kept in the rear yard portion of the Lot behind the dwelling area shielded from the street in a manner approved by the Architectural Control Committee. No 18-wheel trucks or large commercial type trucks may be parked on the premises (includes the truck and /or trailer). No boat of thirty (30) feet in length or larger may be kept on the premises, unless approved in writing by the Architectural Control Committee.

15. **STORAGE SHEDS:** No storage sheds, metal buildings or detached structures shall be permitted upon any Lot except with the prior written approval of the Committee. Exterior design of said structures must be in harmony with the main structure and the subdivision. Said structures must be located in the rear portion of the yard. Said location to be approved by the Committee.

16. **OIL AND MINERAL OPERATIONS:** No oil, exploration, drilling, oil development operations, oil refining, quarrying, mining or excavation operations of any kind shall be permitted upon or below any Lot, nor shall oil wells, tanks, tunnels, mineral explorations or shafts be permitted upon or below any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Oil, gas or other highly flammable materials, other than that stored in small containers or household use, shall not be stored in barrels or drums on any Lot.

17. **SIGNS:** No sign of any kind shall be displayed to the public view on any Lot more than five (5) square feet in size, advertising the property for sale or for rent; except

during the construction period, one (1) additional sign may be erected by the builder and a security service sign shall also be allowed when applicable.

18. **UTILITIES:** All electrical, cable and telecommunication lines located upon the Property, other than those existing on the date of this Declaration, shall be installed and maintained underground. All electrical lines to any structure such as gazebo, outbuilding, pole, or any outside fixture on any Lot must be underground.

19. **CONSTRUCTION PERIOD:** Construction equipment access to the Lot shall be limited to the permanent driveway location. Construction on any Lot shall be completed within a reasonable time from date of the actual commencement of construction. Reasonable time, as used herein, shall mean the normal time consumed to construct a residence of similar design in similar subdivisions in the County of Mobile, Alabama, but in no case more than nine (9) months unless special hardship waiver is granted by the Committee.

20. **PERMITTED ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred, harbored or kept on any lot, except that the Owner may keep three (3) domesticated household pets. Pot Bellied Pigs or swine of any kind are not considered by the Committee to be domesticated house pets and will not be allowed. No such pets shall be kept for any commercial purpose, and any such pets may be kept only so long as they or any of them do not become an annoyance or nuisance to the neighborhood. All pets shall be kept under the close supervision of their owners, behind fence when not on a leash, and in compliance with all applicable laws, rules, regulations and ordinances, including, but not limited to health, safety and leash laws.

21. **FENCES:** No fences may be erected nearer to the front lot line than the front corner of the house on said Lot, unless specifically affirmed in writing by the Architectural Control Committee. In the case of a corner Lot, no fence shall be erected on the front or side Lot line closer to the street than the house, without written permission by the Architectural Control Committee. Chain link fences will not be approved. Fences shall be kept a minimum of three (3) inches above grade to allow for drainage. No fencing of easements shall be allowed without Architectural Control Committee approval.

22. **SWIMMING POOLS:** No swimming pool may be installed without a privacy fence shielding such pool from the street. Above ground pools shall be permitted only with the written approval of the Architectural Control Committee. Swimming pools shall be constructed and located in a manner that does not allow the overflow to drain onto or across adjacent property.

23. **EASEMENTS:** All easements shown on the recorded plat of the subdivision are hereby adopted as a part of these restrictions, and all Lots in the subdivision shall be subject to such easements. The undersigned owner of the subdivision reserves unto itself and its successors and assigns the right and easement, but not the obligation, to construct, install, maintain, repair and replace power, gas, sewer, telephone, and other utility lines, equipment and facilities and drainage ditches, in, on, over and under the streets and road rights of way and easements shown on the recorded plat of the subdivision, and to construct, install, operate, maintain, repair and replace lights, walls, fences, shrubbery, bushes and trees and other decorative or screening improvements, in, on, over and under the Property included within the areas designated as fences, drainage and/or utility easements, if any, with full right of ingress and egress to and from said streets and roads and easements across adjoining property; and the undersigned owner reserves unto itself, and its successors and assigns, the right to contract generally with others for the doing of

any and all such things and right to grant unto others such easements, rights and privileges as the undersigned Developer may deem appropriate or convenient in connection therewith. No warranty, either expressed or implied is made by the Developer, or subsequent builders as to the design, adequacy, or continuing function of easements, streets, sewer system, utilities, drainage, or other improvements which have been constructed and approved by the subdivision design engineers or proper governing authorities and utility companies.

24. **SATELLITE DISHES - TELEVISION & RADIO ANTENNAS:** All outside radio and television antennas shall be installed in such a way as not to be offensive. Antennas (not to exceed 18 inches) shall be placed on the back side of the chimney where possible; otherwise, they shall be placed on the back portion of the roof. Any satellite dish mounted in the yard and not on the home must be concealed behind a privacy fence or hedge such that the satellite dish will not be obviously visible from any street, or from the adjacent Lots, and said satellite dish shall not be located in a front yard or a street side yard of a corner Lot. Yard satellite dishes with diameters of 36 inches or more shall not be allowed without permission from the Architectural Control Committee.

25. **ROOFS:** Flat roofs are not allowed, except as approved by the Committee. Roofs must blend with and reflect the same quality as the main structure. The Committee shall have final approval of roof materials and colors. Minimum roof pitch is 7/12 (7 foot vertical rise for every 12 horizontal feet), unless specifically approved by the Committee. Four tab architectural shingles shall be required.

26. **MAILBOXES:** Every Lot Owner shall select and use a mailbox from the designs approved by the Developer. Mailboxes are to be constructed at the Lot Owner's expense and in accordance with the rules, regulations and location as may be required by the U. S. Postal Service.

27. **HOMEOWNERS ASSOCIATION:** A Homeowners' Association called Kensington Place Home Owners' Association, Inc. (the Association)@, has been formed for the Lot Owners which has articles of incorporation recorded in real property book 4419 page 471 of the Mobile County, Alabama Probate Court Records. All Lot Owners of Kensington Place and Kensington Place 1st Addition shall be members of the Association. Except as otherwise provided for in this document the Articles of Incorporation and By-Laws of Kensington Place Home Owners' Association, Inc., shall be adopted by each Lot Owner in Kensington Place 1st Addition. Among the purposes of such organization shall be the establishment of rules and policies with respect to the use and maintenance of all Common Areas (including but not limited to all detention areas). The Association's responsibilities shall include maintenance of any landscaping or fencing, maintenance of decorative lights within the Common Areas, if any, and maintaining all Common Areas as shown on the recorded plat; and, to pay all costs (including utility charges) incurred in the maintenance and landscaping of said Common Areas (including plants, irrigation systems, and subdivision name signs). All Lot Owners of future units in Kensington Place Subdivision, if any, shall be members of the Association, at the sole option of the Developer. Each owner of any Lot, and its heirs, successors, transferees, and assigns, by acceptance of a deed to such a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to abide by and be governed by the Articles of Incorporation of the Association and its By-Laws and to pay to the Association the following.

- a. Annual General Assessments as herein described; and,

- b. **Special Assessments for capital improvements, repairs or other expenses which exceed the Annual General Assessment as described; and all such assessments, together with interest thereon and the costs of collection thereof, including a reasonable attorney's fee as hereinafter provided, shall be the personal obligation of such Lot owner and shall be a charge and a lien on each Lot and improvements against which each such assessment is made.**

Each year the Board of Directors of the Association shall estimate the cost of maintenance of the Common Areas and such other expenses as it deems necessary for its operations. Such estimate shall be deemed the Annual General Assessment. The Annual General Assessment levied by the Association shall be used exclusively for the maintenance, repair, replacement, beautification, landscaping, property taxes and costs of operation of the Common Areas (including, but not limited to, the maintenance and repair of the Detention Area(s), other property owned by the Association, insurance (as determined by the Board of Directors for the Association), and, if any: irrigation systems, property signage and lighting (not maintained by public utility companies), and such other expenses related thereto as deemed necessary, such as for example the expense of clerical assistance incurred in maintaining the records and operation of the Association.

From time to time, the Association may determine the cost of necessary capital improvements, major repairs and necessary expenses not provided for in the Annual General Assessment. Such costs shall be deemed a Special Assessment.

Except as herein stated, each Lot of the said subdivision, whether improved or unimproved, shall be assessed its pro rata share of the Annual General Assessment and any Special Assessment in accordance with the formula set forth in the Articles of Incorporation of the Association. The following property, individuals, partnerships, or corporations subject to this Declaration shall be exempted from the assessments, charges and lien created herein; the Developer (McLemore, Inc., and its affiliated companies and its affiliated builders, including John Howard Homes, Ltd., H&P Limited, John Howard Construction Company, Inc., and any other John Howard builders designated) and any Lot(s) owned by the Developer; however, until the Developer is no longer an Owner of a Lot within the Property, the Developer or its affiliated builders, will maintain at Developer=s or affiliated builders' expense, the liability insurance thereon, on any vacant Lot or home under construction, owned by the Developer or affiliated builders..

Lots owned by approved or affiliated Builders shall not pay more than \$50.00 per lot during the first year of ownership and after the first year of ownership the lot owner shall pay full dues and assessments.

Each Lot Owner, except as stated above, shall commence to pay the Annual General Assessment in the amount existing from time to time as determined by the Board of Directors upon the first event to occur of:

- 1. First (1st) day of the month following the purchase of a completed home on a Lot; or,**
- 2. One Hundred Eighty (180) days after the purchase of a Lot.**

Upon the first of the above described events occurring, the Lot Owner will then owe and pay to the Association a pro rata amount of the assessment then existing based upon the time remaining during which such assessment shall be in effect.

A vote of two-thirds of the Board of Directors of the Association shall fix the Annual

General Assessment and any Special Assessment upon the basis provided above. The Board shall set the date each such assessment shall become due and may provide for the collection of the assessments in monthly, quarterly or annual installments, provided, however, that upon default in the payment of any one or more installments, the entire balance of said assessment may, at the option of the Board, in its sole discretion, be accelerated and declared to be due and payable in full.

The lien for unpaid assessments shall be effective from and after the time of recording in the Records of the Office of the Judge of Probate, Mobile County, Alabama, a claim of lien stating the Lot number, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and certified by an officer of the Association.

Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recorded satisfaction of lien. All Association liens shall be subordinate to any lien for taxes, the lien of any mortgage of record and any other lien recorded prior to the time of recording of the claim of lien filed by the Association.

Upon any voluntary conveyance of a Lot, the grantor and grantee of such Lot shall be jointly and severally liable to the Association for all unpaid assessments accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any such amounts.

Any Lot owner, prospective purchaser of a Lot, or holder of a mortgage or other lien on any Lot may, at any time, obtain from the Association a certificate showing the amount of unpaid assessments pertaining to such Lot. The Association shall provide such certificate within ten (10) days after request therefor. Any person, other than the Lot owner, at the time of issuance of any such certificate, may rely upon such certificate, and his liability for unpaid assessments shall be limited to the amounts set forth in such certificate.

Any entity, its successors and assigns, obtaining title to a Lot as a result of foreclosure of a first mortgage or vendor's lien shall not be liable for assessments which became due prior to the foreclosure. Such unpaid share of assessments shall be deemed to be an expense of the Association to be collected as part of a future Special Assessment.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a percentage rate established by resolution of the Board of Directors with notice of such rate to be given to each Lot owner in a manner to be designated by said Board.

The Association may bring an action at law against the owner personally or may foreclose the lien created by the terms hereof in accordance with the statutes and laws of the State of Alabama then in effect for the foreclosure of real estate mortgages and shall have the right to sell said property at public outcry at the front door of the Courthouse of Mobile County, for cash to the highest bidder, giving notice of the time, place and terms of said sale, together with a description of said property to be sold, by an advertisement published once a week for three (3) consecutive weeks in a newspaper published in said county; to make proper conveyance to the purchaser in the name of the Lot owner; and the proceeds of said sale to apply first to the payment of the costs of said sale, including a reasonable attorney's fee; second to the payment of the amount of said assessment, whether due or not, with the unpaid interest thereon to the date of sale, and any amount

that may be due the Association by virtue of the special liens herein declared; and, third, the balance, if any, to pay over to the said Lot owner. At any sale under the powers herein stated, the Association may bid for and purchase said property like a stranger thereto, and in the event the Association should become the purchaser at said sale, either the auctioneer conducting the sale or the Association may execute a deed to the Association in the name of the Lot owner.

Proceeding against the owner personally shall not be deemed a waiver of the right to foreclose the lien. No owner may escape liability for assessments provided for herein by the abandonment or transfer of such owner's Lot.

Subject to the provisions of this Declaration, the rules and regulations of the Association, and any fees or charges established by the Association, every Member and every Guest or lessee of such Member shall have an easement of enjoyment in and of the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. A member's or Lessee's spouse and children who reside with such Member or Lessee on the Property shall have the same easement of enjoyment hereunder as a Member. The easement of enjoyment herein shall pass from a Member to a Lessee during the lease term; provide, however, the Association may adopt additional restrictions to its rules and regulations limiting the easement of enjoyment of guest and Lessees, including but not limited to the specification of minimum lease terms, the number of guests allowed, or the prohibition or use by Lessees or guests of specific properties.

28. LIABILITY: Neither the Developer, the Committee or the Association, its employees, agents or assigns, shall be liable to any Lot owner(s) for (i) the manner in which it exercises or for its failure or refusal to exercise any right or authority herein granted to it, whether discretionary or not; (ii) for the failure or refusal of any Lot owner to comply with any of the provisions hereof; or, (iii) the failure or refusal of the Developer, the Committee or the Association to enforce any of the provisions hereof against any Lot owner, his Builder, agent or assigns.

29. COMMON AREAS: Any Common Areas shown on the recorded plats of Kensington Place 1st Addition shall be conveyed to the Association at a time decided solely by the Developer. The Developer shall maintain insurance in effect protecting the Association against liability until, such time as the Developer turns over the responsibility of the Common Area to the Association. Once the Developer turns over the said responsibility to the Association, the Developer will have no further responsibility for the Common Areas, and will be released from any liability therefor.

a. No motorcycle, motorbikes or other motorized vehicles (except those used for maintenance, repairs and upkeep of the Common Areas) shall be permitted on the Common Areas.

b. No planting or gardening by owners shall be permitted within the Common Areas, and no fences, hedges or walls or other obstructions shall be erected or maintained upon the Common Areas, except such as are installed by Developer in connection with the construction of the initial improvements thereon or such as are subsequently approved by the Board of Directors of the Association.

30. ENFORCEMENT: It is hereby stipulated that all of the aforesaid restrictions shall constitute covenants running with the land, and that they are hereby created for the

benefit of and shall be fully binding upon all persons and entities now or hereafter owning property in said Subdivision, and upon their heirs, successors, and assigns, including owners and their heirs, and assigns, until modified or canceled as provided herein. The Home Owners Association, Architectural Control Committee or the owner of any Lot in said Subdivision shall have and are hereby granted the right to enforce compliance on the part of any other owner of any other Lot in said Subdivision, by whatever legal means may be available, with any or all of the restrictions herein contained, and may recover damages, including reasonable attorneys fees, to the extent suffered by such owner for the violation by such other owner of any or all of said restrictions.

31. **AMENDMENT OR MODIFICATION OF RESTRICTIONS:** Any and all of the restrictions or requirements hereinbefore set forth may be annulled, amended or modified at any time by the Owner, so long as it continues to own any lots within the Subdivision, without the consent of the property owners or by the owners of not less than Sixty percent (60%) of the lots in said Subdivision, provided, that the owner, its successors and assigns must approve such amendments, modifications, or annulments so long as such owner shall own any lots in said subdivision and any adjacent lands under his control. Any amending instrument shall be acknowledged by the Owner or owners signing same and shall be filed for record in the Office of the Judge of Probate, Mobile County, Alabama, provided that no amendments shall place an additional burden, restriction or requirement on any lot in said Subdivision, the Owner of which does not join in the said amending instrument. Notwithstanding anything to the contrary herein contained, it shall be the responsibility of the Association to maintain and repair the Common Areas, and no amendment to this Declaration shall remove the responsibility of the Association and/or Members thereof to maintain and repair the Common Areas (as herein defined) in accordance with the requirements of this Declaration and, also, the requirements of the County/City of Mobile. Any such attempted amendment shall be void and to no effect.

32. **DURATION OF RESTRICTIONS:** The covenants, terms, conditions, restrictions and limitations herein contained are to run with the land and shall be binding upon all parties and all persons claiming under them and shall inure to the benefit of, and shall be binding upon, each Lot owner, and upon each of their heirs, personal representatives, executors, administrators, grantees, successors and assigns for a period of twenty (20) years from the date of this document's execution.

33. **SEVERABILITY:** Invalidation of any of these covenants by Judgement or court decree shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, McLemore, Inc., by its President, John M. Howard, who is authorized to execute this conveyance has caused the hereinabove restrictions to be executed on this the _____ day of _____, 2006.

McLemore, Inc.,

By: _____
John M. Howard
Its President

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, the undersigned Notary Public, in and for said State and County, hereby certify that John M. Howard, whose name as President of McLemore, Inc., is signed to the foregoing restrictions and who is known to me acknowledged before me on this date that, being informed of the contents of said instrument, he with full authority, executed the same voluntarily as his own act.

Given under my hand and official seal this the _____ day of _____, 2006.

Sandra B. Lacey, Notary Public
State of Alabama At Large
My Commission Expires: 09-15-2007

ACCEPTED BY:

JOHN HOWARD CONSTRUCTION CO., INC.

By: _____
John M. Howard, President

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, the undersigned Notary Public, in and for said State and County, hereby certify that John M. Howard, whose name as President of John Howard Construction Company, Inc., a corporation, is signed the foregoing instrument and who is known to me, acknowledged before me on this date, that being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, acting in its capacity as such manager as aforesaid.

Given under my hand and official seal this _____ day of _____, 20____.

Sandra B. Lacey, Notary Public
State of Alabama, at Large
My Commission Expires: 09-15-2007

**This Instrument Prepared By:
W. Lindsay Walker
6156 Omni Park Drive
Mobile, AL 36609**