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**AMENDED AND RESTATED**

**GREYSTONE VILLAGE**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**DATED FEBRUARY 21, 1994**

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This instrument prepared by and upon  
recording should be returned to:

Stephen R. Monk, Esq.  
c/o Daniel Corporation  
1200 Corporate Drive  
Meadow Brook Corporate Park  
Birmingham, Alabama 35242

*Cahaba Title*

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**GREYSTONE VILLAGE**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**AMENDED AND RESTATED  
GREYSTONE VILLAGE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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THIS AMENDED AND RESTATED GREYSTONE VILLAGE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 21st day of February, 1994 by DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Daniel"), and SCHOOL HOUSE PROPERTIES, an Alabama general partnership ("Developer").

**R E C I T A L S:**

Daniel and Developer have heretofore entered into the Greystone Village Declaration of Covenants, Conditions and Restrictions dated as of July 15, 1993 (the "Prior Covenants"), which has been recorded as Instrument No. 1993-20846 in the Office of the Judge of Probate of Shelby County, Alabama. Daniel and Developer desire to amend and restate the Prior Covenants in their entirety by the terms and provisions of this Declaration.

NOW, THEREFORE, Daniel and Developer do hereby declare that all of that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described in Exhibit A attached hereto and any of the Additional Property, as described in Section 1.01 below (but only to the extent Daniel approves the submission of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**DEVELOPER AND DANIEL DO FURTHER DECLARE AND AGREE THAT THE PRIOR COVENANTS ARE HEREBY CANCELLED AND TERMINATED, SHALL BE OF NO FURTHER FORCE OR EFFECT AND THE TERMS AND PROVISIONS OF THIS DECLARATION SHALL BE DEEMED TO SUPERSEDE AND REPLACE IN THEIR ENTIRETY ALL OF THE TERMS AND PROVISIONS OF THE PRIOR COVENANTS.**

## ARTICLE I

### DEFINITIONS

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

1.01 Access Property. The term "Access Property" shall have the same meaning given such term in the Easement Agreement. Daniel has agreed to grant to Developer and its successors and assigns a non-exclusive easement over and upon the Access Property in accordance with the terms and provisions of the Easement Agreement.

1.02 Additional Property. The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or contiguous with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time approve for addition to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

1.03 Annual Hugh Daniel Drive Assessments. The term "Annual Hugh Daniel Drive Assessments" shall have the meaning set forth in Section 8.04 below.

1.04 Articles of Incorporation. The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

1.05 Assessment. The term "Assessment" shall mean, collectively, the annual and special assessments, the Annual Hugh Daniel Drive Assessments and individual assessments and/or any other charges assessed against an Owner by the Association pursuant to the terms of this Declaration.

1.06 Association. The term "Association" shall mean Greystone Village Owner's Association, Inc., an Alabama nonprofit corporation.

1.07 Board. The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

1.08 Bylaws. The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.



1.09 **Common Areas**. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall also include (a) all public or private roadways or easements within the boundaries of the Property upon which public or private roadways providing ingress to and egress from the Property for use by all owners of the Property have been constructed, (b) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, improvements, landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians within any public or private roadways, whether the same are located within the boundaries of the Property or on any public or private roadways which may be adjacent to or in close proximity with the Property which provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling), (c) the Lake Common Area, all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling), (d) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and (e) all parks, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. **THE GOLF CLUB PROPERTY IS NOT PART OF THE COMMON AREAS.**

1.10 **Common Expenses**. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.03(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.11 **Daniel**. The term "Daniel" means Daniel Oak Mountain Limited Partnership, an Alabama limited partnership, its successors and assigns.

1.12 **Declaration**. The term "Declaration" shall mean and refer to this Amended and Restated Greystone Village Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.13 **Developer**. The term "Developer" shall mean School House Properties, an Alabama general partnership and its successors and assigns.

1.14 **Dwelling**. The term "Dwelling", with an initial capital letter, shall mean and refer to any improved Lot intended for use as single-family detached residential housing units.

1.15 **Easement Agreement**. The term "Easement Agreement" shall mean and refer to that certain Easement Agreement dated July 28, 1993 between Daniel and Developer and recorded as Instrument No. 1993-22440 in the Office of the Judge of Probate of Shelby County, Alabama.

1.16 **Golf Club Property**. The term "Golf Club Property" shall mean and refer to (a) that certain real property described in that certain Second Amendment to Memorandum of Ground Lease dated as of February 2, 1993 and recorded as Instrument No. 1993-03126 in the Probate Office of Shelby County, Alabama, as the same may be modified or amended from time to time and (b) the golf course, clubhouse and related improvements to be constructed thereon. **THE GOLF CLUB PROPERTY IS NOT PART OF THE COMMON AREAS NOR IS IT TO BE GOVERNED BY THE PROVISIONS OF THIS DECLARATION. NO OWNER OR OCCUPANT, NOR THE ASSOCIATION SHALL HAVE ANY RIGHTS IN AND TO, OR ANY OBLIGATIONS WITH RESPECT TO, THE GOLF CLUB PROPERTY BY VIRTUE OF THIS DECLARATION OR BY VIRTUE OF OWNERSHIP OR OCCUPANCY OF ANY LOT OR DWELLING. THE GOLF CLUB PROPERTY MAY BE USED SOLELY BY THE MEMBERS OF THE GOLF CLUB AND OWNERSHIP OF ANY PORTION OF THE PROPERTY OR ANY LOT OR DWELLING SHALL NOT ENTITLE SUCH OWNER TO ANY RIGHTS IN OR TO OR THE USE OF THE GOLF CLUB PROPERTY.**

1.17 **Governmental Authority**. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property.

1.18 **GRA**. The term or initials "GRA" shall mean and refer to the Greystone Residential Association, Inc., an Alabama non-profit corporation and its successors and assigns.

1.19 **Hugh Daniel Drive**. The term "Hugh Daniel Drive" shall have the same meaning given to such term in the Easement Agreement. Daniel has agreed to grant to Developer, its successors and assigns a non-exclusive easement over and upon Hugh Daniel Drive in accordance with the terms and provisions set forth in the Easement Agreement.

1.20 **Improvement**. The term "Improvement", with an initial capital letter, shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling or Common Area. Improvements shall include, by way of illustration and



not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.21 **Lake**. The term "Lake" or "Lakes" shall mean and refer to any lakes situated adjacent to or in close proximity with the Property.

1.22 **Lake Buffer Area**. The term "Lake Buffer Area" shall mean and refer to that portion of the Property designated as "Common Area" on the Survey of Greystone Village -Phase 1, as recorded in Map Book 18, Page 9 in the Office of the Judge of Probate of Shelby County, Alabama.

1.23 **Living Space**. The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

1.24 **Lot**. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided pursuant to the provisions of Section 2.04 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.25 **Mortgage**. The term "Mortgage", with an initial capital letter, shall mean and refer to any mortgage, deed of trust 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.

1.26 **Mortgagee**. The term "Mortgagee", with an initial capital letter, shall mean and refer to the holder of any Mortgage.

1.27 **Occupant**. The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Lot or Dwelling within the Property. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner

of such Lot or Dwelling.

1.28 **Owner**. The term "Owner", with an initial capital letter, 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 unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling Area 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.

1.29 **Prior Covenants**. The term "Prior Covenants" shall mean and refer to the Greystone Village Declaration of Covenants, Conditions and Restrictions dated July 15, 1993, which has been recorded as Instrument No. 1993-20846 in the Office of the Judge of Probate of Shelby County, Alabama. The Prior Covenants are superseded in their entirety by the terms of this Declaration, are hereby cancelled and terminated and shall be of no further force or effect.

1.30 **Property**. The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

## ARTICLE II

### **PROPERTY SUBJECT TO THE DECLARATION**

2.01 **General Declaration**. Daniel and Developer hereby declare that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling and Common Area 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 the Property and shall be binding upon and inure to the benefit of Daniel, Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling and Common Area thereof. **This Declaration shall not apply to or affect the Golf Club Property nor shall this Declaration apply to any other real property owned by Daniel or Developer unless the same is subjected specifically by written instrument to this Declaration.**

2.02 **Additional Property**. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this



Declaration by Developer, then any such Additional Property shall constitute part of the Property; provided, however, that no Additional Property may be added to the provisions of this Declaration without the prior written consent of Daniel. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer and Daniel in the manner required for the execution of deeds and recorded in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating where this Declaration has been recorded in the Probate Office of Shelby County, Alabama, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions (which shall be subject to the prior written approval of Daniel) as Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Shelby County, Alabama submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Daniel and (2) the rights reserved by Daniel pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

**2.03 Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Dwelling and Common Area 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 and all future and subsequent Owners of any Lot or Dwelling within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**2.04 Subdivision Plat.** With the prior written consent of Daniel, which consent shall not be unreasonably withheld, Developer may record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Property, including,

without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto, upon written approval of the same by Daniel, shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time, upon written approval of the same by Daniel, divide and redivide, combine and resubdivide any Lots owned by Developer.

### **ARTICLE III**

#### **EASEMENTS**

3.01 **Easement Agreement.** All of the terms and provisions of the Easement Agreement shall be binding upon and inure to the benefit of the Owners, Occupants and Mortgagees of any portion of the Property. To the extent of any ambiguity or inconsistency between the terms of the Easement Agreement and this Declaration, the terms of the Easement Agreement shall control.

3.02 **Grant of Non-Exclusive Easements to Owners.**

(a) **Common Areas.** Subject to the terms and conditions of the Easement Agreement and Sections 3.02(b) and 3.10 below, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other owners Occupants and other parties having any rights or interest therein. The easement and rights granted pursuant to this Section 3.02(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling but are expressly subject to the rights reserved by Developer to take any action necessary or desired in order to cause any of the private roadways within the Property to be dedicated to and accepted as public roadways by any Governmental Authority as provided in Section 3.02(b) below.

(b) **Power of Attorney.** Notwithstanding anything provided to the contrary in this Declaration, Developer (i) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate any of the private roadways within the Property as public roadways to any Governmental Authority designated by Developer without requirement that the approval or consent of any Owner, Occupant or Mortgagee be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which any of the private roadways within the Property are submitted for dedication as public roadways.



Each Owner, by acceptance of any deed to a Lot or Dwelling and each Mortgagee, by the acceptance of any Mortgage on any Lot or Dwelling, shall be deemed to, and each does hereby, irrevocably appoint Developer as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of any of the private roadways within the Property to any Governmental Authority as public roadways for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and anyone having any interest in any Lot or Dwelling or in any of the easement rights created or granted in this Declaration. The rights reserved by Developer pursuant to this Section 3.02(b) may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein by Developer.

**3.03 Grant of Easement to Governmental Authorities.** Subject to the provisions of the Easement Agreement and Section 3.02(b) above, Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon all of the private roadways within the Property forming a part of the Common Areas for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

**3.04 Reservation of General Access Easement.**

(a) Developer does hereby establish and reserve for itself, Daniel, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of providing ingress to and egress from each Lot and Dwelling for (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, Daniel and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, Daniel and the Association pursuant to any of the terms or provisions of this Declaration; 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 or Occupant of such Lot or directly affected thereby.

(b) It is anticipated that a single family residential home shall be constructed on each Lot. Each home shall be located in such a manner so that there shall be a minimum of six (6) feet between each home located on the Property (to be measured between the closest outside walls of the homes). The home to be constructed on each Lot may be situated so that one side wall of the home is located up to and on one side line of the Lot (provided that the required distance between each home on the Property is maintained). Any such Lot shall hereafter be referred to as the "dominant lot" and the side line which the home is located up to or on shall thereafter be referred to as the "dominant side". The owner(s) of each dominant lot shall have, and there is hereby created in favor of each dominant lot, a five (5) foot wide easement across the Lot which joins the dominant lot on its dominant side, the easement to extend along their common property line from the front to the rear thereof, for the limited purpose of facilitating the construction and maintenance of the home. The easement herein created shall apply not only during the construction phase but shall also run with the Lots subject thereto in favor of the dominant lot, and apply to the continued maintenance and repair of the home and the reconstruction of a home in the event of its partial or total destruction. Any party exercising its rights under the easement herein established shall not cause any damage to any Lot which is subject to this easement and may exercise its rights only during reasonable hours and in a reasonable manner. The easement herein created shall not permit the alteration in any manner or any area subject to the easement by the Owner of the "dominant lot".

### **3.05 Reservation of Easements With Respect to Common Areas.**

(a) Easement Upon Common Areas. Subject to the provisions of Section 3.10 below, Developer does hereby establish and reserve, for itself, Daniel, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing.

(b) Changes in Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas (other than the Lake Common Area) and any Lots owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine. Notwithstanding anything provided herein to the contrary, no portion of the Lake Common Area may be altered, amended, changed, modified or realigned without the prior written consent of Daniel.



**3.06 Reservation of Easement for Utilities.** Subject to the provisions of Section 3.10 below, Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.06 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.06 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.06 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

**3.07 Reservation of Easement for Perimeter Wall.** Subject to the provisions of Section 3.10 below, Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Lot or Dwelling which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Property; provided, however, that neither Developer nor the Association shall have any obligation to construct any such perimeter wall, fence, mound or berm.

**3.08 Reservation of Maintenance Easement.** Developer does hereby establish and reserve for itself, Daniel, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, Daniel or the

Association to perform any of the foregoing actions.

**3.09 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, Daniel, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the applicable watershed, soil erosion or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, Daniel or the Association of the rights reserved in this Section 3.09 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

**3.10 Establishment of Buffer and Grant of Easement to Lake Common Area.**

(a) Developer does hereby establish and declare, for the benefit of Developer, Daniel, GRA and their respective successors and assigns, that the Lake Common Area (i) shall be and remain a natural, undisturbed buffer area, free from any Improvements of any nature except that Developer shall landscape such area in a manner to be approved in writing by Daniel, (ii) shall not, without the prior written consent of Daniel, be used for any activities, whether as play areas for children, picnic areas, recreational areas or any other uses whatsoever and (iii) except for landscaping to be approved by Daniel as provided above, shall not be improved with any Improvements of any nature (including, without limitation, fences, walls, decks, docks, outdoor furniture, recreational equipment or devices of any nature, equipment, tools, machinery, buildings or other structures.

(b) Developer does hereby grant to the Association, Daniel, GRA and each of their respective successors and assigns, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon the Lake Common Area for the purpose of maintaining the Lake Common Area; provided, however, that nothing contained in this Section 3.10 shall obligate Daniel or GRA to undertake any maintenance responsibilities with respect to the Lake Common Area.

(c) Developer does hereby grant to Daniel, its successors and assigns, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon the Lake Common Area for the purposes of (i) constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways or paths thereon, (ii) providing Daniel, any owner's association designation by Daniel or any of their respective



heirs, executors, administrators, personal representatives, successors and assigns, with the non-exclusive right to use the Lake Common Area and any improvements thereto for pedestrian access to, along and around any Lakes and (iii) mowing, clearing, removing, cutting and pruning any grass, weeds, underbrush, trees, stumps or other unsightly growth thereon; provided, however, that neither Daniel, GRA, any owner's association designated by Daniel nor any of their respective successors or assigns shall have any obligation to construct any of the foregoing improvements or undertake any of the foregoing maintenance, repair or other actions specified herein.

## **ARTICLE IV**

### **ASSOCIATION**

4.01 **Membership.** The Owner of each Lot or Dwelling shall be a member of the Association. For purposes of determining membership in the Association, each dwelling unit situated on any portion of the Property shall be deemed a separate individual Dwelling. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Property, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 **Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the Property. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove

members of the Board and officers of the Association as provided by this Section 4.02.

4.03 **Voting Rights.** The Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling owned. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.04 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

4.04 **Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration and in the Reciprocal Easement Agreement, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.05 **Agreements.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be affiliates of either Daniel or Developer, such duties



of the Association as may be determined by the Board. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Property, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

**4.06 Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings and Common Areas so long as the same do not conflict with, contradict or attempt to supersede any of the terms and provisions of this Declaration or the Reciprocal Easement Agreement.

**4.07 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the Board of the Association). The officers, agents, representatives and members of the Board of the Association shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC or the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers and directors liability insurance in order to fulfill its obligations under this Section 4.07 and the costs of such insurance shall constitute a Common Expense.

## **ARTICLE V**

### **ARCHITECTURAL REVIEW AND PROPERTY STANDARDS**

#### **5.01 Approval of Plans and Specifications.**

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING BY ANY OWNER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY DANIEL, ITS SUCCESSORS OR ASSIGNS, IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.01(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT'S QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY DANIEL, ITS SUCCESSORS OR ASSIGNS, IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.01(b) BELOW.

(b) Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to Daniel plans and specifications and related data for all such Improvements, which shall include the following:

(i) Two (2) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or



Dwelling.

(ii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Dwelling to be constructed on the Lot.

(iii) Two (2) copies of written specifications and, if requested by Daniel, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwelling.

(iv) Two (2) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) Two (2) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.02 below.

(vi) Such other plans, specifications or other information or documentation as may be required by Daniel.

(c) Daniel shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. Daniel shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of Daniel, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. Daniel shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by Daniel for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate Daniel to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Property. Daniel

shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking Daniel approval of plans and specifications. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance without the necessity or requirement that the approval or consent of Daniel be obtained.

(d) In the event Daniel fails to approve in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

(e) Any revisions, modifications or changes in any plans and specifications previously approved by Daniel must be approved by Daniel in the same manner specified above.

(f) If construction of the Dwelling or the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval by Daniel of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced (or continued) on such Lot or Dwelling and the Owner of such Lot or Dwelling shall be required to resubmit all plans and specifications for any Dwelling or other Improvements to Daniel for approval in the same manner specified above.

**5.02 Landscaping Approval.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by Daniel.

**5.03 Construction Without Approval.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without approval of the plans and specifications for the same or (b) Daniel shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and Daniel shall have the right to exercise any of the rights and remedies set forth in Article XI below.

**5.04 Inspection.** Daniel or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or Dwelling being



constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by Daniel.

**5.05 Subsurface Conditions.** The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by Daniel for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by Daniel or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

**5.06 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Daniel, Developer, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling or any Improvements situated thereon.

**5.07 Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the

appropriate Governmental Authorities.

**5.08 Enforcement and Remedies.** In the event any of the provisions of this Article V 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 Daniel and/or the Association shall each have the right, at their option, to exercise any of the rights and remedies set forth in Article XI below.

**5.09 Compliance Certification.** Daniel or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

**5.10 Daniel's Assignment Rights.** Daniel shall have the right at any time to transfer and assign its rights and duties and the benefits granted to it pursuant to this Article V to the Association or to any other person, and following such assignment, such assignee shall be entitled to all of the rights and benefits of Daniel set forth in this Article V.

**5.11 Obligations of Developer.** Developer, its successors and assigns, shall be solely responsible for developing the Property in accordance with sound engineering principles and all requirements of the Governmental Authorities (the "Development Obligations"). The Development Obligations of Developer shall include, without limitation, (a) the installation in a good and workmanlike manner of all underground utilities, roadways, street lighting, street and traffic signage, storm drainage for the Property and each Lot or Dwelling within the Property, (b) compliance with all watershed and soil sedimentation or erosion plans which may be applicable to the Property or as may be required by the terms of this Declaration and (c) compliance with all requirements of any applicable Governmental Authority. Neither Daniel nor GRA shall have any liability or obligation of any nature to (i) undertake any of the Development Obligations, (ii) inspect, insure the completion of, review or approve the quality, condition, manner of installation or working condition of any of the Development Obligations or (iii) repair, maintain or replace any Improvements to any Lots or Dwellings or to any other portions of the Property which have been constructed by Developer as part of the Development Obligations. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall and does hereby waive all claims against Daniel and GRA and their respective successors and assigns, and does hereby release Daniel and GRA and their respective successors and assigns from and against any and all liability, of any nature arising out of or on account of any loss, damage or injury to person or property, including death, as a result of Developer's failure to properly perform the Development Obligations.



## ARTICLE VI

### USE AND PROPERTY RESTRICTIONS

6.01 **Use Restrictions.** Except as otherwise provided to the contrary in this Section 6.01, each Lot and Dwelling shall be used for detached single-family residential purposes only. No trade or business may be carried on in or from any Lot or Dwelling, provided, however, that the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for any of the uses included in the definition of Common Areas.

6.02 **Underground Utilities.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.03 **Density Limitations.** The maximum number of Dwellings to be constructed on or within the Property and any Additional Property shall not exceed 105 Dwellings.

6.04 **Building Setbacks.** The minimum building setback lines for all Dwellings shall be as follows:

Front Setback	15 feet
Rear Setback	15 feet
Side Setback	0 feet; however a minimum distance of ten (10) feet shall be required between Dwellings;

provided, however, that the width of each Lot within the Single-Family Property at the building line for the front and rear of each Dwelling to be constructed thereon shall be a minimum of 75 feet wide. All setbacks shall be measured from the Property line of the Lot. No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in this Section 6.04. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.04.



**6.05 Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed three (3) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

**6.06 Minimum Living Space.** Each Dwelling shall contain a minimum Living Space of (i) 1,800 square feet for a single-story Dwelling; (ii) 1,950 square feet for one and one-half (1½) story Dwellings and (iii) 2,100 square feet for two (2) or more story Dwellings.

**6.07 Landscaping and Trees.**

(a) Except as may be approved by Daniel, no mass grading of multiple Lots shall be allowed (other than as necessary for roadways and utilities) and each Lot within the Property shall be individually graded.

(b) Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of Daniel; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees or prohibit Developer from cutting or removing trees to the extent reasonably required to construct roads or Common Areas with the Property or install underground utilities within the Property.

(c) Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot.

(d) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for roadways providing ingress to or egress from the Property. The determination of whether any such obstruction exists shall be made by Daniel, whose determination shall be final, conclusive and binding on all Owners.

(e) No rocks, rock walls or other substances shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit access to the same. No bird baths, fountains, reflectors, flag poles, statutes, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and

accessories shall be placed or installed on or within any Lot or Dwelling which would be visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private streets providing access to the Property.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private street providing access to the Property.

6.08 **Roofing.** No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling. All plumbing and heating vents, stacks and other projections of any nature on the roof shall (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, not be visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private roadways providing access to the Property.

6.09 **Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by Daniel.

6.10 **Exterior Materials and Finishes.**

(a) All exterior building material finishes for any Dwelling shall be approved by Daniel. All wood surfaces utilized on the exterior of any Dwelling shall be painted; stained wood shall not be authorized; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors.

(b) No wooden steps, stoops or porches shall be allowed on the front or sides of any Dwellings. Concrete steps, stoops or porches must be finished in tile, brick or stone. No concrete, concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.). Metal flashing, valleys, vents and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

6.11 **Off-Street Parking and Garages.** Each Dwelling shall provide for off-street parking for at least two (2) automobiles. Garage doors shall be constructed of such materials as are approved by Daniel. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of Daniel. Garage doors may open directly onto a street subject to the following requirements: (i) garage doors and driveways for each Dwelling shall be staggered



so that the garage door and driveway for any Dwelling located directly across the street from such Dwelling shall not be located in the same location and (ii) to the greatest extent practicable, front opening garage doors should not be visible from Hugh Daniel Drive.

6.12 **Fences.** No fences of any kind or material shall be permitted within the Property except as approved by Daniel.

6.13 **Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes.

(b) No aluminum or metal windows shall be utilized on the front or sides of any Dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

6.14 **Mailboxes.** Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or as approved by Daniel. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by Daniel, but no further inscription, paintings, ornaments or artistry shall be allowed. In lieu of mailboxes, Developer or the Association may provide within any of the Common Areas a kiosk or community mail center.

6.15 **Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall be located on each Lot so as not be visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private roadways providing access to the Property. No window mounted heating or air conditioning units or window fans shall be permitted.

6.16 **Satellite Dishes and Antennae.** No satellite dishes shall be allowed on any Lot or Dwelling. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling unless the same is contained entirely within the interior of a building or other structure, is not visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private street providing access to the Property or adjacent Lot or Dwelling and is approved by Daniel. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.



**6.17 Driveways and Sidewalks.** All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited. No Lot or any roadway constructed on any part of the Property may be utilized to provide access, ingress to or egress from any property lying outside the boundaries of the Property without Daniel's prior written approval, which may be given or withheld in the sole discretion of Daniel. The foregoing shall not be construed as any restriction on Daniel's right to add Additional Property to the terms of this Declaration or to restrict or limit any of the rights created under the Easement Agreement.

**6.18 Outdoor Furniture, Recreational Facilities and Clotheslines.**

(a) Any yard (exterior) furniture placed, kept, installed, maintained or located on any Lot or Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private street providing access to the Property. No interior furniture (i.e., sofas, etc.) shall be allowed outside any Dwelling.

(b) Wood piles, free-standing playhouses, children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be located so that the same are not visible from Hugh Daniel Drive, the Access Property, any Lakes or any public or private street providing access to the Property.

(c) Basketball backboards shall be located so as not to be visible from Hugh Daniel Drive, the access Property, any Lakes or any public or private street providing access to the Property. Basketball goal backboards should be of clear plexiglas or acrylic.

(d) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from Hugh Daniel Drive, the Access Property, any Lakes or any public or private street providing access to the Property and from any adjacent Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and shall not be visible from Hugh Daniel Drive, the Access Property, the Lakes or any public or private street providing access to the Property.

(f) Bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of homecrafts shall be located only at the rear of a Dwelling and shall not be visible from Hugh Daniel Drive, the Access Property, the Lakes

or any public or private street providing access to the Property.

**6.19 Pets and Animals.** No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, Dwelling or other portion of the Property; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. All structures or areas for the care, housing or confinement of any pet shall be located at the rear of a Dwelling, shall not be visible from Hugh Daniel Drive, the Access Property, the Lakes or any street providing access to the Property and shall be constructed of materials and of a size approved by Daniel. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by Daniel, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Property, including the right to assess fines for violations of such rules and regulations.

**6.20 Trash, Rubbish and Nuisances.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Dwellings within the Property or any real property owned or being developed by Daniel in close proximity to the Property. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Dwelling or other portion of the Property. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Dwelling or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and



containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from Hugh Daniel Drive, the Access Property, the Lakes and all public and private streets providing access to the Property and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by Daniel.

(c) Except during initial construction of a Dwelling, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or Dwelling.

#### **6.21 Recreational Vehicles and Machinery and Equipment.**

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by Daniel. Neither the Common Areas nor the public or private streets within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(b) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas.

**6.22 Signage.** No signs or advertising posters of any kind (other than one (1) "for sale" or "for rent" sign in size and color approved by Daniel) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of Daniel. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by Daniel. Notwithstanding the foregoing, the restrictions set forth in this Section 6.22 shall not be applicable to any signs erected pursuant to Section 6.25(b) below. Any other signage, such as neighborhood or entry signage (and landscaping) for the entrance to the Property, must be approved by Daniel.

**6.23 Above or Below Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot, Dwelling, or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwellings. Only public sewage systems shall be utilized for the discharge of sewage from



any Lot or Dwelling.

6.24 **Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) any detached garages or other structures which are approved in writing by Daniel, (b) dog houses, as provided in Section 6.19, and (c) construction trailers and/or sales offices of Developer.

6.25 **Construction of Improvements.**

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any public or private roadways providing access to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly. Used construction materials may be burned on-site so long as such burning is conducted at the rear of such Lot or Dwelling and does not create a nuisance to other Owners or violate the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on Hugh Daniel Drive, the Access Property or any public or private street providing access to the Property.

(b) During the initial construction of any Dwelling up to two (2) signs, in size and color to be approved by Daniel, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or containing information identifying the builder of such Dwelling. No other signage, banners, flags or advertising posters shall be allowed on any portion of the Property. No signage shall be attached, nailed or otherwise adhered to any tree or other plant life on a Lot.

(c) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within the Property. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

(d) All Dwellings and any other Improvements shall be constructed in compliance with all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely

responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

6.26 **Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of Daniel. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.27 **Lake Restrictions.**

(a) All improvements of any kind or nature to be constructed, maintained or placed within view of Hugh Daniel Drive or the Access Property must be approved by Daniel. In addition to the landscaping requirements of Section 5.02 above, Daniel may, in its sole discretion, require additional landscaping along any portions of any Lot or Dwelling which abuts, is adjacent to or which is visible from any Lakes in order to block and otherwise visibly screen any Improvements or other equipment, machinery, toys, swing sets and any other outdoor recreational equipment or toys from view from any Lakes.

(b) No boating, skiing or swimming shall be allowed on, from or in any of the Lakes. Notwithstanding the foregoing, Daniel, any owner's association designated by Daniel and any of their respective successors and assigns shall have the right to utilize electric or gasoline powered watercraft on any of the Lakes. Fishing is not authorized in or upon any Lakes unless approved in writing by Daniel and shall otherwise be subject to any rules and regulations which Daniel may at any time adopt and implement with respect to the Lakes.

(c) **THE OWNER OF ANY LOT OR DWELLING ABUTTING ANY LAKE, FOR ITSELF, ANY OCCUPANT OF SUCH LOT OR DWELLING AND THEIR RESPECTIVE INVITEES, HEIRS, EXECUTORS, PERSONAL REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, BY ACCEPTANCE OF A DEED TO SUCH LOT OR DWELLING, AND EACH MORTGAGEE, BY ACCEPTANCE OF A MORTGAGE ENCUMBERING ANY SUCH LOT OR DWELLING, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, DO HEREBY WAIVE ALL CLAIMS AGAINST AND RELEASE DANIEL, GRA, DEVELOPER, THE ASSOCIATION AND EACH GOVERNMENTAL AUTHORITY, THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITY OF ANY NATURE ARISING OUT OF OR ON ACCOUNT OF ANY LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY, INCLUDING DEATH, AS A RESULT OF ANY ENTRY ONTO THE LAKES BY ANY OWNER, OCCUPANT, MORTGAGEE OR ANY OF**



THEIR RESPECTIVE INVITEES, HEIRS, EXECUTORS, PERSONAL REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, THE RISE AND FALL OF THE WATER LEVEL OF ANY LAKE INCLUDING, WITHOUT LIMITATION, THE FLOW OF WATER ONTO AND OUT OF THE LAKES WHICH COULD RESULT IN OR CAUSE DAMAGE, BY FLOODING OR OTHERWISE, TO ANY IMPROVEMENTS OR ANY OTHER PERSONAL PROPERTY SITUATED ON ANY PORTION OF THE PROPERTY OR WHICH WOULD RESULT IN OR CAUSE ANY IMPROVEMENTS SITUATED ON OR ADJACENT TO ANY LAKES TO BE UNUSABLE DUE TO LOW WATER LEVELS. FURTHERMORE, THE OWNER OF EACH LOT AND DWELLING ABUTTING ANY LAKE, FOR THEMSELVES, THEIR OCCUPANTS, INVITEES, HEIRS, EXECUTORS, PERSONAL REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, DOES HEREBY ACKNOWLEDGE AND AGREE THAT (i) NEITHER DANIEL, GRA, DEVELOPER, THE ASSOCIATION, ANY GOVERNMENTAL AUTHORITY NOR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, SHALL PROVIDE ANY LIFE GUARD OR ANY OTHER SUPERVISORY PERSONNEL OR ASSISTANCE IN THE CONDUCT OF ANY ACTIVITIES ON OR ABOUT THE LAKES, (ii) THE USE OF THE LAKES BY ANY OWNER OR OCCUPANT OF ANY PORTION OF THE PROPERTY OR THEIR RESPECTIVE INVITEES, HEIRS, EXECUTORS, PERSONAL REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, SHALL BE AT THE SOLE RISK AND EXPENSE OF THE PERSON OR ENTITY USING THE LAKES AND (iii) NEITHER DANIEL, GRA, DEVELOPER, THE ASSOCIATION, ANY GOVERNMENTAL AUTHORITY NOR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR ASSIGNS, SHALL BE OBLIGATED TO TAKE ANY ACTION TO MAINTAIN A SPECIFIC WATER LEVEL FOR ANY OF THE LAKES.

6.28 Swimming Pools and Tennis Courts. No swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools or tennis courts may be constructed, installed and maintained on any Lot or Dwelling without the prior written approval of the plans for the same by Daniel.

6.29 Traffic Regulations. All vehicular traffic on the private streets and roads in the Property shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board of the Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the private roads within any portion of the Property. The Board of the Association shall be entitled to enforce such rules and regulations by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof.



6.30 **Variances.** Daniel, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot or Dwelling. Any variance request submitted to Daniel shall be in writing and, upon approval of the same by Daniel, shall be evidenced by a written variance.

6.31 **Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association and/or Daniel shall each have the right, at their option, to exercise any of the rights and remedies set forth in Article XI below.

## **ARTICLE VII**

### **MAINTENANCE RESPONSIBILITIES**

#### **7.01 Responsibilities of Owners.**

(a) The maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his Lot and Dwelling in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from Daniel.

(b) Each Lot or Dwelling shall be landscaped in accordance with plans and specifications submitted to and approved by Daniel pursuant to Section 5.02 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner thereof in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Property.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements

within a Lot unless such decoration, change or alteration is first approved, in writing, by Daniel as provided in Sections 5.01 and 5.02.

#### **7.02 Responsibilities of Association.**

(a) The Association shall maintain and keep in good repair and condition all portions of the Common Areas, including, specifically, the Lake Buffer Area. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling or (3) resulting from thief, burglary or other illegal entry onto the Property or any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board of the Association determines that (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.08 below.

(c) In the event that the Association fails to maintain and keep in good



repair and condition at all times all portions of the Lake Common Area, including, specifically, (i) the immediate removal of any trash or other debris which may collect upon any portion of the Lake Common Area or (ii) the mowing and cutting of all grass and other undergrowth on any portion of the Lake Common Area on a timely basis so that the Lake Common Area does not become unsightly or unattractive, then Daniel and GRA shall each have the right, jointly and severally, to come upon the Lake Common Area and take all appropriate action to correct such defaults and deficiencies of the Association and all costs and expenses incurred by either Daniel or GRA, together with interest thereon at the Applicable Rate, as defined in Section 8.08(a) below, including attorney fees and court costs, if applicable, shall be paid on demand by the Association.

## **ARTICLE VIII**

### **COMMON AREA ASSESSMENTS**

8.01 **Assessments and Creation of Lien.** Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to (a) the Association (i) annual Assessments, as established and to be collected as provided in Section 8.03 below, (ii) special Assessments, to be established and collected as provided in Section 8.05 below, and (iii) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions of this Declaration and (b) GRA, Annual Hugh Daniel Drive Assessments, as established and to be collected as provided in Section 8.04 below. All Assessments, together with late charges and interest as provided in Section 8.08(a) below, and all court costs and attorneys' fees incurred by the Association or GRA, as the case may be, to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.08(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Dwelling and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association or GRA, as the case may be, which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.08(a) below, court costs and attorneys' fees incurred with respect thereto by the Association or GRA, as the case may be, shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Annual Hugh Daniel Drive Assessments shall be due and payable in the manner set forth in Section 8.04 below. All other Assessments



shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature.

#### **8.02 Uniform Rate of Assessments.**

(a) Both annual and special Assessments, as described in Sections 8.03 and 8.05 below, shall be assessed against each Lot or Dwelling in the Property at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his prorata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings in the Property at the time such annual or special Assessment is levied.

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then the Lots and/or Dwellings within the Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Property.

#### **8.03 Computation of Annual Assessments.**

(a) The Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorata share of the same as provided in Section 8.02 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner.

(b) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.05 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(c) The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, trash collection and security services;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association;

(v) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Property which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair;

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(vii) All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

(viii) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to



time by the Board.

**8.04 Annual Hugh Daniel Drive Assessments.**

(a) The Owner of each Lot or Dwelling within the Property shall pay to the GRA, or to such other person or entity designated from time to time by GRA, the following sums as the agreed upon prorata share of maintenance costs payable by the Owner of each Lot or Dwelling for the maintenance, repair, landscaping, lighting, paving, repaving, restriping, trash and litter collection on or upon Hugh Daniel Drive:

(i) Commencing January 1, 1994 and on the first day of January of each year thereafter, the Owner of each Lot or Dwelling within the Property shall pay to GRA the sum of \$60.00 per Lot or Dwelling (the "Annual Hugh Daniel Drive Assessments"), which amounts shall be paid in advance on the first day of January of each year and shall be subject to increases as provided below; and

(ii) The Annual Hugh Daniel Drive Assessments for each Lot or Dwelling shall be subject to annual increase on the first day of January of each year (commencing January, 1995) by multiplying the Annual Hugh Daniel Drive Assessments paid for such Lot or Dwelling for the 1993 calendar year (i.e., \$60.00 per Lot or Dwelling) by a fraction, the numerator of which shall be the "CPI" (as hereinafter defined) for November of the immediately preceding year and the denominator of which shall be the "CPI" (as hereinafter defined) for January, 1993. As used herein, the term "CPI" shall mean the U.S. Consumer Price Index (All Urban Consumers, United States City Average, All Items 1982-84=100). In the event the CPI ceases to be published or no longer exists in the form specified herein, GRA shall determine a reasonable substitute equivalent official index or use appropriate conversion factors to accomplish such substitution.

(b) In no event shall the Annual Hugh Daniel Drive Assessments for any Lot or Dwelling be less than the amounts set forth in Section 8.04(a)(i) above. All Annual Hugh Daniel Drive Assessments shall be utilized by GRA, its successors and assigns, for the paving, repaving, striping, restriping, landscaping, maintenance and repair of Hugh Daniel Drive, any signage and landscaping erected or installed by Daniel or GRA thereon and all other costs and expenses incurred in connection with the maintenance and repair of Hugh Daniel Drive including, without limitation, mowing, landscaping, seeding, cleaning and picking up and removing trash and other litter or debris from Hugh Daniel Drive.

(c) Each Owner, by acceptance of any deed to any Lot or Dwelling within the Property, agrees that in the event any Owner fails to timely pay the Annual Hugh Daniel



Drive Assessments as required by Section 8.04(a) above, then the rights and remedies set forth in Section 8.08 below may be exercised by GRA against such Owner.

**8.05 Special Assessments.** In addition to the annual Assessments authorized in Section 8.03 above and the special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

**8.06 Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided for in this Section 8.06 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.06 shall apply, without limitation, to any individual Assessments levied pursuant to Section 7.02(b) above and Article XI below.

**8.07 Notice of Meetings and Quorum.** With respect to any meeting of the Members of the Association, including, without limitation, any meetings which are called for the purpose of approving special Assessments pursuant to Section 8.05 above, (a) written notice of such meeting shall be sent to all Owners not less than ten (10) days and not more than fifty (50) in advance of such meeting and (b) the presence in person or by proxy of Owners entitled to cast at least fifty (50%) of all of the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of (i) a majority of the Owners who are voting in person or by proxy and (ii) developer, to the extent developer owns any Lot in the Property, shall be required to approve any matter submitted to the members of the Association for Approval.

#### **8.08 Effect of Non-Payment; Remedies of the Association.**

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to (i) the Association, all annual and special Assessments provided for herein and any individual Assessments levied or assessed pursuant to the terms of this Declaration and (ii) GRA, the Annual Hugh Daniel Drive Assessments. In the event any Assessments or any portions thereof are not paid when due, the same shall be subject to a late charge in an amount determined from time to time and uniformly applied by the Board, in the case of annual Assessments, special Assessments and/or individual Assessments, and by GRA, in the case of Annual Hugh Daniel Drive Assessments and the Owner of such Lot or Dwelling shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessments shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association or GRA employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association or GRA, as the case may be. The lien and equitable charge upon each Lot or Dwelling for Assessments, including the Annual Hugh Daniel Drive as provided above, shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association or GRA in attempting to collect any unpaid Assessments.

(b) In the event any Assessments 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 or through any of its officers or authorized representatives, and/or GRA, as the case may be, may undertake any or all of the following remedies:

(i) The Association or GRA may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments or the Annual Hugh Daniel Drive Assessments, as the case may be, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.09(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association or GRA in collecting such unpaid Assessments; and/or

(ii) The Association or GRA may enforce the lien created pursuant to Section 8.01 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to GRA of the Annual Hugh Daniel Drive



Assessment and to the Association of any and all other Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.08(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by GRA or the Association in collecting the Annual Hugh Daniel Drive Assessments or any other Assessments. If any portion of the Assessments remain unpaid for more than sixty (60) days, then GRA or the Association, through its Board or any officer or authorized representative thereof, as the case may be, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, GRA or the Association, as the case may be, may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any officer of GRA or any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Shelby County, Alabama:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot or Dwelling upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by GRA or the Association, as the case may be, pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of GRA or the Association, as the case may be, 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 or GRA, as the case may be, 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 or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and GRA, as the case may be, and/or their respective agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in GRA and the Association and/or their respective agents, as the case may be, the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien

created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

**8.09 Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments authorized herein with respect to any Lot or Dwelling in the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.08(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by GRA or the Association, as the case may be, pursuant to Section 8.08(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments levied, assessed or incurred by the Association and GRA, as the case may be, and the Association and/or GRA, as the case may be, shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by Mortgagee on such Owner's Lot or Dwelling.

**8.10 Certificates.** The Association (or any officer or authorized representative thereof) and GRA shall, upon request and at such reasonable charges as may from time to time be adopted by the Board or GRA, furnish to any Owner a certificate in writing setting forth whether the Assessments or the Annual Hugh Daniel Drive Assessments, as the case may be, for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

## **ARTICLE IX**

### **CASUALTY, CONDEMNATION AND INSURANCE**

#### **9.01 Damage or Destruction to Common Areas.**

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.



(b) Notwithstanding anything provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 **Damage or Destruction to Lots or Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

9.03 **Condemnation of Common Areas.**

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such

repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Property cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board of the Association shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot or Dwelling which is subject to any such taking and the Board of the Association may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

**9.04 Condemnation of Lots or Dwellings.** In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot, Dwelling or Multi-Family Area as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any



remaining Improvements thereon in a clean, orderly, safe and sightly condition.

9.05 **Insurance**. Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot, Dwelling and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot or Dwelling, does hereby waive and release the Association, GRA, Daniel and Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage is caused by the fault or negligence of the Association, GRA, Daniel, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers and directors.

## ARTICLE X

### **TERM AND AMENDMENTS**

10.01 **Term**. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Shelby County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 **Amendments**. Amendments to this Declaration may be proposed and adopted only by the affirmative vote of (a) two-thirds (2/3) of the total votes of the Owners present in person or by proxy at a meeting of the Association called for the purpose of acting on any such proposed amendment, (b) Developer, for so long as Developer owns any Lot or Dwelling within the Property and (c) Daniel. No amendments to this Declaration may be made without the consent and approval of Developer, to the extent Developer owns any Lot or Dwelling within the Property, and Daniel. Any other attempt to amend this Declaration shall be deemed null and void. Any amendments which have been approved in accordance with the provisions of this Section 10.02 shall be executed by all parties whose consent to

the same has required; provided, however, that the sworn statement of the president of the Association or by the chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was lawfully obtained may be attached to and incorporated into such Amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Notwithstanding anything provided in this Section 10.02 to the contrary, Daniel shall have the right, at its option, to add Additional Property to the Declaration as provided in Section 2.02 above.

## **ARTICLE XI**

### **ENFORCEMENT**

11.01 **Authority and Enforcement.** In addition to the rights and remedies provided in Article VIII above, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board of the Association from time to time, then Daniel, the Association, the Board and the Developer shall each, jointly and severally, having the power and right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their respective designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by Daniel, the Association, the Board or Developer in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of this Declaration and all such costs shall be deemed individual Assessments pursuant to Section 8.06 above. Notwithstanding anything provided herein to the contrary, the rights and remedies of Daniel, the Association, the Board and Developer set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by any of them either at law or in equity in the event of any violation or breach by any Owner or Occupant of any of the terms or provisions of this Declaration.



## ARTICLE XII

### MISCELLANEOUS PROVISIONS

12.01 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE Property, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Property, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.

12.02 Legal Expenses. In addition to the rights and remedies set forth in this Declaration, in the event either the Board, the Association, Daniel or GRA or any of their respective agents and representatives, undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated.

12.03 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

12.04 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

12.05 **Pronouns and Plurals.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

12.06 **Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner, Occupant and Mortgagee, and shall inure to the benefit of Daniel, Developer, the Association, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

12.07 **Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

12.08 **No Reverter.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

12.09 **Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Daniel, Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

12.10 **Rights of Third Parties.** This Declaration shall be recorded for the benefit of Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party (other than Daniel) 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.

12.11 **No Trespass.** Whenever the Association, Developer, Daniel 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.

12.12 **No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

12.13 **Standards for Review.** Whenever in this Declaration Daniel, Developer or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Daniel, Developer or the Association, as the case may be.

12.14 **Oral Statements.** Oral statements or representations by Daniel, Developer, the Association or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Daniel, Developer, or the Association.

12.15 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Property.

12.16 **Assignment.** Daniel and Developer shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Daniel and Developer, respectively.

12.17 **Further Assurances.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Daniel, Developer or the Association for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.


12.18 **No Waiver.** All rights, remedies and privileges granted to Daniel, Developer and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges 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 time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.19 **Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

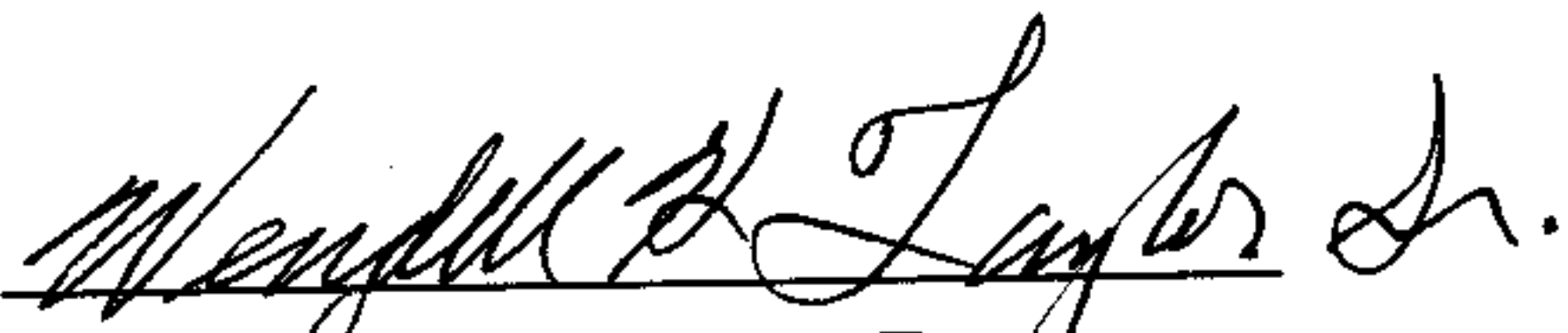
IN WITNESS WHEREOF, Daniel and Developer have caused this Declaration to be duly executed as of the day and year first above written.

**DANIEL OAK MOUNTAIN LIMITED  
PARTNERSHIP**, an Alabama  
limited partnership

By: **DANIEL REALTY INVESTMENT  
CORPORATION - OAK MOUNTAIN**,  
an Alabama corporation,  
Its General Partner

By:   
Its: Sewo Vice President

**SCHOOL HOUSE PROPERTIES**, an  
Alabama general partnership

By:   
Its: General Partner



STATE OF ALABAMA )

COUNTY OF SHELBY )

I, the undersigned, a notary public in and for said County in said State, hereby certify that Stephen R. Monk whose name as Sr. Vice President of DANIEL REALTY INVESTMENT CORPORATION - OAK MOUNTAIN, an Alabama corporation, which serves as general partner of DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership, is 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, he, as such officer with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as general partner.

Given under my hand and official seal, this the 13th day of April, 1994.

Sheila H. Ellis  
Notary Public

My Commission Expires: 2/26/98

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, the undersigned, a notary public in and for said County in said State, hereby certify that Wendell H. Saylor, Jr., whose name as General Partner of SCHOOL HOUSE PROPERTIES, an Alabama general partnership, is 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, he, as such General Partner and with full authority executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 13 day of April, 1994.

Wendell H. Saylor, Jr.  
Notary Public

My Commission Expires: 7-18-94

## CONSENT OF MORTGAGEE

Compass Bank, formerly known as Central Bank of the South ("Mortgagee"), as the holder of that certain (a) Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated as of September 30, 1993 executed by School House Properties, an Alabama general partnership, and recorded as Instrument No. 1993-32536 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office") and (b) Accommodation Mortgage and Security Agreement dated May 1, 1992 executed by Greystone Ridge Partnership, an Alabama general partnership, and recorded as Instrument No. 1992-7102 in the Probate Office, as modified by Amendment to Accommodation Mortgage and Security Agreement dated as of February 15, 1994 and recorded as Instrument No. 1994-05812 in said Probate Office, has joined in the execution of this Amended and Restated Greystone Village Declaration of Covenants, Conditions and Restrictions (the "Amended Declaration") for the purposes set forth below. Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Amended Declaration.

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby consent to the execution of the Amended Declaration and all of the terms and provisions set forth therein and does hereby acknowledge and agree that the Amended Declaration shall and does amend, restate and supersede the Prior Covenants in their entirety.

Dated as of the 13<sup>th</sup> day of <sup>April</sup>~~March~~, 1994.

COMPASS BANK

By: \_\_\_\_\_

Its: Real Estate Officer

STATE OF ALABAMA      )

COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify Compass Bank that Harold D. McLaughlin, whose name as Real Estate Officer of the corporation is 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 13<sup>th</sup> of <sup>April</sup>~~March~~, 1994.

Blenda H. McLaughlin  
Notary Public

My commission Expires: 8-21-97



EXHIBIT A

Legal Description (Greystone Single-Family Area) prepared for school house properties:

A tract of land situated in the Northeast Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 5, Township 19 South, Range 1 West, with a portion situated in the Southeast Quarter of the Southeast Quarter of Section 32, Township 18 South, Range 1 West all in Shelby County, Alabama and being more particularly described as follows:

Commence at the Northeast corner of said Section 5 and run thence S 0°58'47" W along the east line thereof for 180.29 feet to the POINT OF BEGINNING of the tract of land herein described; from said point of beginning run N 70°10'11" W for 275.68 feet; thence run S 85°01'23" W for 391.67 feet; thence run N 39°22'29" W for 69.09 feet; thence run N 15°50'27" E for 28.48 feet; thence run N 64°51'16" W for 41.11 feet; thence run N 67°41'32" W for 100.66 feet to a point in the Southeast Quarter of the Southeast Quarter of said Section 32; thence run S 87°28'27" W for 44.66 feet; thence run S 63°26'48" W for 112.17 feet to a point in the Northeast Quarter of the Northeast Quarter of said Section 5; thence run N 82°41'26" W for 107.30 feet; thence run N 62°50'42" W for 79.16 feet to a point in the Southeast Quarter of the Southeast Quarter of said Section 32; thence run S 27°56'21" W for 426.60 feet to an iron pin on the west line of the Northeast Quarter of the Northeast Quarter of said Section 5; said point also being the Northeast corner of the Shelby County Sewage Treatment Plant; thence run S 0°59'12" W along the west line of said quarter-quarter line for 298.63 feet to an iron pin; thence run S 1°39'12" W for 656.30 feet to an iron pin; being the southwest corner of the Northeast Quarter of the Northeast Quarter of said Section 5; thence run S 0°44'19" W for 386.85 feet to an iron pin; thence run N 89°57'50" E for 329.87 feet to an iron pin; thence run S 0°47'07" W for 410.96 feet; thence run S 89°59'28" E for 343.11 feet; thence run N 0°56'36" E for 551.83 feet to a point on the south boundary of a proposed Hoover school site; thence run S 90°00'00" W along said school boundary for 113.41 feet; thence run N 44°30'36" W along said boundary for 252.37 feet; thence run N 0°58'47" E along said boundary for 548.86 feet; thence run N 89°01'13" W along said boundary for 75.00 feet; thence run N 0°58'47" E along said boundary for 59.40 feet to a point of curve, curving to the right in a northeasterly direction, having a central angle of 89°01'13", a radius of 150.00 feet and a length of 233.05 feet; thence run along the arc of said curve for 233.05 feet to the end of said curve; thence run N 90°00'00" E, tangent to the end of said curve and along said school boundary for 36.96 feet; thence run S 0°00'00" E for 35.00 feet; thence run N 90°00'00" E along said boundary for 560.00 feet; thence run S 44°30'36" E for 406.60 feet along said school boundary to a point on the east line of said Section 5; thence leaving said school boundary run N 0°58'47" E along said east line of Section 5 for 771.84 feet to the POINT OF BEGINNING. Said tract of land contains 31.84 acres, more or less, does not lie in a flood prone area, and is subject to any easements, restrictions or rights-of-way of record.

Inst # 1994-12222

04/14/1994-12222  
08:22 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
057 MCD 148.50

04/14/1994-12222  
08:22 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
057 MCD 148.50