

STATE OF ALABAMA )

JEFFERSON COUNTY )

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**CAHABA BEACH, A RESIDENTIAL SUBDIVISION**

Inst # 1997-36030  
11/04/1997-36030  
10:18 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
016 MCD 46.00

THIS DECLARATION OF PROTECTIVE COVENANTS (the "Declaration") is made as of this 1<sup>st</sup> day of September, 1997 by Gibson & Anderson Construction, Inc., an Alabama corporation (the "Declarant").

WHEREAS, the Declarant is the owner of certain lands in Shelby County, Alabama (hereinafter sometimes referred to as the "Subject Property"), which are more particularly described on the attached Exhibit A and are known as Cahaba Beach; and,

WHEREAS, Declarant desires to establish certain protective covenants with respect to the Subject Property for the benefit of the property owners in Cahaba Beach as set forth herein.

NOW, THEREFORE, Declarant does hereby declare that the Subject Property shall hereafter be subject to the following restrictions, conditions, exceptions, liens and protective covenants, to-wit:

**ARTICLE I**

**DEFINITIONS**

1.1 Association: The Cahaba Beach Residential Association, Inc., its successors and assigns.

1.2 Association Land: That part of the Subject Property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be the owner thereof.

1.3 Board: The Board of Directors of the Association.

1.4 By-Laws: The duly enacted By-Laws of the Association.

1.5 Common Areas: Those portions of the Subject Property which are conveyed to the Association or otherwise defined or designated as Common Areas pursuant to Article IV of this Declaration.

1.6 Declaration: This Declaration of Protective Covenants of Cahaba Beach, which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described herein.

1.7 Declarant: Gibson & Anderson Construction, Inc. and any successor thereof.

1.8 Entranceway Improvements: Any improvements which might be made with respect to any entranceway into the Subject Property from Cahaba Beach Road, which shall include any entrance walls, monument signs and landscaping that might be constructed or installed by Declarant or the Association. There are no immediate plans for any such improvements and no representation is being made that any such improvements will be constructed or installed.

1.9 GAC: Gibson & Anderson Construction, Inc.

1.10 Cahaba Beach or Cahaba Beach Property: The property described in this Declaration together with such other property which may be acquired by Declarant and designated by Declarant to be a part of Cahaba Beach. The Cahaba Beach Property does not include that certain 7,128.36 square foot parcel which is shown on the plat recorded in Map Book 22, Page 31 in the office of the Judge of Probate of Shelby County, Alabama, as "common area," and said parcel may be subdivided, developed, improved, sold and occupied for residential purposes, unrestricted by this Declaration and free from any provisions herein set forth. Declarant, however, reserves the right, at its election and in its sole discretion, to amend this Declaration to add said parcel, including all subdivided portions thereof, as a part of the Cahaba Beach Property.

1.11 Member: A person or other entity who is a record owner of fee simple title to any portion of the Subject Property.

1.12 Parcel: Any unit, lot, part or parcel of the Subject Property designed for a residence and platted of record, regardless of whether a dwelling has or has not been constructed thereon.

1.13 Parcel Owner: The owner or owners of record title to any Parcel.

1.14 Resident: Any person or persons occupying a Parcel.

1.15 Subject Property: The property described on the attached Exhibit "A" along with any other real property which may be subjected to this Declaration by separate instrument executed by Declarant.

## ARTICLE II

### ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL

2.1 Architectural Committee: The Architectural Committee (herein the "Architectural Committee") shall be composed of three individuals designated and redesignated from time to time by the Board of Directors of the Association. Provided, until such time as Declarant no longer owns or has the right to acquire any portion of the Subject Property, the Architectural Committee shall be composed of Earl Gibson and Ed Anderson or such successors as are approved by Declarant.

2.2 Approval Required: Before commencing the placement, construction or alteration of any improvements upon any parcel or any other portion of the Subject Property, including but not limited to dwellings, garages, outbuildings, parking areas, fencing, landscaping, antennas, or satellite dishes, (a) plans and specifications for any such improvements showing all exterior materials and colors thereof, and including, when applicable, all exterior elevations, schedule of proposed materials, landscaping, and such other detail and information as the Architectural Committee might require, and (b) the builder or contractor selected to perform such construction or alteration, must first be submitted to and approved by the Architectural Committee. GAC is hereby approved as a builder or contractor and no further approvals of GAC by the Architectural Committee or otherwise shall be required.

THE SCOPE OF REVIEW BY THE ARCHITECTURAL COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

#### 2.3 Application Process:

A. No improvements shall be erected, placed, altered, maintained or permitted on the Subject Property until plans and specifications showing plot layout and all exterior elevations, with exterior materials and colors therefor, signs and landscaping, irrigation and drainage plans shall have been submitted to and approved in writing by both the Architectural Committee and the Declarant. Such plans and specifications shall be submitted in writing over the signature of any Parcel Owner or its authorized agent, and shall specify for which part of such plans and specifications approval is sought.

B. In any case in which the Architectural Committee shall disapprove any plans and specifications or shall approve same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. In any such event, the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be



prepared and submitted for approval. Upon approval by the Architectural Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Committee.

C. If the Architectural Committee fails either to approve or to disapprove such plans and specifications within thirty (30) business days after the same have been submitted in writing to it, or fails to include in any disapproval the statement required in subparagraph (B) above, by written notice to the applicant, it shall be conclusively presumed that the Architectural Committee has approved said plans and specifications, subject, however, to the covenants contained herein.

D. In considering the requests for approval of the plans and specifications and related items described herein, the Architectural Committee shall be entitled to the use of its absolute discretion.

2.4 Inspection Rights: Any agent of the Declarant, the Association or the Architectural Committee may at any reasonable time or times enter upon and inspect any Parcel and any improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither Declarant, nor the Association, nor the Architectural Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Any such inspection shall be for the sole purpose of determining compliance with this Declaration, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the owner of a Parcel or any third persons or entities for any purpose whatsoever; nor shall any such inspection obligate the Declarant, the Association or the Architectural Committee to take any particular action based on the inspection.

2.5 Waiver of Liability: Neither the Architectural Committee nor any architect nor agent thereof, nor the Association, nor the Declarant, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of structures to comply with requirements of this Declaration, although a certificate of compliance has been issued, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefitting therefrom agree not to sue or claim against the entities and persons referred to in this Section 2.5 for any cause arising out of the matters referred to in this Section 2.5 and further agree to and do hereby release said entities and persons from any and every such cause.

2.6 Delegation by Architectural Committee: The rights, duties and functions of the Architectural Committee may be delegated to the Association at any time by the written consent and declaration of all of the members of the Architectural Committee. Upon such delegation, the rights, duties and functions of the Architectural Committee shall become those of, and shall be enforceable by, the Association.

## ARTICLE III

### GENERAL RESTRICTIONS

3.1 Permitted Uses: The Subject Property may be improved, maintained and occupied only for residential purposes together with such associated and ancillary uses as are customarily appurtenant thereto. The provisions of this section shall not in any manner prohibit the use and maintenance by the Declarant upon the Subject Property of a temporary sales office and model unit and the conduct of such activities as are customary and appropriate to the marketing, sale and improvement of the Subject Property or any portion thereof.

3.2 Proscribed Uses: A. No operation or use shall be permitted or maintained within any Parcel which causes or produces any of the following effects discernible within any other portion of the Subject Property except during the period of construction of improvements thereon:

1. Noise or sound that is unusual and inappropriate for the development proposed and to be constructed upon the Subject Property and is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;

2. Noxious, toxic, or corrosive fumes or gases;

3. Obnoxious odors;

4. Dust, dirt or fly ash; or

5. Unusual fire or explosive hazards.

B. No animals may be kept or maintained on the Property except that domestic pets may be kept within the residential dwelling upon a Parcel and no more than a total of two (2) dogs and cats shall be permitted to be kept within the confines of the residential dwelling on the Parcel or within a fully fenced rear yard, provided that the following restrictions with respect to the maintenance of such pets are fully complied with at all times:

1. No animals of any kind may be kept, bred, raised, or maintained in any manner on any portion of the Property for commercial purposes;

2. No pets shall be permitted to be kept on any Parcel which make loud noises or which in any other manner interfere with the quiet and peaceful enjoyment of the other Parcels by the owners or occupants thereof;

3. No such pets shall be allowed to enter upon any other Parcel within the Property;

4. When any such pets are outside of the dwelling located on the Parcel and not confined within the fenced rear yard of the Parcel, such pets must be on a walking chain or within a cage and must be accompanied by an owner or occupant of the Parcel;

5. The maintenance of any such pets upon any Parcel shall also be further subject to such additional rules, restrictions and regulations as might be promulgated by the Association from time to time.

C. No fencing shall be constructed or altered on any Parcel until the location, materials, plans, specifications and color thereof have been approved by the Architectural Committee. In no event, however, shall any chain link or similar fencing be allowed or authorized on any Parcel unless same is located on the interior side of a fence which is constructed of wood or some other visually impervious material and which has been approved by the Architectural Committee.

D. No trash, debris, clothes lines or other unsightly materials shall be permitted or maintained on any Parcel.

3.3 Keep Parcel in Repair; Liens: Except as provided in Section 5.3, each Parcel Owner shall keep all Parcels owned by him, and all improvements therein, thereon or appurtenant thereto, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the Association any Parcel Owner fails to perform the duties imposed by the preceding sentence after thirty (30) days' written notice from the Association to the Parcel Owner to remedy the condition in question, the Association shall have the right, through its agents and employees, to enter upon the Parcel in question (or upon the improvements which may be appurtenant thereto) and to repair, maintain, repaint and restore the Parcel or such improvements and the cost thereof shall be a binding, personal obligation of such Parcel Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question; provided however, that after control of the Association has been given to the Class A members of the Association, the approval of 51% of the votes of Class A members of the Association will be required to continue to remedy a violation on a specific Parcel as provided above if the aggregate cost charged hereunder against the Parcel Owner exceeds \$500 per calendar year, as may be adjusted upward annually in an amount not to exceed five percent (5%) of the maximum amount which could have been charged the preceding year. Any landscaping approved by the Architectural Committee cannot be changed pursuant to this Section 3.3.

3.4 Priority of Lien: The lien provided in Section 3.3 hereof shall not be valid as against a bona fide Purchaser (or bona fide mortgagee) of the Parcel in question unless a notice of said lien shall have been recorded in the Office of the Judge of Probate of Shelby County, Alabama, prior to the recordation in said office of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).



3.5 Signs: No commercial signs, including "for rent", "for sale", political advertisements and other similar signs, shall be erected or maintained on any Parcel except with the written permission of the Declarant. If such permission is granted, the Declarant reserves the right to restrict size, color and content of such signs. One "for sale" or "for rent" sign not in excess of four square feet in size shall be permissible with respect to the size of the sign. The other characteristics of the signs shall be subject to the approval of Declarant as above provided. Property identification and like signs may not be erected without the written permission of the Declarant.

3.6 Subdivided Parcels: No Parcel shall be subdivided, or its boundary lines changed, except with the written consent of the Declarant and the Architectural Committee. However, the Declarant hereby expressly reserves to itself, its successors or assigns, the right, without the approval of the Architectural Committee, (i) to combine or rearrange the boundaries between any two (2) or more Parcels shown on the plat of any subdivision in order to create a modified building Parcel or Parcels; and (ii) to subdivide any Parcel shown on the plat of any subdivision. Declarant may take such other steps as are reasonably necessary to make such replatted or subdivided Parcels suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of the said replatted Parcels.

3.7 Trailers, Boats and Commercial Trucks: Unless approved by the Declarant, in writing, no trailers, boats, commercial trucks or other commercial vehicles, travel trailers or the like shall be stored, parked or permitted to remain within the right-of-way of any street within the Subject Property or on any Parcel except in a garage or carport, or except during periods of approved construction on a Parcel. The prohibitions in this Section 3.7 shall not apply to temporary parking of trucks and other commercial vehicles for the providing of commercial services to the Parcel or to the efforts and activities of the Declarant in connection with the improvement and development of the Subject Property.

3.8 Parking Restrictions: The parking of automobiles or other such vehicles shall not be permitted within the right-of-way of any street within the Subject Property except during such times as the number of guests or visitors of the occupants of the Parcel are such that the parking areas created on the Parcel are not of sufficient size to accommodate the automobiles of the guests or visitors. During such occasions, such automobiles or other vehicles shall not in any manner block the flow of traffic or block access to driveways serving any of the other Parcels.

3.9 Mailboxes: A mailbox of a standard design and quality shall be maintained by the owner of each Parcel. No mailbox shall vary from the standard design without the written permission of the Association.

3.10 Garage Doors: All garage doors shall be maintained in a good and operable condition and shall remain closed at all times except when entering or exiting the garage.

## ARTICLE IV

### SPECIAL RESTRICTIONS AFFECTING COMMON AREAS

4.1 Purpose: It shall be the intent and purpose of these restrictions and covenants to make provision for and designate, within the Subject Property, Common Areas to be conveyed to or otherwise made available to the Association for use by the Parcel Owners.

4.2 Sanitary Sewer Pump: The Common Area shall include a sanitary sewer pump which is located between Beach Circle and the Northwest corner of the Northwest quarter of the Northwest quarter of Section 31, Township 18 South, Range 1 West, in an area designated as "common area" on the plat recorded in Map Book 22, Page 31, in the Office of the Judge of Probate of Shelby County, Alabama. Said sanitary pump shall be maintained by and at the expense of the Association. Any owner, developer or occupant of that certain 7,128.36 square foot area which is located in the Northwest corner of the real property included within the foresaid recorded plat and which is also designated on said recorded plat as "common area," shall have the right to connect said parcel to the sanitary sewer which serves Cahaba Beach, including the right to connect to and receive service from said sanitary sewer pump, provided that the owner of record title to said parcel executes and records in the Office of the Judge of Probate of Shelby County, Alabama, a written instrument, which shall run with the title to said parcel and be binding upon the future owners and occupants thereof, agreeing to pay to the Association a pro rata share of the expense incurred by the Association, from time to time, for the maintenance and repair of said sanitary sewer pump, based upon the number of dwelling units within said parcel and the total number of dwelling units served by said sanitary sewer pump. Subject to the provisions of this Section 4.2, an easement is hereby declared, created, reserved and granted for the benefit of said 7,128.36 square foot parcel, and the owners and occupants thereof, across any Common Area to connect to said sanitary pump.

4.3 IMPROVEMENT OF COMMON AREAS: DECLARANT SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO IMPROVE THE COMMON AREA OR ANY PORTION THEREOF WITH SUCH AMENITIES AS DECLARANT IN ITS SOLE DISCRETION, MIGHT DEEM APPROPRIATE. DECLARANT HAS NO PRESENT PLAN TO MAKE ANY SUCH IMPROVEMENTS AND NO REPRESENTATION IS HEREBY MADE THAT SUCH WILL OR WILL NOT BE MADE.

4.4 Use of Common Area: The Declarant expressly reserves to itself, its successors and assigns, including Parcel Owners, every reasonable use and enjoyment of said Common Areas in a manner not inconsistent with the provisions of this Declaration and subject to such limitations and rules and regulations as might be promulgated by the Association.

4.5 Common Areas and Facilities; Conveyance to Association: The Association shall have the right to maintain or help maintain the Common Areas and facilities within Cahaba Beach which serve the Parcel Owners, including, but not limited to, Entranceway Improvements, landscaping, and like areas available to all Parcel Owners, if any, regardless of whether such



Common Areas and facilities are owned by the Declarant, or have been conveyed to the Association as Common Areas. Declarant shall have the right, but not the obligation, at such time or times as may be determined by Declarant, in its sole discretion, to convey to the Association as Common Areas all or some of any Entranceway Improvements, landscaping, and other facilities and Common Areas located within Cahaba Beach.

4.6 Common Driveways: The Common Area shall include those portions of the easements for ingress and egress shown on the plat recorded in Map Book 22, Page 31, in the Office of the Judge of Probate of Shelby County, Alabama, (the "Plat") which are situated along the rear portions of the 19 lots which are created pursuant to the Plat and those portions thereof which are improved as a driveway by the Declarant (the "Common Driveways"). The Common Driveways shall be kept and maintained, by and at the expense of the Association, as a part of the Common Area in the manner originally constructed by the Declarant, and same are hereby declared to be a part of the Common Area. In no event shall any portion of the Common Driveways which is situated on a particular Parcel be modified, removed or extended in scope without the prior written consent of the owners of the affected Parcel and the Association. The portions of the easements for ingress and egress which are shown on the Plat in the front yards of the 19 lots created pursuant to the Plat, shall not be improved or used as common drives except to the extent that said areas are improved as common drives by the Declarant.

4.7 Tax Assessments: All ad valorem taxes assessed against any Common Area or other property owned by the Association shall not be paid by the Association; rather, the amount of such taxes shall be paid by the owners of each of the Parcels directly to the tax collector of Shelby County, Alabama, with the portion to be paid with respect to each Parcel being equal to the total amount of the taxes multiplied by the fraction, the numerator of which is one and the denominator of which is the total number of Parcels. By the acceptance of a deed to a Parcel, the owner or owners thereof shall be conclusively deemed to have agreed to the inclusion (together with the tax bill with respect to the Parcel) of the additional tax with respect to the Common Area computed in the manner described above. The tax assessor of Shelby County, Alabama and the tax collector of Shelby County, Alabama, or any other public officials to whom the duties and authorities of these officials might hereafter be delegated, are hereby authorized to assess the Parcels and bill the owners thereof the taxes to be paid with respect to the Common Area in accordance with the provisions of this Section 4.7.

4.8 Insurance: The Association shall not be obligated to maintain policies of insurance of any kind or with respect to any hazard, risk, peril or liability. It shall be the responsibility of the owner or owners of each Parcel to purchase such policies of insurance with respect to their interests and potential liabilities as they deem to be appropriate, including all interests and liabilities relative to the Parcel, the Common Area, and all improvements upon the Parcel. Notwithstanding the foregoing, the Association shall have the right and authority to purchase such policies of insurance with coverages as the Association, in its sole discretion, deems appropriate.

## ARTICLE V

### CAHABA BEACH RESIDENTIAL ASSOCIATION, INC.

5.1 General: The structure of the Association is contained in its Articles of Incorporation and By-laws, which should be consulted for a full explanation of the rights and obligations appurtenant to membership in the Association.

5.2 All Parcel Owners Are Members of Association: Every owner of a Parcel located within the Subject Property shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Parcel which is within the Subject Property.

5.3 Maintenance Fund; Assessments: In order to provide a fund to maintain, landscape and repair the Common Areas, including the sanitary sewer pump, Common Driveways and the items and areas described in Section 4.6 above, and like community areas, maintain the front and side yards and lawns of the Parcels in a clean and orderly condition, and in general provide those services important to the development and preservation of an attractive community appearance; in order to pay such taxes or assessments with respect to Common Area or other property of the Association which cannot be assessed directly against the Parcels; and, in order to provide additional funds for such purposes as may be deemed appropriate by the Board of the Association, the Association may each year assess against each Parcel owned by a Member of the Association an annual assessment (which shall be uniform for all Parcels) equal to a specified number of dollars per Parcel. Said assessment may be collected periodically in twelve even monthly installments, quarterly, in one advance annual installment, or in such other manner as the Association deems appropriate. Until such time as the Association determines to provide any of the services which it has the authority to provide as set forth in this instrument or incurs expenses for such other purposes as are authorized pursuant to this instrument or otherwise by applicable statutes, there shall be no Association assessments or dues against any Parcel.

5.4 Lien: The assessments set forth in Section 5.3 hereof, together with interest thereon (at such rate as the Association might reasonably determine) and the costs of collection thereof (including reasonable attorney's fees) shall be a charge on and shall be a continuing lien (enforceable in the same manner as a mortgage, with power of sale) upon the Parcel against which each such fee, assessment or charge is made.

5.5 Subordination of Lien to Mortgages: The lien of any fee, assessment or charge on a Parcel, as authorized in this Article V, is hereby made subordinate to the lien of any bona fide mortgage on such Parcel if, but only if, all fees, assessments and charges levied against such Parcel falling due on or prior to the date such mortgage is recorded have been paid. The sale or transfer of any Parcel pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Parcel pursuant to sale under power contained in a



mortgage on such Parcel shall extinguish the lien for fees and assessments falling due prior to the date of such sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of such sale which shall be senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve an owner whose Parcel has been mortgaged of his personal obligation to pay all fees, assessments and charges falling due during the time when he is the owner of such Parcel. In the event of the foreclosure of any mortgage on a Parcel or a sale in lieu of foreclosure, the purchaser shall accept the deed subject to this Declaration, and such purchaser shall be a Member of the Association and shall be responsible for payment of any fees, assessments or charges authorized by the Association; provided, however, that the Board, in its sole discretion, may at any time, either before or after the mortgaging of any Parcel, waive, relinquish or quitclaim in whole or in part the right of the Association to fees, assessments and other charges collectible by the Association with respect to such Parcel coming due during the period while such Parcel is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

5.6 Maintenance of Front and Side Yards of Parcels: The Association shall have the obligation, easement, authority and right, through its employees, contractors or agents, to maintain the front and side yards of each Parcel or such portions thereof as the Board shall deem appropriate, and to levy an assessment for the expense of such maintenance against the Parcels and Members as provided in Section 5.3 above. The Board shall have the right to determine the extent of the maintenance to be provided by the Association which may include the mowing of the front and side lawns, pruning and replacement of shrubs, trees, and other plants, and watering the grass and other plants.

5.7 Declarant's Exemption: The Declarant and any Parcel or other portion of the Subject Property owned by the Declarant shall be exempt from the payment or levy of any and all assessments by the Association, during such time as there are Class B members, as described in the Articles and Bylaws, or until the Declarant has conveyed all of its interest in the Subject Property or any portion thereof, whichever shall later occur, unless waived in writing by the Declarant.

## ARTICLE VI

### EASEMENTS

6.1 Utility Easements. The Declarant reserves unto itself, its successors and assigns, a perpetual, assignable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over all Common Areas and such other areas as are shown and designated as easement areas on recorded plats; provided, that the Declarant may cut drain ways for surface water wherever and whenever such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance, but no such drainways may be constructed by the Declarant on a Parcel after a



dwelling has been constructed on such Parcel. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and maintenance, and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

6.2 Roads and Streets; Conveyance to Association: The Association shall have the right to maintain or help maintain the roads and streets within Cahaba Beach regardless of whether such roads and streets have been dedicated to the public, are owned by the Declarant, or have been conveyed to the Association. Declarant shall have the right, at such time or times as may be determined by the Declarant in its sole discretion, to convey to the Association all or some of the roads and streets within Cahaba Beach. Declarant shall also have the right to dedicate all or any of such roads and streets owned by Declarant to the public. The Declarant is under no duty or obligation, express or implied, to maintain the roads and streets within Cahaba Beach. The Association shall have the right to maintain any and all public and private roads and streets within Cahaba Beach, and subject to the provisions of Article V hereof, may charge fees or assessments as the Association deems appropriate for the proper maintenance thereof.

6.3 Party Walls/Easements for Encroachments. In the event that any two dwellings constructed within Cahaba Beach shall have a common or party wall between them, then an easement is hereby created for the benefit of each of the Parcels upon which said dwellings are constructed for the continuous maintenance of said common or party wall and for the support which it gives to each of said dwellings. No such easement is hereby created except in those situations where a common or party wall has been constructed between two dwellings. In the event that a dwelling on any Parcel, as originally constructed on the Parcel, encroaches upon any adjacent Parcel, then an easement is hereby created for the continuous maintenance of said encroachment.

## ARTICLE VII

### GENERAL

7.1 Grantee's Acceptance. The grantee of any Parcel subject to this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of these restrictions, liens, easements and provisions herein contained.

7.2 Indemnity For Damages. Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to this Declaration, agrees to indemnify Declarant and the Association from and against (i) any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines

or sanitary sewer lines owned by Declarant or the Association, or for which Declarant or the Association has responsibility, at the time of such damage, and (ii) any loss damage, claim or liability that the Declarant or Association might suffer, including costs of defense and attorneys' fees, arising out of any breach or violation of the provisions of this Declaration.

7.3 Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restriction in this Declaration, and the invalidity of any one or more of the provisions hereof shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

7.4 Right of Declarant to Modify Restrictions With Respect to Unsold Parcels. With respect to any Parcel owned by Declarant, Declarant may include in any contract or deed hereinafter made or entered into such modifications and/or additions to this Declaration as Declarant in its sole discretion desires.

7.5 Declarant's Right to Remove Portions of the Subject Property: Other provisions herein to the contrary notwithstanding, the Declarant shall have the right, at any time, to remove from the provisions of this Declaration, the Articles and Bylaws, any portion or portions of the Subject Property as the Declarant might determine, in its sole discretion; provided, that, at the time of any such removal, any such portions of the Subject Property are owned by the Declarant. Declarant shall have and does hereby reserve unto itself the power and authority to execute and effectuate, without the approval of any other persons or entities, amendments to this Declaration, the Articles and Bylaws as the Declarant shall deem appropriate to amend the legal description of the Subject Property and to carry out and enforce the rights reserved unto itself under this section. Any portions of the Subject Property so removed by the Declarant shall no longer be affected or encumbered in any manner by the provisions of this Declaration, the Articles or the Bylaws.

7.6 No Development Scheme. The size, configuration, style, location and any other of the characteristics of any particular Parcels or improvements thereto shall not in any manner bind or restrict the Declarant with respect to the characteristics of the development of any other portion of the Subject Property. The Declarant shall have the right to redesign and relocate the roads, drives and entrances on the Subject Property and to change the size, configuration, style, location and other characteristics of any lots or Parcels to be created within the Subject Property in such manner as the Declarant deems appropriate, including, but not limited to, the right to increase or decrease the size of Parcels and improvements thereupon, develop and construct residential buildings of such sizes and configurations as the Declarant might deem appropriate.

7.7 Captions. The captions preceding the various sections, paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.



7.8 Effect of Violation on Mortgage Lien. No violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Subject Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other owner of any portion of the Subject Property.

7.9 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

7.10 Duration and Amendment. The restrictions and provisions contained in this Declaration shall run with and bind the Subject Property, shall inure to the benefit of and shall be enforceable by Declarant, the Association, the Architectural Committee, and any Parcel Owner, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2023, after which time said restrictions and provisions shall be automatically extended for successive periods of ten years. Except as provided elsewhere in this Declaration, this Declaration may not be amended in any respect (except with regard to the addition of other property) except by the execution of an instrument signed by not less than 75% of the Parcel Owners, which instrument shall be filed for recording in the Probate Office of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2023, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Parcel Owners which instrument shall be filed for recording in the Probate Office of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. Provided, other provisions herein to the contrary notwithstanding, (a) as long as Declarant owns any portion of the Subject Property, Declarant may amend the provisions of this Declaration in such manner as Declarant, in its sole discretion, deems appropriate, (b) the rights of Declarant and the rights specifically herein given to the holders of any mortgages upon any Parcel may not be affected without their prior written consent, (c) the voting and membership rights of the owners of any Parcel may not be altered without the prior written consent of the owners of any Parcel so affected, and (d) until Declarant has conveyed all of its interest in the Subject Property, this Declaration may not be amended without the prior written consent of Declarant.

7.11 Enforcement. In the event of a violation or breach of any provision of this Declaration or any amendments thereto by any owner, resident, or employee, agent, or lessee of such owner or resident, the owner(s) of Parcel(s), the Association, Declarant, their successors and assigns, or any other party to whose benefit this Declaration inures shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions and provisions, to sue for and recover damages or other dues, or to take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.



Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

7.12 Certificate of Violation. In addition to any other rights or remedies available to the Association hereunder or at law or equity, the Association shall have the right to file in the Probate Office of Shelby County, Alabama a Certificate or Notice of Violation of this Declaration (which violation shall include, without limitation, nonpayment of the fees, assessments or charges, or failure to comply with architectural guidelines) upon failure of a Parcel Owner to correct a violation of this Declaration within ten (10) days after written notice of the violation has been given by the Association to the Parcel Owner.

7.13 Interpretation by Association. The Association shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof.

7.14 Assignment by Association. The Association shall be empowered to assign its rights hereunder and its properties to any successor nonprofit membership corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the Association hereunder.

7.15 No Waiver. The failure of any party entitled to enforce any of the provisions of this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article II shall be binding on any and all parties as a conclusive determination that such plans are in conformity with this Declaration.

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration as of the date first above written.

GIBSON & ANDERSON  
CONSTRUCTION, INC.

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

Its: \_\_\_\_\_

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Earl M. Gibson whose name as President of GIBSON & ANDERSON CONSTRUCTION, INC., an Alabama 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 the 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 seal of office this 1 day of September, 1997

Vanetta Lovell  
Notary Public

[NOTARIAL SEAL]

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.

MY COMMISSION EXPIRES: April 13, 1993.

My commission expires: BONDED THRU NOTARY PUBLIC UNDERWRITERS.

Inst # 1997-36030