

This instrument prepared by: Jack P. Stephenson, Jr.,  
420 N. 20th Street, Suite 3100, Birmingham, Alabama 35203

STATE OF ALABAMA )

)

COUNTY OF SHELBY )

**DECLARATION OF PROTECTIVE COVENANTS  
FOR  
VILLAGE AT BROOK HIGHLAND, A RESIDENTIAL SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS (hereinafter referred to as the "Declaration") is made as of this 12<sup>th</sup> day of March, 1998 by Eddleman Properties, Inc. (hereinafter referred to as the "Declarant"), which declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants").

WHEREAS, the Declarant is presently the owner of all of the real property described as Lot 3 A, according to the Survey of Brook Highland Commercial Resurvey No. 1, as recorded in Map Book 23 page 89 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

WHEREAS, the Declarant desires to subdivide the Property into single family, residential lots and to establish and enforce uniform standards of Property quality and to provide for the effective preservation of the appearance, value and amenities of real property herein described and for the maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desires to subject said real property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the said real property and each owner thereof; and

WHEREAS, the Declarant has deemed it desirable for the establishment and enforcement of uniform standards of Property quality and the effective preservation of the appearance, value and amenities to create a nonprofit corporation (sometimes hereinafter referred to as the "Association") to which should be delegated and assigned the powers of maintaining and administering certain areas thereof which benefit all owners of property therein and enforcing the Protective Covenants and of levying, collecting and depositing such charges and assessments as may be authorized in this Declaration for that purpose; and

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*Alabama Title*

WHEREAS, the Declarant has incorporated or will incorporate the Association under the laws of the State of Alabama, as a nonprofit corporation, for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Declarant declares that the real property described in Section 2.01 hereof, and such additions thereto as may hereafter be made pursuant to Section 2.02 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said real property, as well as their heirs, successors and assigns.

## ARTICLE I

### DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

1.01 "Association" shall mean and refer to the Village at Brook Highland Homeowners' Association, Inc., an Alabama nonprofit corporation, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles of Incorporation to be filed in the Probate Office of Jefferson County, Alabama (hereinafter referred to as the "Articles") and By-Laws (hereinafter referred to as the "By-Laws") of the Association make reference.

1.02 "Common Area" shall mean and refer to all real and/or personal property which the Association and/or the Declarant owns, leases, or has otherwise acquired for the common use and enjoyment of the members of the Association, and all real and/or personal property within or in the vicinity of the Property (hereinafter defined) in which the Association and/or the Declarant has an interest for the common use and enjoyment of the members of the Association, including, without limitation, a right of use (such as but not limited to, easements for surface water collection and retention, and licenses to use recreational facilities). The use of the Common Area shall be restricted to park landscape, entry features, directional graphic system, drainage and retention, landscape medians, security, safety, pedestrian paths, roads, lighting, recreational facilities or any other use to which the Board of Directors of the Association may accede.

1.03 "Declarant" shall mean and refer to Eddleman Properties, Inc.; provided that if Declarant or any of its successors conveys any portion of the Property and designates the transferee as successor to the Declarant with respect to such Property, the transferee shall be deemed to be the Declarant with respect to such Property for all purposes under this Declaration from and after the date of such conveyance.



1.04 "Dwelling" shall mean and refer to any improved Lot intended for use as single-family detached residential housing units.

1.05 "Government 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 Development.

1.06 "Improvement" shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot, 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, piers, 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.

1.07 "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust which holds a first mortgage or other first lien or charge upon any Lot or portion of a Lot or any interest therein which is of record in the Office of the Judge of Probate of Shelby County, Alabama.

1.08 "Lot" shall mean and refer, to the individual single family lots to be reflected on the subdivision plat(s) for the Property as recorded in the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time. Any portion of the Property not included in the subdivision plat shall be considered a single Lot.

1.09 "OPERS" shall mean the Public Employees Retirement System of Ohio acting by and through its trustees, ancillary trustees, and their respective agents.

1.10 "OPERS Property" shall refer to the real property situated in Shelby County, Alabama, currently owned by AmSouth Bank as Ancillary Trustee for First Union National Bank of North Carolina as Trustee for the Public Employees Retirement System of Ohio and included in the Master Plan for Brook Highland as heretofore approved by the Shelby County Planning Commission.

1.11 "Owner" shall mean and refer to one or more persons or entities who or which have fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.12 "Property" shall mean and refer to all real property which is presently or may hereafter be subject to this Declaration pursuant to Article II hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, DELETIONS THEREFROM

2.01 Legal Description. The real property which presently is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Alabama, and is described as Lot 3 A, according to the Survey of Brook Highland Commercial Resurvey No. 1, as recorded in Map Book 23 page 89 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

2.02 Additions to Property. Upon the approval in writing of the Association, the owner of any property who desires to subject it to this Declaration, may file a Supplementary Declaration to that effect in the Office of the Judge of Probate of Shelby County, Alabama. Such Supplementary Declaration may contain such complementary additions to and modifications of the Protective Covenants as the Association shall determine to be necessary or proper to reflect the different character, if any, of the additional property, provided they are not inconsistent with the general plan of this Declaration.

2.03 Withdrawals of Property. The Association may at any time or from time to time withdraw portions of the Property from this Declaration, provided only that the withdrawal of such portions of the Property shall not, without the joinder or consent of the Owners of Lots constituting over one-half of the then existing acreage of the Property, increase by more than one-fourth (1/4) the share of Association expenses payable by the Owners of Lots which would remain subject hereto after such withdrawal. The withdrawal of Property as aforesaid shall be evidenced by filing in the Office of the Judge of Probate of Shelby County, Alabama, a Supplementary Declaration setting forth the portions of the Property to be so withdrawn.

2.04 Platting and Subdivision of the Property. The Declarant shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property.

## ARTICLE III

### EASEMENTS

3.01 Owner's Easement With Respect To Common Areas. Every Owner shall have a right and easement of enjoyment in and to all Common Areas subject to the limitations set forth in Section 3.04 of this Declaration.



3.02 Owner's Mutual, Reciprocal, Non-Exclusive, Easement for Ingress and Egress and/or Utilities, Other Services and Drainage. In the event that all of the Owners shall agree, they may elect to create, by having all affected Owners file a declaration in the Office of the Judge of Probate of Shelby County, Alabama, one or more mutual, reciprocal, non-exclusive easement(s) in favor of each Owner, in common with all other Owners, and their respective tenants, employees, guests, invitees, licensees, agents and contractors under, through and over such portions of the Property as are designated therein in order to: (1) permit vehicular and pedestrian traffic over, through and across such areas designated therein as may from time to time be paved and intended and designated for such purposes and use, and (2) install, maintain, use, repair and replace wires, pipes, conduits, utility lines, sewer and storm drainage lines and other services located or to be located on the Property. The use of each such easement may be made subject to such terms and restrictions as the Owners may agree and set forth in such declaration. In the event that all of the Owners shall agree, they may elect to have the Association maintain any such easement or easements.

3.03 Additional Easements and Uses. For so long as the Declarant owns any Lot, the Declarant, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Declarant and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Declarant or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Office of the Judge of Probate of Shelby County, Alabama. Such right of the Declarant and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, their respective tenants, employees, guests, invitees, licensees and agents.

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

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

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

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

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

#### ARTICLE IV

##### COVENANTS FOR ASSESSMENTS

4.01 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the Association, in the manner set forth herein, all assessments determined in accordance with the provisions of this Declaration ("Assessments").

4.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas and of any easement in favor of the Association, and for the establishment of reserves therefor, as well as for such other purposes as are properly undertaken by the Association in accordance with this Declaration.

4.03 Annual Assessments. The Association shall levy annual assessments ("Annual Assessments") in such amounts as are necessary to meet the Common Expenses (as defined in Article V below) and such other recurring or projected expenses as the Board may deem appropriate. The Assessment year for the Annual Assessment need not be the calendar year.

4.04 Special Assessments. In addition to the Annual Assessments specified in Section 4.03 above, the Association may at any time levy one or more special assessments ("Special Assessments") for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair to or replacement of any of the Common Areas, including any fixtures and personal property related thereto.



4.05 Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of all Annual Assessments and Special Assessments, the date of commencement for such Assessment, and the due date of such Assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that time, prepare a roster of the Lots and Assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the amount of the Annual Assessment and Special Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement.

4.06 Date of Commencement and Due Date For Annual Assessments. The liability of a Lot for any Annual Assessment shall commence on the date or dates (which shall be the first day of a month) fixed by the Board in the resolution authorizing such Assessment. The due date of any such Assessment (which may be different from the commencement date) shall also be fixed in the resolution authorizing such Annual Assessment (but which need not be the first day of a month). Such Annual Assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as so fixed in the resolution authorizing the Annual Assessment.

4.07 Allocation of Assessment. The Board shall allocate a portion of each Assessment to each Lot in the proportion that each Lot bears to the total number of Lots within Property (to the nearest one-thousandth).

4.08 Certificates Concerning Assessments. The Association shall, upon demand at any time, furnish to any Owner liable for any Assessment or his designee a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.09 Liability of Owners for Assessments.

(a) No Owner may exempt himself from liability for any Assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Area, or by abandonment of the Lot or in any other manner.

(b) In the event that the Board of Directors of the Association determines to construct improvements as Common Areas for the substantial or exclusive benefit of a limited number of Lots within the Property, the Board shall designate the Lots so benefitted, and the Owners of such Lots shall be solely responsible for any Assessments for Common Expenses attributable to such Common Area.

4.10 Effect of Non-Payment of Assessments: The Lien, the Personal Obligation: Remedies of the Association.

(a) If any Assessment or other charge or lien provided for herein is not paid in full on the due date set by the Board, then such Assessment charge or lien shall become delinquent on the thirtieth day thereafter, and together with interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot encumbered thereby, and also the personal obligation of its Owner, his heirs, and his or its successors and/or assigns. The personal obligation of any Owner to pay such Assessment, however, shall remain his or its personal obligation and shall not pass to any successors or assigns unless expressly assumed by them.

(b) If any Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at eight percent (8%) per annum, and the Association may bring an action against the Owner personally obligated to pay the same and/or commence the foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include the aforesaid interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. Any person (except an Institutional Mortgagee) who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to the Association and shall acquire his interest in any Lot expressly subject to any such lien of the Association.

(c) The lien herein granted to the Association shall be perfected by recording a Claim of Lien in the Office of the Judge of Probate of Shelby County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall have been fully paid. Such Claim of Lien shall include only Assessments which are due and payable when the Claim of Lien is recorded, plus interest, late charges, costs, attorneys' fees and advances to pay taxes, prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such Claim of Lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of an officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.



(d) The lien of any Assessments shall be subordinate to the lien of any Institutional Mortgagee bearing a recording date in the Office of the Judge of Probate of Shelby County, Alabama, prior to the date of recording the Association's Claim of Lien. Where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or where any Institutional Mortgagee or its designee accepts a deed to a Lot in lieu of foreclosure, such acquiror of title, its successors and assigns, shall not be liable for any Assessment pertaining to such Lot or chargeable to the former Owner which became due prior to the acquisition of title to such Lot, unless such delinquent Assessment was secured by a Claim of Lien recorded prior to the recordation of the Institutional Mortgagee's mortgage. Such unpaid Assessments shall be instead collectible from all Owners, including such acquiror, its successors and assigns. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or liability for the enforcement or collection thereof by means other than foreclosure.

(e) Any person who acquires an interest in a Lot, except an Institutional Mortgagee as specifically provided above, including, but not limited to, persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the Common Areas until such time as all unpaid Assessments due and owing by the former Owner have been paid in full. Any party who has a contract to purchase a Lot, or who proposes to make a loan secured by a mortgage on a Lot, may, by written request, inquire of the Association whether the Lot is subject to any Assessments and the due date of any such Assessments and the amount of interest due on any delinquent Assessments and an authorized representative of such Association shall give the requesting party a written response, providing all such information, within ten days of the Association's receipt of such inquiry and such response shall be binding upon the Association. If the response is incorrect or if the Association does not make such response within said ten-day period, any such assessment shall not be an obligation of such purchaser or a lien on the Lot, but shall continue to be a personal obligation of the Owner of the Lot.

(f) The Association shall have the right to assign its Claim of Lien, and any other lien rights provided for in this Article, for the recovery of any unpaid Assessments to the Declarant, to any Owner or group of Owners or to any third party.

4.11 Exempt Property. The Board of Directors shall have the right to exempt any portion of the Property from the assessments, charge and lien created herein provided that such part of the Property exempted is used (and as long as its is used) for any of the following purposes:

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

(b) As Common Area as defined in Section 1.02 hereof;

(c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

## ARTICLE V

### COMMON EXPENSES

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

5.01 Maintenance and Repair of Common Areas. The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean, attractive, and sanitary condition.

5.02 Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

5.03 Fidelity and Directors' Insurance. Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

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

## ARTICLE VI

### ARCHITECTURAL CONTROL

#### 6.01 Architectural Review Board.

(a) The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (hereinafter referred to as the "ARB"), which shall consist of not more than three (3) members who may or may not be members of the Association. The initial ARB shall be comprised of John Detwiler, Billy D. Eddleman, and Douglas D. Eddleman. So long as OPERS owns any property within the OPERS Property, at least one member of the ARB shall be designated by OPERS; and so long as Eddleman Properties, Inc. owns any property within the OPERS Property, at least one member of the ARB shall be designated by



Eddleman Properties, Inc. The Association shall have authority to appoint members of the ARB not required to be designated by OPERS or Eddleman Properties, Inc.

(b) Subject to the provisions of subparagraph (a) above, the Association shall have full authority to elect a successor to the ARB upon the death, resignation, or removal of a member of the ARB.

(c) The members of the ARB shall not be entitled to any compensation for services performed pursuant to this covenant.

#### 6.02 Procedure and Meetings.

(a) The ARB shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARB. The ARB may meet on a regular basis as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The affirmative vote of a majority of those present in person or by proxy at a meeting of the ARB shall constitute the action of the ARB on any matter which comes before it; provided that a majority of the members of the ARB may delegate the right to act for and on behalf of the ARB to one or more of its members. The ARB is authorized to retain the services of consulting Architects, landscape Architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARB in performing its functions set forth herein. Each member shall be entitled to a reimbursement of expenses incurred on behalf of the ARB. The ARB shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARB.

(b) The ARB shall have the right and power to appoint one or more committees of the ARB and to delegate to such committees various responsibilities of the ARB. The members of the committees of the ARB must be Owners but they need not be members of the ARB. Each committee established by the ARB and each member thereon shall serve at the pleasure of the ARB and the authority of each committee may be limited, expanded or revoked by action of the ARB. Each committee shall have the right from time to time to adopt and establish rules and regulations as may be necessary concerning the procedure and conduct of the business of the committee. All decisions of a committee of the ARB shall be subject to the approval of the ARB. Any Owner may appeal any decision of a committee of the ARB, and the decision of the ARB shall be final with respect to such appeals. The ARB shall have the right from time to time to establish rules and procedures for appeals from the committees; provided that in the absence of such rules and procedures the procedures set forth in Section 6.05 shall be followed with respect to an appeal from a committee of the ARB.

6.03 Architectural Standards. The ARB and the Association are each hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction.

location, landscaping and design of all Dwellings and other improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other improvements on a Lot are to be submitted to and approved by the ARB and any other matters affecting the construction, repair or maintenance of any Dwelling or other improvements on any Lot (the "Architectural Standards"). The Architectural Standards adopted by the ARB and the Association shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

6.04 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, OTHER THAN DECLARANT, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARB IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 6.04(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 THE ARB IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 6.04(b) BELOW.**

(b) The ARB is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other improvements on any Lot or Dwelling within the Property. Prior to the commencement of any Dwelling or other improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARB plans and specifications and related data for all such improvements, which shall include the following:

(i) Three (3) copies of an accurately drawn and dimensioned site Property 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) Three (3) 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) Three (3) copies of written specifications and, if requested by the ARB, 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) Four (4) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) Four (4) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 6.05 below.

(vi) Three (3) copies of an erosion control plan prepared and submitted in accordance with Section 6.06 below.

(vii) Such other plans, specifications or other information or documentation as may be required by the Architectural Standards.

(c) The ARB shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the ARB shall be retained in the records of the ARB and the other copy shall be returned to the Owner submitting the same marked "approved," "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance and may make interior improvements and alterations within any buildings or structures it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that ARB approval or consent be obtained.

(d) The ARB 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 or the architectural Standards, 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 Property proposed for the Property, objection to the location of any

proposed improvements on any such Lot, objection to the erosion control plan and/or 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 the ARB, would render the proposed improvement inharmonious with the general plan contemplated for the Property. The ARB 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 the ARB for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARB 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.

(e) In the event the ARB 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. In such event, the Owner may then submit the plans and specifications directly to the Association for its consideration. The approval, conditional approval or disapproval of such plans and specifications by the Association shall be final and binding on the Owner and the ARB. The Association shall note its approval, conditional approval or disapproval on all copies of the plans and specifications and shall return two copies to the ARB for distribution and retention in accordance with subparagraph (c) above.

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

(g) 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 the ARB 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 the ARB for approval in the same manner specified above.

(h) If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without approval by the ARB of the plans and specifications for the same or (b) the ARB and/or the Association shall determine that any approved plans and specifications for any improvements or the approved erosion control plan and/or 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 the ARB and/or the Association shall have the right to exercise any of the rights and remedies set forth in Section 6.12 below.

(i) The ARB and the Association, or any agent, employee or representative of either of them, may at any reasonable time and from time to time enter upon and inspect any Lot or



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

6.05 Landscaping Approval.

(a) 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 on any Lot or Dwelling unless and until landscaping plans therefor have been submitted to and approved by the ARB. The provisions of Section 6.04 above regarding the method that such plans are to be submitted to the ARB, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

(b) Each landscape plan so submitted shall provide for the construction of a sidewalk along the Lot line bounded by the street in accordance with the requirements of the ARB and the Association, and the Owner shall be responsible for the repair of any damage to the sidewalk occurring during construction of the Dwelling or any other Improvements on the Lot. The landscape plan shall also reflect the location of all curb cuts in the sidewalk allowing access to the Lot or Dwelling.

6.06 Erosion Control Plan. Owner or the Owner's builder or contractor shall prepare an Erosion Control Plan to be implemented with respect to any Lot. Any such Erosion Control Plan, to be approved by the ARB and the Association, must provide that gravel be placed in the driveway of the Lots during the construction period and that hay and silt fences be utilized during construction to minimize erosion. Such Erosion Control Plan must comply with all terms and conditions of the General Permit issued by the Alabama Department of Environmental Management and made available to Declarant regarding storm water runoff from construction, excavation, land clearing and other land disturbance activities within the Property.

6.07 Builder Regulation and Approval. In order to minimize disruption in the Property and to maintain orderliness during construction of Improvements to Lots or Dwellings within the Property, the ARB and/or the Association shall have the right and authority from time to time, in its discretion, to propose, adopt, alter, amend and revoke rules and regulations applicable to builders, general contractors and subcontractors who are engaged in the construction of Improvements on any Lot or Dwelling within the Property.

6.08 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 the ARB and the Association for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the ARB, the Association or Declarant 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.

6.09 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Declarant, the ARB, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director of any of them, 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 VI, (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 VI, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner or the respective family members, guests, employees, servants, tenants, agents, invitees or licensees of any such Owner, or any damage to any Dwellings, Improvements or the personal property of any Owner, or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner, 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 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 or Dwelling or any improvements situated thereon.

6.10 Commencement and Completion of Construction. Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously, and, unless a longer period of time is approved by the ARB, construction shall be completed within one (1) year of the commencement date of said construction. Such completion shall be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities and a Certificate of Compliance issued by the Association.

6.11 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant, its agents, employees, successors and assigns, shall have the right and option to maintain such facilities and to carry on such activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the Property of Lots, Dwellings, and the Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Declarant from time to time; provided, however, that the location of any construction trailers of any assignees of Declarant's rights under this Section 6.11 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.



6.12 Enforcement and Remedies. In the event any of the provisions of this Article VI or any rules and regulations promulgated by the ARB and/or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or the respective family members, tenants, guests, invitees, agents, employees or contractors of any Owner, then the Association shall have the right, at its option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARB and the Association for such Improvements, and/or (b) deny a contractor access to the subject Lot or Dwelling until the Owner or contractor submits a plan for correction of the violation that is approved by the ARB and the Association and undertakes to cure such violation in accordance with the approved plan, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article VI, 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 nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article VI shall be paid by such Owner as an individual Assessment under Article IV of these Protective Covenants, if the same is not paid when due, shall be subject to the lien and be subject to foreclosure as provided for Assessments. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARB or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration.

## ARTICLE VII

### USE AND PROPERTY RESTRICTIONS

7.01 Use Restrictions. Except as otherwise provided to the contrary in Section 6.11 above and in this Section 7.01, each Lot and Dwelling shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Dwelling. 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 7.01 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 (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used

for any purpose other than Common Areas, or single-family residential purposes, then such use must be approved in writing by the ARB.

7.02 ARB Approval. No Dwellings or other improvements of any nature whatsoever shall be constructed on any Lot unless such Dwelling and/or improvements have been approved by the ARB in the manner set forth in Article VI above.

7.03 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.

7.04 Lot Size. Unless otherwise permitted in Article II of this Declaration, no Lot shall be subdivided without the prior written approval of the Association.

7.05 Limitation on Size and Location of Structures.

(a) No Dwelling shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat for the Property. No Dwelling shall be located on any Lot nearer than 20 linear feet to the front Lot line. No Dwelling shall be located nearer than 5 linear feet to an interior Lot line. No Dwelling shall be located on any Lot nearer than 20 linear feet to the rear lot line. For the purpose of this covenant, eaves, steps, and open decks or terraces shall not be considered as a part of a Dwelling, provided, however, that this shall not be construed to permit any portion of a Dwelling on a Lot to encroach upon another Lot.

(b) Each Dwelling, exclusive of open porches, garages, basements and carports, shall not be less than 1,200 square feet on the ground floor of any one-story building; not less than a total of 1,700 square feet in the case of a 1½ story building; and not less than 2,000 square feet in the case of a 2-story building with a minimum of 1,000 square feet being on each floor of the 2-story building.

The Association can reduce or increase the living space requirements for a Dwelling if, in the opinion of the Association, the appearance of the Dwelling on the Lot will be consistent with the other Dwellings within the Property.

7.06 Landscaping.

(a) The landscaping plan for each Lot or Dwelling in the Property shall substantially comply with the requirements of Section 6.05 and shall be submitted to the ARB for approval pursuant to the provisions of Section 6.04 above. All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARB no later than thirty (30) days following the issuance of a Certificate of Compliance for the Dwelling situated thereon.



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

(c) 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, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot.

(d) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any street.

(e) No Owner shall allow the grass on his Lot or Dwelling to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(f) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling as soon as such holiday passes.

#### 7.07 Roofing.

(a) The requirements for the pitch of the roof of the portion of a Dwelling facing a street shall not be less than 8/12 and the pitch for any other roof attached to or adjoining the main body of the Dwelling shall be not less than 6/12. One and one-half (1 1/2) story Dwellings shall not have a roof pitch of less than 3/12 on rear.

(b) The ARB and/or the Association shall have the right to establish specific requirements for the type of roofing materials which may be utilized for any Dwelling.

(c) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling, including, without limitation, the roof of any Dwelling if the same would be visible from any street.

(d) No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and 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 any street.

(e) No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

7.08 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 the ARC.

7.09 Exterior Materials and Finishes.

(a) The exterior building material for the front wall(s) and each side wall of a Dwelling shall be primarily brick. Dwellings may have portion of framing in gables or offsets as deemed necessary. Approved exterior for the rear wall(s) of a Dwelling shall include brick, stucco, synthetic plaster (*i.e.*, dryvit), hardy plank (or similar substitution), vinyl siding and such other materials as may be approved by the ARB. All wood surfaces utilized on the exterior of any Dwelling shall be painted; except eaves may have vinyl siding. 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) All brick, stonework and mortar, as to type, size, color and application, must be approved by the ARB. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g. dryvit), wood, trim, cornices, eaves, railings, doors and shutters shall be subject to approval of the ARB.

(c) 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.

(d) 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.).

(e) 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.

7.10 Garages.

(a) Each Dwelling shall provide for parking for at least two (2) automobiles in attached garages equipped with garage doors.



(b) Garage doors shall be constructed of such materials as are approved by the ARB. 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 the ARB.

(c) All automobiles owned or used by the Owner of any Dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein.

#### 7.11 Fences.

(a) No chain link, vinyl coated or wire fences shall be permitted within the Property except with regard to maintenance areas within the Common Areas. No fences shall be allowed in front yards. Electric fences (other than underground invisible electric fences for the retention of pets) shall not be permitted. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARB. Fences visible to streets shall be screened with landscaping acceptable to the ARB.

#### 7.12 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) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

7.13 Mailboxes. Only one (1) mailbox shall be allowed on any Lot. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or as approved by the ARB. Mailboxes shall contain only the name and/or house number of the Lot as approved by the ARB, but no further inscription, paintings, ornaments or artistry shall be allowed.

7.14 Satellite Dishes and Antennae. Unless specifically permitted by the Architectural Standards from time to time adopted as herein provided, no satellite dishes, radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Property unless the same is contained entirely within the interior of a building or other structure. 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; provided, however, that Declarant shall not be prohibited from causing to be installed and operated, either directly or indirectly by contract or otherwise with another entity, any equipment necessary for master antenna, cable television, security, mobile radio or similar systems within the Property.

7.15 Driveways and Sidewalks. Subject to 6.05(c), all driveways and sidewalks for each Lot or Dwelling shall be constructed of such hard surfaced material as may be specified in the Architectural Standards or approved by the ARB. All driveways and sidewalks shall be paved in such hard surfaced materials. Chert, gravel and loose stone driveways and sidewalks are prohibited.

7.16 Outdoor Furniture, Recreational Facilities and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained or located in or on front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots and Dwellings.

(c) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street.

(d) Free-standing playhouses and treehouses shall not be permitted.

(e) Basketball backboards shall not be located in the front of a Dwelling.

(f) 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 any street 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.

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from the street.

(h) Bird feeders, wood carvings, plaques and other types of home crafts 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 home crafts shall be located at the rear of a Dwelling, shall not be visible from any street.

7.17 Pets and Animals. No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or Dwelling or other portion of the Property; provided, however, that a reasonable number of the usual household pets may be kept and maintained on a Lot (but not exceeding two dogs and three cats) so long as they are not kept for breeding or commercial purposes and so long as they are kept within a fence or walled area on the



Lot (including, without limitation, invisible fences) approved by the ARB, they are kept on a leash when outside such fenced or walled area, and they are kenneled inside the Dwelling each day between the hours of 9:00 p.m. and 7:00 a.m. local time. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas; all such structures or areas shall be located at the rear of a Dwelling, shall not be visible from any street and shall be constructed of materials and of a size approved by the ARB. Dogs and cats shall not be allowed to roam unattended within the Property. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street or any portion of the Common Areas 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. The Association 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.

#### 7.18 Trash, Rubbish and Nuisances.

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any 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. 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 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.

(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 streets and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers can be moved to the side yard of any Dwelling on trash collection days for such Lot or Dwelling.

(c) Except as otherwise provided in Section 7.23(a) below, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot, Dwelling, or other portion of the Property.

#### 7.19 Recreational Vehicles and Machinery and Equipment.

(a) 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. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(b) Each Lot or Dwelling shall provide for adequate off-street parking (*i.e.*, parking areas located solely within the property lines of such Lot or Dwelling). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 7.15 above or in garages constructed in accordance with the provisions of Section 7.09 above. Vehicles shall not be parked on any landscaped or natural areas of a Lot or Dwelling.

(c) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner 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, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.

7.20 Signage. All signs, billboards or advertising structures of any kind are prohibited except for signage structures approved by the Association for use by an Owner's real estate broker, for use by an Owner for the purpose of advertising a Lot or Dwelling for sale and for signage structures or for use by the primary builder for the purpose of advertising the construction of the Dwelling. The signs shall contain no more than the name of the broker or builder, telephone number, the name of the agent, and such other information as may be approved by the Association. The ARB and the Association shall have the right to enter any of the Property for the purpose of removing and destroying any unauthorized signs without recourse from any Owner or builder. All builder or contractor signs shall be promptly removed after completion of construction. So long as it owns any Lots within the Property, the Declarant shall have the right to place any type of signs on or about the Property for the purpose of advertising the Property and promoting the sale of Lots.

7.21 Above 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 or 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 Dwelling.

7.22 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) temporary structures for social functions as



may be permitted by the rules and regulations of the Association, (b) any detached structures which are approved in writing by the ARB, (c) dog houses so long as such dog houses are visibly screened from view from all streets, and (d) offices erected or placed on any part of the Property by Declarant pursuant to Section 6.11 above.

#### 7.23 Construction of Improvements.

(a) During the construction of any Improvements or Dwelling, (i) all Lots or 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 street 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 does not create a nuisance to other Owners or violate the laws, ordinance, 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 or Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of improvements on a Lot or Dwelling prior to such vehicles traveling on any streets within the Property;

(b) After all Dwellings are completed, 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.

(c) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and 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 the plans and specifications for the Dwelling, the landscaping plan for the Lot, the erosion control plan approved by the ARB, as well as any other applicable watershed protection or soil erosion requirements, and other governmental requirements, both during and after completion of construction of any improvements on such Owner's Lot. In the event that the Owner or any of his contractors or agents shall be in violation of the aforesaid requirement, the Association or the ARB shall have the right to exercise any of the remedies set forth in Section 7.27 below. Further, the Owner shall indemnify and hold the Declarant harmless from and against any liability the Declarant may have as a result

of the violation, by the Owner or its builder, contractor, or other agent, of the terms, conditions or requirements of the Erosion Control Plan submitted by the Owner and approved by the ARC.

7.24 Swimming Pools and Tennis Courts. Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling subject to the prior written approval of the plans for the same by the ARB and the restrictions contained herein and in the Erosion Control Plan. Above-ground pools shall not be permitted. The Association shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities and tennis courts within the Property.

7.25 Additional Regulations. In addition to the restrictions set forth in this Declaration, (i) the ARB and the Association shall have the right, in their sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling and (ii) the Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Association, in its sole discretion, determines to be in the best interests of all Owners with respect to the use, maintenance and repair of the Common Areas in the Property, which rules and regulations shall be binding on all Owners, Lots and Dwellings.

7.26 Variances. The Association, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article VI above and this Article VII with respect to any Lot or Dwelling. Any variance request submitted to the Association shall be in writing and, upon approval of the same by the Association, shall be evidenced by a written variance executed by the Chairman, President or a Vice President of the Association.

7.27 Enforcement and Remedies. In the event any of the provisions of this Article VII are breached or are not otherwise being complied with in all aspects by any Owner or the respective family members, guests, invitees, tenants, agents, employees or contractors of any Owner, then the Association or the ARB shall each have the right, at their option, to do any or all of the following: (a) require cessation of such violation or noncompliance and/or (b) through their 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 the ARB or the Association in enforcing any of the provisions of this Article VII, including, without limitation, attorney's 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 by the ARB or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VII, shall constitute an individual Assessment to such Owner pursuant to Article IV hereof, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for in Article IV



hereof, and shall be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARB and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARB or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration in Sections 5.04, 6.12, 7.23(c), 8.02(b), and 10.3 of this Declaration.

## **ARTICLE VIII**

### **MAINTENANCE RESPONSIBILITIES**

#### **8.01 Responsibilities of Owners.**

(a) The maintenance and repair of all Lots, Dwellings, all other Improvements situated hereon 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 or its Lot or Dwelling, as the case may be, 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 finished 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 (including, without limitation, painting or finishing) without first obtaining the prior written approval of the same from the ARB.

(b) Each Lot or Dwelling, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ARB pursuant to Section 6.05 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 in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 8.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of any roadway or buffer area on or abutting such Lot or Dwelling and shall be binding on the Owner of each Lot or Dwelling at all times, either prior, during or after the construction of any Improvements thereon. 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, weed, rubbish, debris, garbage and waste material shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Property.

(c) No Owner shall (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling (including, without limitation, painting or finishing) or the landscaping, grounds or other Improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARB as provided in Sections 6.05 and 6.06 above or (ii) do any work which, in the reasonable opinion of the ARB, would jeopardize the soundness and

safety of the Property, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtained the prior written approval of the ARC.

#### 8.02 Responsibilities of Association.

(a) Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas. 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 theft, burglary or other illegal entry into the Property or any Lot or Dwelling.

(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 the family members, guests, servants, employees, invitees, tenants, or contractors of such Owner, 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 Associations' 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 and shall constitute an individual Assessment to such Owner under Article IV hereof and shall be subject to the lien and foreclosure rights granted pursuant to Section 4.10 hereof.

8.03 Assessments. 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 the Association: (a) Annual and Special Assessments, as established and to be collected from all Owners as provided in Article IV hereof, and (b) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration. All Assessments, together with late charges and interest as provided in Section 4.10 hereof, and all court costs and attorneys' fees



incurred by the Association 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 4.10 hereof.

## ARTICLE IX

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

9.01 Membership. Every Owner, including the Declarant, shall, for so long as it is an Owner, at all times be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of any instrument of transfer of such ownership interest (provided such tender is accepted), or upon such ownership interest being divested in some other manner.

9.02 Voting. Subject to the restrictions hereinafter set forth, each member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When one or more persons hold such interest, all such persons may be members, and the vote (s) for such Property shall be exercised in the manner set forth in the By-Laws, but in no event shall more than one vote be cast with respect to any one Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of this Declaration, the Articles or the By-Laws, the affirmative vote of Owners who own a majority of the total Lots of the Property that are represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth in the By-Laws.

Notwithstanding the provisions of this Section 9.02, the Declarant shall have the right to elect the members of the Board of Directors of the Association, and in the event of vacancies, the Declarant shall fill vacancies, until such time as all Lots have been sold to Owners other than Declarant, or the Declarant elects at its option, to terminate its control of the Association, whichever first occurs.

## ARTICLE X

### NATURE OF PROTECTIVE COVENANTS: DEFAULTS AND REMEDIES

10.01 Protective Covenants Running with the Land. The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with such Property and inure to the benefit of and be enforceable by the Declarant, by the Association, by any Owner, or by OPERS (if it is no longer the Declarant and for so long as OPERS owns any of the OPERS Property) for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive periods of ten (10) years, unless an agreement, which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration has been recorded in the Office of the Judge of Probate of Shelby County, Alabama.

10.02 Default. Violation or breach of any of the Protective Covenants shall constitute a default hereunder. Any person given the right to enforce the Protective Covenants herein set forth may provide written notice thereof to any Owner (and any Institutional Mortgagee who or which has requested the same and provided to the Association an address for such notices).

10.03 Remedies for Default. The existence of any default which has not been cured within thirty (30) days of the notice specified above shall give the Declarant, the Association, any Owner, OPERS (if it is no longer the Declarant and for so long as OPERS owns any of the OPERS Property) in addition to all other remedies specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them.

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

10.05 Assignment. The Declarant and/or the Association shall have the right to assign their respective rights to enforce these Protective Covenants. In the event of such assignment, the assignee shall have all the rights, remedies and privileges granted to its assignor under the provisions of this Article IX.



10.06 No Right of Reverter. No covenant, condition or restriction set forth in this Declaration is intended to be, or shall be construed as, a condition subsequent or as creating the possibility of reverter.

## ARTICLE XI

### AMENDMENT OF DECLARATION

11.01 Amendment By Declarant. The Declarant reserves the right unilaterally to amend this Declaration, and to do so at such time, and upon such conditions, in such form and for such purposes as it, in its sole discretion, shall deem appropriate by preparing and recording an amendment hereto, provided, however, that this right of unilateral amendment is subject to the limitations set forth in Section 11.03 hereof and provided, further, that this right of unilateral amendment shall expire after all Lots have been sold to Owners other than the Declarant, after which time this Declaration may be amended only in the manner set forth in Section 11.02 below.

#### 11.02 Amendment by Association.

(a) Amendments to this Declaration may be proposed by either the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by the affirmative vote of members of the Association who own not less than a majority of the Lots, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to the Declaration being proposed by the said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association or, in the absence of the President, such other officer of the Association, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days, nor later than sixty (60) days, from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each member written or printed notices of such special meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than fifty (5) days, before the date set for such special meeting. Such notice shall be given to any Institutional Mortgagee of record who requests such notices and provides an address therefor to the Association. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the member at his post office address as it appears on the records of the Association, the postage thereon being prepaid. Any member may, by written waiver of notice signed by such members, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such special meeting, the amendment or amendments proposed must be approved by the affirmative vote of members who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be

recorded in the Office of the Judge of Probate of Shelby County, Alabama within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

11.03 Restrictions on Amendment. Notwithstanding the foregoing provisions of this Article XI,

(a) No amendment shall materially adversely affect the rights of any Owner or group of Owners, unless such Owner or all Owners so adversely affected shall consent thereto. For example, no amendment shall alter the basis for apportionment of assessments in a manner which would materially adversely affect any Owner or Owners, as opposed to other Owners, unless the Owner or Owners so adversely affected shall consent thereto.

(b) No amendment shall materially adversely affect the rights and priorities of any Institutional Mortgagees of record or change the provisions of this Agreement with respect to Institutional Mortgagees, unless all Institutional Mortgagees of record so adversely affected shall consent thereto.

(c) No amendment to this Declaration shall make any change in the qualifications of the membership nor in the voting or property rights of members, without approval in writing by all members and the joinder of all Institutional Mortgagees.

(d) No amendment to this Declaration shall abridge, limit, amend or alter the rights, privileges, powers or options of the Declarant or any Institutional Mortgagee, as the same are set forth in this Declaration, without the prior written consent of the Declarant if it is so affected and/or any Institutional Mortgagee which is so affected.

(e) No amendment shall be made to this Declaration so long as the Declarant owns any Lot, unless the Declarant shall consent thereto. Such consent may be withheld by the Declarant for any reason or no reason at all.

(f) No amendment shall be made to this Declaration so long as OPERS owns any of the OPERS Property unless OPERS shall consent thereto.

11.04 Scrivener's Error. Notwithstanding the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of an amendment to this Declaration consented to by the Board of Directors of the Association and any Owners or mortgagees of record



directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Agreement, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment to this Declaration executed by the Board of Directors of the Association without the consent of any other party.

## ARTICLE XII

### GENERAL PROVISIONS

12.01 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage paid, to the address of such Owner as it appears on the records of the Association at the time of such mailing.

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

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

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

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

12.06 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, the Articles, the By-Laws or the Rules and Regulations, then the provisions of this Declaration shall prevail.

12.07 Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Shelby County, Alabama.

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

DECLARANT:

EDDLEMAN PROPERTIES, INC.

By: Douglas D. Eddleman

Its: PRESIDENT

STATE OF ALABAMA     )  
COUNTY OF Jefferson     )

I, the undersigned, a Notary Public in and for said County in said State hereby certify that Douglas D. Eddleman, whose name as President of Eddleman Properties, Inc., a corporation, is signed to the foregoing Declaration of Protective Covenants, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Protective Covenants, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date. Inst # 1998-10373

Given under my hand and official seal of office this 12<sup>th</sup> day of March, 1998.

Louise A. Love  
Notary Public

My Commission Expires: 10/99

Inst # 1998-10373

513616.3

03/25/1998-10373  
08:54 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
034 MCD 91.00