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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**OAK ALLEY ESTATES RESIDENTIAL SUBDIVISION**

December 5, 2008

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STATE OF ALABAMA )  
COUNTY OF SHELBY )

  
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**DECLARATION OF COVENANTS, CONDITIONS  
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FOR  
OAK ALLEY ESTATES RESIDENTIAL SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (this "Declaration") is made as of this 5<sup>th</sup> day of December, 2008, by **OAK ALLEY ESTATES, LLC**, an Alabama limited liability company ("Developer"), which declares that the real property hereinafter described, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants"); and

**WHEREAS**, Developer intends to develop the Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community (collectively, the "Subdivision"); and

**WHEREAS**, Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefit all Owners of the Property and, to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the Property and each Owner thereof; and

**WHEREAS**, Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Development and of levying assessments against the Owners of Lots within the Subdivision to enable the Association to perform such obligations.

**NOW, THEREFORE**, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said Property, as well as their heirs, successors and assigns.

**ARTICLE I  
DEFINITIONS**

As used in this Declaration, the following terms shall have the following meanings, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

Section 1.1 **"Architectural Review Committee" or ARC** shall mean the Architectural Review Committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

Section 1.2 **"ARC Guidelines"** shall mean the written architectural, landscaping, and use regulations, specifications, procedures, guidelines and policies for the Property.

Section 1.3 **"Articles"** shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

Section 1.4 **"Assessment"** shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include the Annual Assessments, Special Assessments, Individual Assessments, and Common Area Assessments, all as described in Article VI hereof.

Section 1.5 **"Association"** shall mean and refer to OAK ALLEY ESTATES Homeowners' Association, Inc., an Alabama non-profit corporation, formed or to be formed at or about the same time as the filing of this Declaration under the Alabama Nonprofit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association make reference.

Section 1.6 **"Board" or "Board of Directors"** shall mean the Board of Directors of the Association.

Section 1.7 **"By-laws"** shall mean the By-laws of the Association, as such by-laws may be amended from time to time.

Section 1.8 **"Common Area" or "Commons Areas,"** as the case may be, shall mean and refer to all real and/or personal property, including property which the Association now or hereafter owns or otherwise acquires by lease, easement or otherwise, for the common use and enjoyment of the Owners, whether located within the Property, adjacent to the Property or in close proximity to the Property, and which shall be responsibility of the Association to maintain, and which shall include, without limitation, the following:

(a) all stormwater detention ponds and facilities situated within the Property or any Additional Property hereafter subjected to this Protective Covenants;

(b) the monument signs and landscaping for entrance areas into the Subdivision, all of which are subject to the Entrance Easements;

(c) all installations for the furnishing of electricity, telephone, natural gas, sanitary sewer (including pumping stations), water service and television cable not immediately appurtenant to any Dwelling;

(d) all outdoor exterior lighting not situated within the boundaries of any Lot;

(e) landscaping, trees, and walkways not situated within the boundaries of any Lot (which shall include the main entrance, median, and any landscaping within the entrance areas);



(f) all portions of the Property which are designed or designated on the Plat or otherwise for collecting, retaining and discharging surface and subsurface water from the Property, including without limitation all drainage/utility easement areas;

(g) any and all other areas designated on any Subdivision Record Map as a "Common Area."

Section 1.9 **"Control Period"** shall have the meaning ascribed to it in Section 11.1 hereof.

Section 1.10 **"Declaration"** shall mean this entire document, as same may from time to time be amended.

Section 1.11 **"Developer"** shall mean OAK ALLEY ESTATES, LLC, an Alabama limited liability company, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

Section 1.12 **"Dwelling"** shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof and the ARC Guidelines.

Section 1.13 **"Entrance Easement"** shall have the meaning ascribed to it in Section 3.1 hereof.

Section 1.14 **"Living Area"** shall mean enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditions equipment, exclusive of porches, garages, basements, carports, or attics.

Section 1.15 **"Lots"** shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

Section 1.16 **"Member"** shall mean any person who is a member of the Association. Every Owner shall be a Member.

Section 1.17 **"Mortgage"** shall mean any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

Section 1.18 **"Mortgagee"** shall mean the holder of any Mortgage.

Section 1.19 **"Occupant"** shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

Section 1.20 **"Owner"** shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee of Lot upon which a Dwelling has been constructed, unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

Section 1.21 **"Property"** shall mean and refer to the real property more particularly described on Exhibit A attached hereto, including all the Lots within the Subdivision, all Common Areas, and all easements as reflected on the Subdivision Record Map.

Section 1.22 **"Protective Covenants"** shall mean all of those covenants, conditions and restrictions contained in this Declaration.

Section 1.23 **"Purchaser"** shall mean any person who acquires any Lot.

Section 1.24 **"Single Family Unit"** shall mean a group of one or more persons each related to the other by marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 1.25 **"Subdivision"** shall mean all phases of OAK ALLEY ESTATES, collectively, and any amendments or supplements thereof.

Section 1.26 **"Subdivision Record Maps"** shall mean each recorded map or plat for OAK ALLEY ESTATES, each as shall be prepared by Surveying Solutions and recorded in the Office of the Judge of Probate of Shelby County, Alabama, and any amendments or supplements thereof.

## ARTICLE II PROPERTY SUBJECT TO RESTRICTIONS

Section 2.1 **General Declaration.** The Property which presently is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration is located in Shelby County, Alabama. Any part of such Property and each Lot or Dwelling thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof.

For a period of 20 years from date of recordation of these Covenants, Developer reserves unto itself or its members in the event of dissolution of Developer the right to receive any proceeds of condemnation of Common Areas 1 and 2 as dedicated by the Record Map recorded in Map Book 40, Page 85 in the Probate Office of Shelby County, Alabama. Developer also reserves unto itself the right to receive the proceeds of sale of Common Area 3 as shown on the



record Map. The Association agrees to deed Common Area 3 to any Purchaser upon request of Developer.

Section 2.2 **Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot or Dwelling within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot or Dwelling within the Property, and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

### ARTICLE III EASEMENTS

#### Section 3.1 **Grant of Nonexclusive Easements to Owners:**

(a) **Common Areas.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

Section 3.2 **Utility Easements.** Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter appear on any plat of record of Property subject to these Protective Covenants. Without limitation upon the foregoing, Developer specifically reserves a ten (10) foot easement on the rear property line and a five (5) foot easement on the side of each Lot for surface water drainage, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary.

Section 3.3 **Additional Easements and Uses.** For so long as Developer owns any Lot, Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or

any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office of Shelby County, Alabama. Such right of Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

Section 3.4 **Reservation of General Access Easement.** Developer does hereby establish and reserve for the Association and its respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any improvements thereon in order to determine compliance with the provisions of this Declaration and/or other applicable regulations or covenants, and (b) the performance of the duties of the Association hereunder, including, without limitation, taking any action required or permitted to be taken by the Association pursuant to any of the terms or provisions of this Declaration and/or other applicable regulations or covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner of such Lot directly affected thereby.

Section 3.5 **Additional Documents.** All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

Section 3.6 **Limitations.** Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

(a) All provisions of this Declaration and the Articles and By-Laws of the Association;

(b) All the rules and regulations governing the use and enjoyment of the Common Areas which may or may have been or may hereafter be adopted by the Association; and

(c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.



## ARTICLE IV ARCHITECTURAL CONTROL

### Section 4.1    ARC Guidelines.

(a)    The general architectural objective of Developer for the Property is to create a neighborhood of Dwellings constructed in high quality styles, design, materials, and colors. All Dwellings shall be constructed in conformity with the ARC Guidelines applicable to the Subdivision, and in accordance with the provisions of this Declaration. The Developer, by the terms of this Declaration, has charged the ARC with the approval of all Dwellings, prior to construction, so as to determine that all Dwellings meet the ARC Guidelines applicable to same. In appropriate cases, the ARC shall be entitled to grant variances from the ARC Guidelines, as described in Section 4.6 hereof.

(b)    The ARC is hereby empowered and authorized to formulate and promulgate ARC Guidelines for the Subdivision to govern (i) the review, approval, rejection, form, content and provisions of all landscaping or architectural submissions, and (ii) the rules and regulations governing restrictions as to the use of the Property. The ARC will provide a copy of the applicable ARC Guidelines, and any amendments thereto, to each Owner. Such ARC Guidelines must be followed by all applicants submitting plans for review and approval by the ARC. Decisions of the ARC shall be based upon the uniform application of such reasonable, but high, standards as are consistent with the ARC Guidelines, such standards to include, among other things, the harmony of external design including roof style (pitch, shingle and color), chimney, exterior siding (material and color), windows and trim, shutters (color and style), front doors, garage doors, location in relation to surrounding structures and topography, variation in front set backs, the type, kind and character of buildings, structure and other improvements, and aesthetic qualities in general.

Section 4.2    **Method of Architectural Control.** So as to establish and maintain the ARC Guidelines set forth in this Declaration, no improvement or structure of any kind, including, without limitation, any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, window awnings or other exterior window covering, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed, or maintained upon a Lot, nor shall any addition, change, or alteration therein, thereof, or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, elevation, materials and location of the same, together with such information as the ARC may require, shall have been submitted to and approved in writing by the ARC.

Section 4.3    **ARC Membership.** The ARC shall consist of three (3) members appointed by Developer. In the event of the death, resignation or other termination of any members, the Developer during the Control Period shall have full authority to appoint successor members. The Developer's appointed members shall serve during the Control Period, whereupon, the Developer's control and authority and Developer's appointed members to the ARC shall cease, and the Association shall assume full control and authority over the ARC. Developer, during the Control Period, and thereafter the Association (from and after the time



that it has assumed control of the ARC) reserve the right to remove any member from the ARC at any time with or without cause, in such parties' sole discretion.

Section 4.4 **Release**. Neither the ARC nor any member thereof shall be liable to any Owner, Occupant or to any other party for any damage, loss, or prejudice suffered on account of the approval or disapproval of any plans, drawings, or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition, or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. Neither the ARC nor any member thereof shall have any liability for structural defects, building code compliance, or similar issues, the sole responsibilities of the ARC being limited to aesthetic approvals and compliance with this Declaration. Without limitation on the foregoing, the ARC shall have no obligation to review any submittals for their compliance with applicable building codes or other inadequacy or deficiency, and approval of any submitted plans by the ARC shall not constitute a basis for any liability of the members of the ARC, Developer, members of the Board or the Association as regards any failure of such approved plans to conform to any applicable building codes or other inadequacy or deficiency in the said plans. Neither the ARC, nor any of its members, shall in any way or manner be held liable to any Owner, the Association or any other person or entity for its good faith exercise of the discretionary authority herein conferred.

Section 4.5 **Powers and Duties**. The ARC shall have the following powers and duties:

(a) To require submission to the ARC of plans and specifications for any improvement or structure of any kind, and any change, modification, or alteration thereof, including, without limitation, any such improvement or change to any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, decorative building, landscaping, landscape device or object, the construction or placement of which is or is proposed upon any Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARC and shall include but not necessarily be limited to:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks;

(ii) A foundation plan, floor plan, landscape plan, and exterior elevations of the Dwellings as they will actually appear after all back filling and landscaping is done from finished ground up;

(iii) All plans must include a specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the ARC is unfamiliar; and

(iv) The name and address of the Lot Owner's Contractor who will construct the residence and all other improvements to the Lot.

The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to the office of OAK ALLEY ESTATES, LLC, 2 Perimeter Park South, Suite 430E, Birmingham, AL, 35243, PHONE: (205) 951-9506, FAX: (205) 951-9507, Attention: David B. Keith, or such other address as may be reflected by the ARC in a duly recorded instrument filed in the Probate Court of Shelby County, Alabama.

(b) To approve or disapprove the submitted plans and specification for any Dwelling, improvement, structure as herein above described prior to commencement of construction or such Dwelling, improvement, or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted.

(c) In the event the ARC fails to approve or disapprove any submitted plans by notice in writing sent to the applicant within thirty (30) days following submission to the ARC, then, unless an extension of time has been accepted by the applicant, the applicant may (i) at any time thereafter inform the ARC and the Board, by written notice sent separately to both the ARC and the Board, of the ARC's failure to approve or disapprove the applicant's submitted plans (which notice shall specifically list and identify all materials comprising the applicant's submitted plans), and (ii) if the ARC shall fail to approve or disapprove the applicant's submitted plans within thirty (30) days following its receipt of the said notice, the submitted plans will be deemed to be disapproved by the ARC to the extent same conform to all other express terms and provisions of this Declaration. The approval by the ARC of any plans and specifications for any Dwelling, improvement, or structure shall not be deemed a waiver of the right to object to any of the features or elements embodied in any subsequent plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any Dwelling, improvement, or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARC, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARC, then the Owner shall, upon and in accordance with a demand by the ARC, cause the Dwelling, improvement, or structure either to be restored to its original condition or to comply with the plans and specification as approved by the ARC, and shall bear all costs and reasonable attorneys' fees of the ARC. Any agent or member of the ARC may at any reasonable time enter any building or property subject to the jurisdiction of the ARC which is under construction or on or in which the agent or member may believe that a violation of these Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any Dwelling, improvement, or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the ARC that the construction thereof has been completed in accordance with the plans and specifications approved by the ARC. In the event that the ARC shall fail, for a period of thirty (30) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been denied. The ARC, may from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

(d) To adopt fees which may be designed to reimburse the ARC for the necessary and reasonable costs incurred by it in processing requests for ARC approval of any matters under its



jurisdiction. Such fees, if any, shall be payable to the ARC, in cash, at the time that any application for approval is sought from the ARC.

(e) Neither the ARC nor any architect or agent thereof nor Developer shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

(f) The initial three members of the ARC appointed by Developer are as follows: David B. Keith, W. R. Kinnebrew, Jr. and Barbara Martin.

Section 4.6 **Variances.** The ARC, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the Committee grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the Committee, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

Section 4.7 **Additional Remedies.** In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the ARC or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall have the right, at its option, (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC or the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling until any work in place which does not comply with the plans and specifications approved by the ARC or the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other enforcement rights specified in this Declaration.

Section 4.8 **Condition of Property.** The Property is located in an area which may include underground mines, tunnels, sinkholes and subsurface conditions. The approval of any plans by the ARC shall not be construed in any respect as a representation or warranty by the ARC, the Association, the Developer, or any director, officer, employee or agent of any of them (collectively, the "Released Parties"), to any Owner or any other person that the surface or subsurface conditions of any Lot or of any other portion of the Property are suitable for the construction of a dwelling or other improvement thereon. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and the subsurface conditions of each Lot. No Released Party shall be liable or otherwise responsible for any damage or injury suffered or incurred by any Lot, Owner or any other person as a result of surface or subsurface conditions affecting a Lot or any portion thereof, including, without limitation, any surface or subsurface drainage or underground mines, tunnels, sinkholes or other conditions or types of ground subsidence occurring on or under any Lot or any other portion of the Property.

## ARTICLE V RESTRICTIONS

Section 5.1 **Use Restrictions.** The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the ARC and subject to any restrictions and limitations as the ARC may reasonably request), including all types of home industry, will be permitted. No building or structure other than a Dwelling which shall include outbuildings such as a pool house or detached garage shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

- (a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners;
- (b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs (2) and/or cats as domestic pets on a single Lot and provided further that the ARC may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the ARC. It is permissible for an owner to construct barns and maintain horses for their personal use and enjoyment;
- (c) exploring, mining, boring, quarrying, drilling or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas; and
- (d) use of a Dwelling by more than a Single Family Unit.

Any Owner may request from the ARC at any time a determination of whether a prospective use of a Lot is permitted. A certificate to that effect signed by a member of the ARC shall be deemed to be dispositive of this issue.

Section 5.2 **Storm Drains.** Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets and other structures necessary for proper control of storm drainage and runoff. Owners shall not alter, modify, or in any way interfere with the



functionality of these structures. Additionally, Owners shall not allow debris, grass clippings, fences, or any other items to impede the function of the drainage structure and shall maintain the same.

Section 5.3 **Common Areas.** The Developer shall deed to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The conveyance to the Association is made upon the condition that the Association takes control of the Common Areas, assesses the Common Areas in the name of the Association for tax purposes, improves and maintains the Common Areas and obtains and maintains liability insurance coverage on the Common Areas in the name of the Association.

Section 5.4 **Tenants.** It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by him receives a copy of these Protective Covenants and that every lease utilized by such Owner contains a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs of enforcing the same.

Section 5.5 **Enforcement.** If a determination is made by the ARC that any of the restrictions in this Article V or the ARC Guidelines are being or have been violated upon any Lot, then the ARC shall so notify the Owner in writing, specifying the violation. If within fifteen (15) days from such notification, the ARC shall make a second determination that sufficient progress has not been made to remedy the violation, the ARC may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the ARC may treat all such costs and expenses therefor as a charge which shall become an appropriate proceeding at law or in equity.

Section 5.6 **Additional Restrictions.** Additional restrictions may be contained in the ARC Guidelines and each Owner shall be subject to the terms and conditions thereof.

## ARTICLE VI COVENANT FOR ASSESSMENTS

Section 6.1 **Affirmative Covenant to Pay Assessments.** Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of these Protective Covenants. Notwithstanding the foregoing, Lots owned by Developer, shall not be subject to any Assessment by the Association, be it Individual, Annual, Special or Individual Assessments. The Annual, Special, Initial, and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be



a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due, but shall not constitute a charge or lien upon the Lot against which the Assessment is made.

Section 6.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

Section 6.3 **Individual Assessment.** Any expenses incurred by the Association in enforcing any of the provisions of these Protective Covenants against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

Section 6.4 **Annual Assessments.** The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board of Directors of the Association may deem appropriate. The Annual Assessment for the Development shall commence on January 1 of each year, and shall be paid in advance. Each Lot Owner (other than Developer) will be required to prepay the Annual Assessment at the purchase of such Lot Owner's purchase of its Lot on a prorated basis based upon the number of days between the closing of such Lot and the following December 31.

Section 6.5 **Special Assessments.** In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at anytime, one or more Special Assessments for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such Assessment must have the assent and approval of (a) at least fifty-one percent (51%) of the Owners who are voting in person or by proxy at a meeting duly called for this purpose, and (b) to the extent Developer is the Owner of any Lot in the Development, the approval of Developer.

Section 6.6 **Special Meeting.** Written notice of any meeting called for the purpose of taking any action authorized under Section 6.6 above shall be sent to all Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners, either in person or by proxy, entitled to cast fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required



quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting.

Section 6.7 **Amount of Assessments.** Both Annual and Special Assessments must be fixed at a uniform rate for Dwellings types within the Subdivision, and shall commence when such Lot is improved with a completed Dwelling, and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice).

Section 6.8 **Certificate.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessment on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

Section 6.9 **Effect of Non-Payment of Assessments; Liens; Remedies.** Any Assessments (whether Annual, Special, Initial, or Individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any Assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

(a) The Association may commence and maintain a suit at law against the Owner for a personal money judgment to enforce all such charges and obligations for Assessments and other amounts including the late charge and interest specified above as well as all attorneys' fees, court costs and all other costs and expenses paid or incurred by the Association in connection therewith; and/or

(b) The Association may enforce the lien created pursuant to Section 6.1 above as hereinafter provided. The lien created pursuant to Section 6.1 above shall secure the payment of any and all Assessments (Annual, Special, Initial, and Individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the Assessments and in maintaining any legal action in connection therewith. If any Assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on the defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Association may file a claim of lien

against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Directors of the Association or any officer of the Association and shall be filed for record in the Probate Office of Shelby County, Alabama. The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amount due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner (other than Developer) may waive or otherwise be exempt from the liability to pay the Assessments provided herein.

Section 6.10 **Lien Subordinate to Mortgages.** The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot. No Mortgagee shall be required to collect Assessments on behalf of any Owner. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due more than six (6) months prior to such sale or transfer.

Section 6.11 **Damages.** In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the ARC, or any Member thereof, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association or the ARC, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 6.9(b) above. The failure of Developer, the Association or the ARC to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

Section 6.12 **Exempt Property.** The Board shall have the right to exempt any portion of the Property from the Assessment and liens created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

(a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;



- (b) As a Common Area; or
- (c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

## ARTICLE VII COMMON AREA EXPENSES

Section 7.1 **Common Area Expenses.** The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article VI hereof; provided, however, that the enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by assessment:

(a) **Maintenance and Repair of Common Areas:**

(i) The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean and attractive condition, (but not to include the cost of initial construction, which shall be at the cost of the Developer) if any, including the charges in Section 6.5 of this Declaration, as well as the following charges:

(ii) Any electrical costs to run all common lighting and any other electrical device necessary to the Common Areas, including street lighting;

(iii) Sanitary sewer and storm sewer lines within private drives, if applicable;

(iv) Gas bills of the Association, if any;

(v) Water bills and sprinkler systems for use on the Common Areas;

(vi) Any insurance for the Common Areas;

(vii) Any management fees, accounting fees, and legal expenses incurred by the Association;

(viii) Any and all other property deeded to the Association by Developer;

(ix) Maintenance costs of all detention ponds and storm water drainage areas, if applicable; and

(x) Such other matters which involve the use of the Common Areas as determined by the Association.

(b) **Management.** The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and

equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

(c) Property Taxes. All ad valorem taxes and other Assessments relating and connected to the Common Areas, if any.

(d) Insurance:

(i) Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any;

(ii) Adequate property and casualty insurance for the benefit of the Association insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

(iii) Public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and all members, directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

(iv) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine; and

(v) All insurance coverage authorized hereunder shall be written in the name of the Association. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

Section 7.2 Reserves. The Association may establish reserves for the payment of Common Expenses in the future (including reserves for maintenance of the storm water detention system for the Subdivision, if any).

Section 7.3 Interested Transactions. The Association may obtain materials and/or services from Developer and/or any of its Affiliates in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party providing similar materials and/or services which can be reasonably made available to the Association.



Section 7.4 **Enforcement of Declaration and Rules and Regulations.** All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, by the By-Laws or this Declaration.

## ARTICLE VIII NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES

Section 8.1 **Protective Covenants Running with the Land.** The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with the Property and inure to the benefit of and be enforceable by Developer, its designated successors and assigns, or by any Owner and its respective heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive period of ten (10) years, unless an agreement which has been signed by Owners who own three-fourths (3/4) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Probate Court of Shelby County, Alabama.

Section 8.2 **Remedies for Default.** The existence of any default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them; provided, this Declaration shall be recorded for the benefit of Developer, the ARC, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

Section 8.3 **Nature of Remedies: Waiver.** All rights, remedies and privileges granted to Developer, the ARC, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

Section 8.4 **No Reverter.** No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter.

## ARTICLE IX FUNCTION OF ASSOCIATION



Section 9.1 **Name.** The name of the Association for the Property is OAK ALLEY ESTATES Homeowners' Association, Inc., which shall be incorporated as a nonprofit corporation.

Section 9.2 **Maintenance Responsibilities.** The Association may, at any time, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct and repair all of the improvements within the Common Areas, to include plantings and shrubbery, maintenance of all storm water detention facilities, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain and manage the Common Areas shown on the Subdivision Record Map so as to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity to be conducted thereon;

(c) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(d) Do all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

Section 9.3 **Other Rights of Association.** The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII hereof, and adopt rules, regulations, procedures and policies with respect to:

(a) garbage and trash collection and removal;

(b) motor vehicle operation;

(c) parking of motor vehicles on streets or roads in the Property; and

(d) such other matters including the general welfare of the Property as a whole.

## ARTICLE X AMENDMENT OF DECLARATION

Section 10.1 **Amendment by Association.** During the Control Period, this Declaration may be amended by Developer in Developer's sole discretion, provided that any such amendment does not adversely impact any Owner in which case such Owner's consent shall be required. Following the expiration of the Control Period, an amendment to this Declaration may be proposed by written instruction signed by the Owners of not less than three-fourths (3/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten (10) days nor more than thirty (30) days, before the



date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the ARC as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Court of Shelby County, Alabama, within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered at or prior to such meeting.

Section 10.2 **Scrivener's Error.** Notwithstanding the foregoing amendment provisions, any scrivener's error omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any Owners or Mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by Developer without the consent of any other party.

## **ARTICLE XI PERIOD OF DEVELOPER CONTROL**

### **Section 11.1 Developer Control.**

(a) Notwithstanding any provision contained herein to the contrary, in view of the Developer's financial commitment to the Subdivision, Developer's obligations as an initial owner of the Lots to pay the expenses of the Subdivision and Developer's obligations and Developer's need to insure the success of the Subdivision, then until the later of such time as Developer has sold and no longer retains ownership of any of the Lots within the Subdivision, or until the Developer elects to terminate its control of the Association, or February 28, 2009, (such period of time being referred to herein as the "the Control Period"), the Developer shall have (a) the right to manage all of the affairs and decisions of the Association, (b) the exclusive right to elect the Directors of the Association (who need not be Owners), (c) the right to amend the this Declaration, the Articles, and the Bylaws of the Association.

(b) Developer may terminate its management rights and responsibilities, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time

prior to the expiration of said Control Period. During the Control Period, the Developer shall have the sole and exclusive right to take all actions and do all things in behalf of the Association.

(c) During the Control Period, Developer shall pay all expenses otherwise payable by the Association and as reimbursement therefor and as compensation for its management services, Developer shall be entitled to receive and retain all of the Assessments payable by the Owners during said Control Period, and Developer shall have all of the rights of the Association to levy and enforce payment of Assessments. Developer's contributions to the Subdivision via the development thereof shall be credited against any Assessments otherwise due by Developer for Lots owned by the Developer and upon which a Dwelling has been completed. During the Control Period, Developer shall not be required to assess or create any reserves and at the termination of the Control Period and the assumption of the operation of the Association by the Members, Developer shall not be required to render an accounting of income and expenses incurred during the Control Period.

## ARTICLE XII GENERAL PROVISIONS

Section 12.1 **Deeds Subject to Covenant.** Each deed for the sale of a Lot in the Subdivision will be subject to the terms and conditions of this Declaration and the said Deed will contain a reference to this Declaration.

Section 12.2 **Obligation of Owner to Restore.**

(a) In the event a Dwelling on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace said structure within one (1) year from the date of such damage or destruction and such repair or replacement of such structure shall be in accordance with the covenants and restriction set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a sightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

Section 12.3 **Indemnity for Damages.** Each and every Owner and future Owner, in accepting a deed or contract for any lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such Owner, or the contractor, agent or employee or such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water drainage or storm sewer lines, or sanitary sewer lines owned by Developer, or for which Developer has responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by any said land owner, said owner accepts his/her knowledge of this Declaration, and ratifies the covenants contained herein and thus releases his/her right to prosecute Developer for the conveniences said lot owner deems inadequate or unbecoming of said lot owner's needs.

Section 12.4 **No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action



within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

Section 12.5 **Notices.** Any notice required to be sent to any Owner under the provisions of this declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, return receipt requested, to the street address of the Lot owned by such Owner.

Section 12.6 **Severability.** Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

Section 12.7 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

Section 12.8 **Captions.** The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

Section 12.9 **Usage.** Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 12.10 **Conflict.** If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.

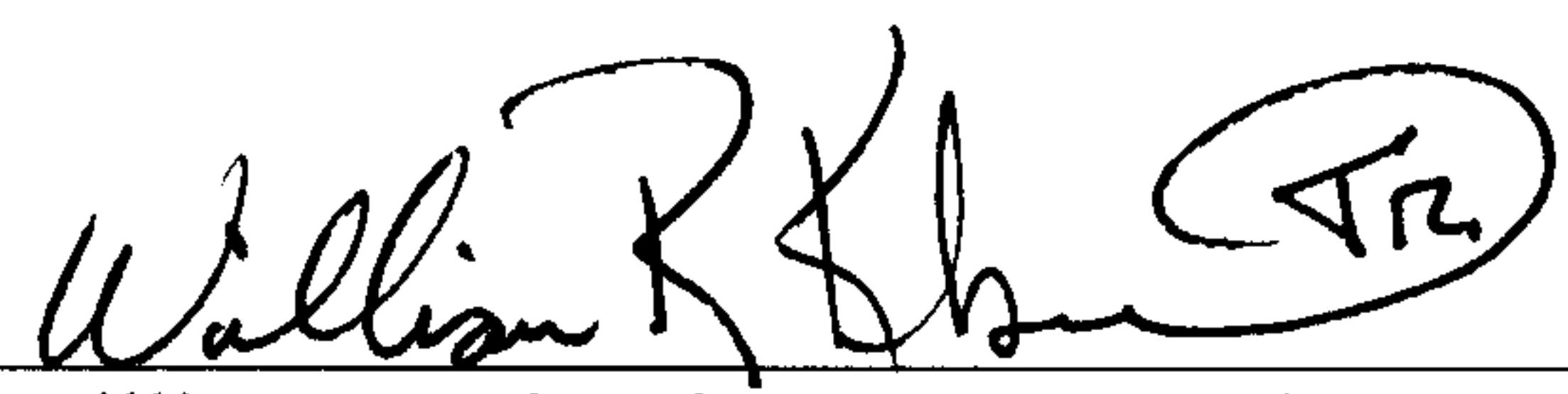
Section 12.11 **Effective Date.** This Declaration shall become effective upon its recordation in the Probate Court of Shelby County, Alabama.

**IN WITNESS WHEREOF,** Developer has caused this Declaration to be executed on the 5<sup>th</sup> day of December, 2008.

**DEVELOPER:**

**OAK ALLEY ESTATES, LLC,**  
an Alabama limited liability company

BY:  member  
David B. Keith, Member

BY:  Tr  
William R. Kinnebrew, Jr., Member

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David B. Keith and William R. Kinnebrew, Jr., whose names as Members of Oak Alley Estates, LLC, an Alabama limited liability company, are signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, they, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this, the 5<sup>th</sup> day of December, 2008.


[SEAL]

J L Hartman III  
Notary Public

My Commission Expires: 8/4/09

THIS INSTRUMENT PREPARED BY:

John L. Hartman, III  
Hartman & Springfield  
P. O. Box 846  
Birmingham, AL 35201-0846  
(205) 879-0500

  
20081205000459170 24/25 \$83.00  
Shelby Cnty Judge of Probate, AL  
12/05/2008 03:34:10PM FILED/CERT



## EXHIBIT "A"

Lots 1, 2, 3, and 4, Common Areas 1, 2, and 3, and that private roadway, according to the Survey of Oak Alley Estates, as recorded in Map Book 40, page 85, in the Probate Office of Shelby County, Alabama.

Subject to: (1) Taxes for the year 2009 and subsequent years; (2) Easements and building line as shown on recorded map; and (3) Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages.



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Shelby Cnty Judge of Probate, AL  
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