

STATE OF ALABAMA)

SHELBY COUNTY)

**THE Foothills of Chelsea Commercial
Declaration of Covenants, Conditions
and Restrictions**

THIS THE Foothills of Chelsea Commercial DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 30th day of October, 2001 by The Foothills Partnership, L.L.C., an Alabama limited liability company ("Developer").

R E C I T A L S:

Developer is the owner of that certain real property, as described in Section 1.25 below (the "Property"), and desires to own, develop, improve, lease and sell the Property for office, retail, institutional, governmental, public and commercial purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has contemporaneously herewith caused the Association, as defined below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property and any Additional Property, as defined below (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I
DEFINITIONS

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

1.1 **Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.3 below. The Additional Property may also include additional Common Areas.

1.2 **ARC.** The term or letters "ARC" shall mean the architectural review committee appointed pursuant to Section 5.2 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.3 **Architectural Standards.** The term "Architectural Standards" shall mean the standards which may be prepared, issued and amended from time to time by the ARC pursuant to Section 5.4 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Lot, Building or Common Area.

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

1.5 **Assessment.** The term "Assessment" shall mean any charges assessed against an Owner pursuant to Section 8.1 hereof.

1.6 **Association.** The term "Association" shall mean the Foothills of Chelsea Commercial Owners Association, Inc., an Alabama nonprofit corporation, its successors or assigns.

1.7 **Board.** The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and By-Laws.

1.8 **Building.** The term "Building" shall mean and refer to any building or other structure constructed or situated on any portion of the Property.

1.9 **By-Laws.** The term "By-Laws" shall mean and refer to the By-Laws of the Association, as the same may be amended from time to time.

1.10 **Common Area.** The term "Common Area" shall mean and refer to all real and personal property now or hereafter owned, leased or maintained by the Association within or without the Development for the common use and enjoyment of the Owners. The Common Areas shall also include, but not be limited to, (a) all signage for the Development, street lights, sidewalks, paths, walls, fences, guardhouses, improvements, landscaping and landscaped or other areas adjacent to any public or private roadways, including all medians within any public or private roadways, which provide ingress to and egress from any portion of the Development (other than any such areas located solely within the boundary lines of any Lot or otherwise to be maintained by an, Owner pursuant to Article VII below), (b) all lakes, water features, storm drains and sewers, drainage and/or watershed

protection or retention ponds, lakes, basins (including the Common Area Detention Basin which is west of the northerly extension of Foothills Parkway and the Lake which is north of the Property) or other areas and facilities located within the Development (other than such areas located solely within the boundary lines of any Lot), (c) all maintenance areas and parking areas located on any portion of the Development (other than such areas located solely within the boundary lines of any Lot or Building), (d) all public and private utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and (e) all Natural Areas, as defined below, parks, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Development which are designated by Developer as Common Area from time to time. The designation of any land and/or Improvements as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

1.11 **Common Expenses.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.4(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.12 **Declaration.** The term "Declaration" shall mean and refer to this the Foothills of Chelsea Commercial Declaration of Covenants, Conditions and Restrictions and all amendments thereto.

1.13) **Developer.** The term "Developer" shall mean Foothills Partners, L.L.C., an Alabama limited liability company, its successors and assigns.

1.14 **Development.** The term "Development" shall mean and refer to the Property and all Improvements thereon.

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

1.16 **Improvement.** The term "Improvement" shall mean and refer to all Buildings and any other device or other improvement constructed, erected or placed upon any Lot which in any way affects the exterior appearance of any Lot, Building or any portion of the Property. Improvements shall include, by way of illustration and not limitation, buildings, foundations, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or manmade changes or alterations to the natural condition of any Lot. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

shrubbery, landscaping, fences, screening, walls, signs and any other artificial or manmade changes or alterations to the natural condition of any Lot. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.17 **Lake**. The term "Lake" means the Lake which is located north of Lots 5, 6 and 7 as shown on the record map of the Property.

1.18 **Lake Lot**. The term "Lake Lot" means any Lot within the Property or any Additional Property which abuts the Lake.

1.19 **Lot**. The term "Lot" shall mean and refer to any portion of the Property upon which it is intended that a Building be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. Until such time as the Property is further subdivided, to be evidenced by a subdivision plat approved by the ARC and all of the Governmental Authorities and recorded in the Probate Office of Shelby County, Alabama, the Property shall constitute and be deemed to be the Lots described in Exhibit A attached hereto.

1.20 **Mortgage**. The term "Mortgage" shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot, Building or any portion of the Property or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

1.21 **Mortgagee**. The term "Mortgagee" shall mean and refer to the holder of any Mortgage.

1.22 **Natural Area(s)**. The term "Natural Area(s)" shall mean and refer to those portions of the Property, including any Additional Property, designated as "Buffer Area" or "Natural Area" on the plats of the various subdivisions and other real property situated within the Property or Additional Property as recorded in the Office of the Judge of Probate of Shelby County, Alabama and made subject to the terms and provisions of this Declaration.

1.23 **Occupant**. The term "Occupant" shall mean and include any Owner and any guest, tenant, agent, employee, invitee or licensee thereof and any other person who occupies or uses any Lot or Building within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot or Building.

1.24 **Owner**. The term "Owner" shall mean and refer to the record owner, including Developer, of fee title to any Lot or Building, whether a corporation, partnership, proprietorship, association or other entity of any

1.25 **Property.** The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with any Additional Property which may, from time to time, be subjected in whole or in part to this Declaration.

ARTICLE II **PROPERTY SUBJECT TO THE DECLARATION**

2.1 **General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Building or Improvement thereon shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property, any Lot comprising part of the Property and any Building or Improvement thereon.

2.2 **Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, or any Additional Property, Developer may, by deed, contract or other instrument filed for record in the Probate Office of Shelby County, Alabama (which deed, contract or other instrument shall be deemed an amendment to this Declaration which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot), modify the provisions of this Declaration as the same apply to any such Lot.

2.3 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, to add and submit any real property owned by Developer situated adjacent to or in close proximity with the Property to the provisions of this Declaration and, to the extent any additional property is specifically submitted to the terms and provisions of this Declaration by Developer, then such additional property shall constitute part of the Property, but in doing so, may specifically amend or modify the provisions of this Declaration as the Declaration may apply to any such Additional Property. In order to submit any such additional property to the terms of this Declaration, Developer, without the need of obtaining the consent or approval of any Owner, Occupant or Mortgagee of any Lot, may modify this Declaration to add such additional property to the terms of this Declaration in the same manner as required for the execution of deeds and the recordation of the same in the Probate Office of Shelby County, Alabama. In no event shall Developer be obligated to submit any additional property owned by Developer situated adjacent to or in close proximity with the Property to the terms and

provisions of this Declaration.

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

2.5 **Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Building in the Development, to make improvements and changes to all Common Areas, whether owned by Developer or the Association, and to all Lots or Buildings owned by Developer, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Buildings owned by Developer or of the Common Areas whether owned by Developer or the Association, (iii) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas, (iv) installation of security and trash and refuse facilities and (v) the dedication any of the Common Areas to a Governmental Authority.

2.6 **Subdivision Plat.**

(a) Developer may record, modify, amend, revise and otherwise add to or delete from, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Buildings, Common Areas, Natural Areas, Additional Property, public or private roads, public or private utility systems, drainage systems, utility easements, drainage easements, access easements, setback line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and re-divide, combine and re-subdivide any Lots owned by Developer. Developer reserves the right, in its sole discretion and without the consent or approval of any Owner or Mortgagee, to amend this Declaration from time to time or at any time in order to reflect the subdivision of all or any portion of the Property by filing an amendment to this Declaration in the Probate Office of Shelby County, Alabama which adds to, modifies or amends Exhibit A hereto and the legal description of the Property set forth thereon.

(b) Subject to the prior written approval of the ARC in accordance with the terms and provisions of Article V below, an Owner may record, modify, amend, and revise, at any time and from time to time, a subdivision plat setting forth such information as Owner may deem necessary

with regard to the Lot(s) owned by the Owner, including, without limitation, the locations and dimensions of all Lots, Buildings, Common Areas, Natural Areas, public or private roads, public or private utility systems, drainage systems, utility easements, drainage easements, access easements, setback line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration.

ARTICLE III **EASEMENTS**

3.1 **Grant of Non-Exclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, all other Owners and Occupants and the rights of all other parties having any interest or rights therein. The easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot or Building.

3.2 **Grant of Easement to Governmental Authorities.** Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon the Property for the purposes of performing such duties and activities related to law enforcement, fire protection, trash, garbage and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.3 **Reservation of Easement.** Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, representatives, invitees, licensees, successors and assigns, a permanent and perpetual easement appurtenant, over, across, through and upon the Property for the purpose of (i) constructing roadways, medians, landscaped areas, guard houses, security gates, roadways, sidewalks, paths, curbing, gutters and other improvements thereon, (ii) constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, paths and lanes, informational and traffic directional signs and related improvements thereon and (iii) doing all things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer or the Association have any obligation to undertake any of the foregoing. The easements established and reserved pursuant to this Section 3.3 shall include the right to cut and remove trees, underbrush, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to install any of the improvements contemplated pursuant to this Section -3.3.

3.4 **Reservation of General Access Easement.** Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, representatives, invitees,

licensees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of any of the duties or rights of Developer hereunder, including, without limitation, taking any action required or permitted to be taken by Developer pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Building, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Building directly affected thereby.

3.5 Reservation of Easements With Respect to Common Areas.

(a) Easement Upon Common Areas. Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Buildings and other Improvements in and to any Lots and Buildings, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, utility lines, equipment and facilities, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Building within the Development, Developer hereby establishes and reserves for itself, its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) Changes in Common Areas and Natural Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas and Natural Areas, whether owned by Developer or the Association, and any Lots or Buildings owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey, and the Association shall accept such conveyance, by quitclaim or other deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas or Natural Areas, as

Developer, in its sole discretion, may determine. The Developer also reserves the right, in its sole discretion, to dedicate any portion(s) of the Common Area to a Governmental Authority.

3.6 **Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself, the Association, and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant, over, across, under, through and upon all portions of all Common Areas and Lots for the purpose of (i) installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development or to any other real property situated adjacent to or in close proximity with the Development and (ii) doing all things reasonably necessary in connection therewith. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same.

3.7 **Reservation of Easements for Signs, Walks, Trails, Walks and Fences.** Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant, over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot, Building, Common Area or Natural Area and any public or private roadway which is directly adjacent to and abuts such Lot, Building, Common Area or Natural Area for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, paths and lanes, traffic directional signs and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

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

3.9 **Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon those portions of any Lots for the purpose of (a) taking any action necessary to effect compliance with any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or otherwise set forth herein and (b) to effect the draining of storm water and water runoff into any water channels, retention ponds or lakes to be constructed thereon. The

easement and right established and reserved herein shall include, without limitation, the right (but not the obligation) to implement erosion control procedures and practices, the right to drain standing water, the right to take any other action which may be required in order to satisfy the requirements of any Governmental Authorities and the right to utilize any lakes or water, retention ponds to be constructed thereon for off-site drainage purposes for real property situated adjacent to or in close proximity with the Property. Except in the case of any perceived emergency situation, the exercise by Developer of the rights reserved in this Section 3.9 shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot. No Owner shall be allowed to divert or obstruct the flow of surface water from the drainage channels or otherwise divert or obstruct the flow of surface water so as to adversely impact adjoining or neighboring Lots or Buildings. The determination of whether any such diversion or obstruction of surface water exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

3.10 Reservation of Signage Easement. Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant, over, across, through, upon and under the Property and each Lot for the purpose of constructing, installing, maintaining and replacing from time to time signage for the Development and any future neighboring residential sectors of The Foothills, together with lighting, landscaping, irrigation and other improvements thereto. The size, materials, colors, lettering, lighting, landscaping and location of all signage shall be subject to ARC approval in accordance with Article V below.

3.11 Establishment of Natural Areas.

(a) Developer does hereby establish and declare, for the benefit of Developer and the Association and their respective successors and assigns, that the Natural Areas (i) shall be and remain a natural undisturbed buffer area, free from any Improvements of any nature except that Developer may landscape such area in a manner and to the extent determined by Developer in Developer's sole discretion, and (ii) shall not, without the prior written consent of Developer or the ARC, be used for any activities, whether as play areas for children, picnic areas, recreational areas or any other uses whatsoever.

(b) Developer does hereby grant to the ARC, the Association and each of their respective successors and assigns, a permanent, perpetual and nonexclusive easement appurtenant over, across, through and upon the Natural Areas for the purpose of maintaining the Natural Areas as provided in Section 7.2 below; provided, however, that nothing contained in this Section 3.11 shall obligate Developer to undertake any maintenance responsibilities with respect to the Natural Areas or preclude Developer's conveyance of a Natural Area to an entity chosen by Developer in Developer's sole discretion for the maintenance and protection of a Natural Area as a natural, undisturbed buffer area.

3.12 The Lake and Easement Reservations Pertaining Thereto.

a) Developer does hereby establish and declare, for the benefit of Developer and the Association and their respective successors and assigns, that the Lake (i) shall be for fishing for the Owners and the

Occupants, and (ii) shall not, without the prior written consent of Developer or the ARC, be used for any other activities, including, without limitation, boating or swimming.

(b) Developer does hereby grant to the ARC, the Association and each of their respective successors and assigns, a permanent, perpetual and nonexclusive easement appurtenant over, across, through and upon the Lake for the purpose of maintaining the Lake as provided in Section 7.2 below; provided, however, that nothing contained in this Section 3.12 shall obligate Developer to undertake any maintenance responsibilities with respect to the Lake or preclude Developer's conveyance of the Lake to an entity or Governmental Authority chosen by Developer in Developer's sole discretion for the maintenance and protection of the Lake.

3.13 Fire and Emergency Medical Rescue District.

(a) Payment of Fire District Charges. Developer desires to provide each Owner and Occupant of any Lot or Building within the Development with the highest available quality fire protection and emergency medical services. Each Owner, by acceptance of any deed to a Lot, and each Mortgagee, by the acceptance of any Mortgage on any Lot shall be deemed to, and each does hereby, irrevocably acknowledge and agree that each such Lot and Building shall be subject to the applicable fire and emergency district's (if any) promulgated rules and regulations, applicable statutes as amended, and all usual and customary service charges of such district. Furthermore, each Owner and Occupant of a Lot or Building shall be subject to and assume all duties and obligation of other property owners located within the boundary of such district as described in the rules and regulations promulgated by such district and the applicable statutes as amended. In consideration therefor, each such Owner and Occupant shall be entitled to all rights and privileges of other property owners located within the boundary of such district.

(b) Power of Attorney. Notwithstanding anything provided to the contrary in this Declaration, Developer (i) hereby establishes and reserves the right, in its sole and absolute discretion, at any time and from time to time, to petition the applicable fire and emergency medical district (if any) to expand its boundaries to include the Development, and all portions thereof, within such district's boundary without requirement that the approval or consent of any Owner, Occupant, or Mortgagee be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which the Development or any portion thereof is submitted to and included within such district's boundary. Each Owner and Occupant, by acceptance of any deed to a Lot, and each Mortgagee, by the acceptance of any Mortgage on any Lot, shall be deemed to, and each does hereby, irrevocably appoint the Developer as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the inclusion of the Development within such district's boundary for and in the name of any such Owner, Occupant and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner, Occupant or Mortgagee and to be binding on all Owners, Occupants and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and anyone having any interest in any Lot, Building, Common Area, Natural Area or in

any of the rights created or granted in this Declaration. The rights reserved by Developer pursuant to this Section 3.13(b) may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein to Developer.

ARTICLE IV **ASSOCIATION**

4.1 Membership. The Owner of each Lot shall be a member of the Association.

Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have the voting rights set forth in Sections 4.2 and 4.3 below, (b) in the event any Lot is owned by more than one (1) person, then the Owners of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot owned by such Owners and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to its transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred.. assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the By-Laws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.2 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the By-Laws. Developer hereby retains and shall have the sole right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until the latter to occur of the following: (a) the expiration of fifteen (15) years from the date of this Declaration or (b) at such time as Developer no longer is the Owner of any Lot within the Development; provided, however, that Developer may, in its sole discretion, elect to transfer all such rights to the members of the Association prior to the occurrence of either of the foregoing events in the manner provided in the By-Laws. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

4.3 Voting Rights. Subject to the rights reserved to Developer herein and in the Articles of Incorporation and By-Laws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Article XI below, the Owner of each Lot shall be entitled to that number of votes equal to the percentage obtained wherein the number of Lots within the Property is the denominator and the numerator is one. Each Owner, by acceptance of a deed or other conveyance to a Lot, consents and agrees to the dilution of his voting interest in the

Association by virtue of the submission of any Additional Property to the terms of this Declaration. Fractional voting shall not be permitted. For purposes of this Section 4.3, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots owned by Developer.

4.4 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the By-Laws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the By-Laws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the By-Laws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase or lease one or more Lots and/or Buildings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (ii) subject to the provisions of this Section 4.4, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.4, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the ARC, the Association and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer from the Association fee simple title to all or any portion of the Common Areas or Natural Areas to any Governmental Authority or other entity for the maintenance and protection of a Natural Area as a natural, undisturbed buffer area, and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, including but not limited to utilities or other entities affiliated with Developer, for the furnishing of trash collection, water, sewer and/or security services for the Common Areas and/or the Lots and Buildings. For so long as Developer shall own any Lot, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas or Natural Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the By-Laws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.5 **Agreements.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be affiliates of Developer, such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the* Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation or the By-Laws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the By-Laws or any rules and regulations of the Association.

4.6 **Management by Developer or its Affiliates.** Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Building within the Development, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Building, shall be deemed to ratify the provisions of this Section 4.6 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof

4.7 **Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Buildings, or Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas and Natural Areas, the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Development. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled

or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled or modified unless such action is also approved by Developer so long as Developer owns Lots or Buildings in the Development.

4.8 Indemnification. The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the ARC and the Board harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the ARC or the Board. The officers, agents, representatives and members of the ARC or the Board shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the ARC or the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC or the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the ARC or the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the ARC or the Board may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the By-Laws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers and directors liability insurance in order to fulfill its obligations under this Section 4.8 and the costs of such insurance shall constitute a Common Expense.

ARTICLE V ARCHITECTURAL REVIEW COMMITTEE AND ARCHITECTURAL STANDARDS

5.1 Committee Composition. The ARC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.2 below. The members of the ARC may, but shall not be required to be, members of the Association or Owners of any Lot or Building. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.2 below may be removed with or without cause in the manner provided in Section 5.2 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Building, shall be deemed to ratify the provisions of Section 5-2 below-

5.2 Appointment and Removal of ARC Members.

(a) For so long as Developer is the Owner of any Lot or Building within the Development or any portion of the Development, Developer shall have the sole and exclusive right to

the Property or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 5.2(a) above, then the members of the ARC shall be appointed by the Board.

(c) Any member of the ARC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 5.2(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.2(b) above are in effect. In the event of death or resignation of a member of the ARC, then Developer, in the event of the provisions of Section 5.2(a) above are applicable, or the Board, in the event the provisions of Section 5.2(b) above are applicable, as the case may be, shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.3 Procedure and Meetings. The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall 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. A majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC 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 ARC.

5.4 Architectural Standards. The ARC is hereby authorized but not required 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 Buildings 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 Building or other Improvement on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Building or other Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

5.5 Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE THE DEVELOPMENT AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS AND ALL BUILDINGS AND IMPROVEMENTS THEREON, NO

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE THE DEVELOPMENT AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS AND ALL BUILDINGS AND 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 BY ANY OWNER, OTHER THAN DEVELOPER, UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.5(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY BUILDINGS, SIDEWALKS, PARKING AREAS AND ANY OTHER STRUCTURES OR IMPROVEMENTS ON ANY LOT 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 BUILDING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED IN WRITING BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.5(b) BELOW.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Buildings and other Improvements on any part of the Property. Prior to the commencement of any Building or other Improvements on any Lot, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which shall include the following:

(i) Two (2) copies of an accurately drawn and dimensioned site development plan and grading plan indicating the nature and extent of all grading and excavation for such Lot, the location of any and all Improvements, including, specifically, the Building 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 setback requirements applicable to the Lot and the number and location of all parking areas, parking spaces and curb cuts onto adjoining public or private roadways.

(ii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Building to be constructed on the Lot, which plans shall also indicate the total gross square footage of space, the number of stories and height of the Building to be built on such Lot.

(iii) Two (2) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Building on such Lot or any other Improvements thereto, including, without limitation, the type and color of all materials (including roofing materials) to be utilized on the exterior of any Building.

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

(v) Two (2) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.6 below, including screening for trash receptacles and service areas.

(vi) Two (2) copies of a signage plan for such Lot and the Building to be built thereon.

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

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable.

(d) The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration and the Development, including purely aesthetic considerations or any failure to comply with any of the provisions of this Declaration. The ARC shall have the right to approve plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and which must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for a Building to be constructed on one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Building to be constructed on any other Lot within the Development. The ARC may establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking the ARC's approval of plans and specifications.

(e) In the event the ARC fails to approve in writing any such proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

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

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

5.6 **Landscaping Approval.** 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 or Occupant, other than Developer, on any Lot unless and until landscaping plans therefor have been submitted to and approved by the ARC. The provisions of Section 5.5 above regarding the method that such plans are to be submitted to the ARC, 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.

5.7 **Construction Without Approval.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without the ARC's prior written approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.13 and Article XI below.

5.8 **Inspection.** The ARC and its agents, employees and representatives may at any reasonable time and from time to time enter upon and inspect any Lot, Building or any other 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 ARC -

5.9 **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 ARC for any Building or other Improvements on a Lot shall not be construed in any respect as a representation or warranty by the ARC 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 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 for the construction of any contemplated Improvements thereon.

5.10 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the Association, the ARC, the Board, nor any agent, employee, representative, contractor, consultant, member, shareholder, partner, officer or director of Developer, the Association, the Board or the ARC shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner or Occupant on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Buildings, Improvements or the personal property of any Owner, Occupant or

the respective tenants, employees, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Lot, Buildings or Improvements or the plans and specifications therefor, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, radon gas, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or any Improvements situated thereon.

5.11 Commencement and Completion of Construction. Upon commencement of construction of any Building, construction work thereon shall be prosecuted diligently and continuously and shall be completed within two (2) years of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy or similar document issued by the appropriate Governmental Authorities.

5.12 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Buildings or the development of Lots, Buildings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, and signs, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 5.12 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Buildings as offices for the sale of Lots and/or Buildings and for any related activities.

5.13 Enforcement and Remedies. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant on the respective tenants, employees, agents and invitees of any Owner or Occupant, then the Developer, and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, directors, officers, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Developer or the Association in enforcing any of the provisions of this Article V, 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 Developer or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.6 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.1

below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Developer and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Developer or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration.

5.14 **Compliance Certificates.** The ARC or any authorized representative thereof shall, upon request, furnish to an Owner a certificate in writing setting forth whether all necessary approvals have been obtained and whether any Building or Improvement has been constructed in accordance with the provisions of this Declaration.

ARTICLE VI **USE AND DEVELOPMENT RESTRICTIONS**

6.1 **Use Restrictions.** Except as otherwise provided to the contrary in this Section 6.1, each Lot and Building shall be used for only office, retail, institutional, governmental, public or commercial purposes and then only to the extent such use is approved in writing by the Board. The Property may be used and developed for (a) any of the uses included in the definition of Common Areas and (b) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in each case, such uses must be approved in writing by the Board. No Building or other Improvements of any nature whatsoever shall be constructed on any Lot unless such Building and/or Improvements have been approved by the ARC in the manner set forth in Article V above.

6.2 **Under Ground Utilities.** An utility lines, pipes, conduit and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.3 Building Setbacks.

(a) Subject to the provisions of Section 6.4 below, minimum building setback lines for all Buildings may be established either (i) on the recorded subdivision plat for the subdivision within which such Lot is included (which may vary for each phase of development), or (ii) in the deed from Developer to the Owner of such Lot, or (iii) as prescribed by the ARC.

(b) No Building shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.3 (a) above and shall specifically not violate any setback requirements of the appropriate Governmental Authority.

6.4 **Siting of Buildings.** Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Building to be constructed thereon shall be set forth on the site development plan for such Lot (which must be approved by the ARC pursuant to the provisions of Section 5.5 above) and shall be staked for approval by the ARC. Notwithstanding anything provided in Section 6.3 above to the contrary, the ARC may require building setback requirements different from those described in Section 6.3, including building setbacks which are greater than those specified in Section 6.3 above.

6.5 Landscaping.

(a) The landscaping plan for each Lot or Building in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 5.6 above. No Owner shall be allowed to divert or obstruct surface water from its drainage channels or otherwise divert or obstruct surface water so as to adversely impact adjoining or neighboring Lots or Buildings. The determination of whether any such diversion or obstruction of surface water exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

(b) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC no later than thirty (30) days following the issuance of a certificate of occupancy for the Building situated thereon.

(c) 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 providing ingress to or egress from the Development or any portion thereof. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

(d) All Owners shall maintain their landscaping in a neat and attractive manner as determined by the ARC, which determination shall be final, conclusive and binding on all Owners and Occupants. The ARC may from time to time promulgate rules and regulations with regard to the maintenance and appearance of yards including, but not limited to, rules and regulations as to acceptable and unacceptable lawn fixtures, decorations, accessories, and plant life.

6.6 Exterior Lighting. All exterior lighting for any Lot or Building, including, without limitation, free standing Lighting and accent lighting, must be approved by the ARC.

6.7 Fences. Unless approved by the ARC, no fence, whether of chain link, vinyl coating, wood, metal, brick, wire or other material, shall be permitted within the Development except for maintenance areas (and then, only as approved by the ARC). The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC.

6.8 Parking and Roadways.

(a) Each Lot shall provide off-street parking which meets the then applicable minimum requirements of the appropriate Governmental Authorities. All parking areas on each Lot shall (i) be paved to provide dust-free, all weather surfaces, (ii) be adequate in the area and number of parking spaces provided, (iii) contain adequate driveways and space for the movement of vehicles, (iv) meet at grade with connecting public or private streets, (v) be striped to designate parking spaces, (vi) contain curbing, sidewalks and walkways and proper drainage as approved by the ARC, and (vii) be landscaped in accordance with the landscaping plan for such Lot as submitted to and approved by the ARC. Each Owner and Occupant shall maintain all parking areas and driveways on its Lot clean and clear of all refuse, rubbish, trash or debris of any nature. No parking spaces shall be located on and no

parking shall be allowed or permitted within driveway areas, roadway areas, walkways, paths, unpaved areas, landscaped areas or service areas for any Lot.

(b) All roadways located solely within the boundaries of any Lot must (i) be approved by the ARC prior to commencement of construction of the same, (ii) be adequate in size to provide sufficient means of ingress and egress to and from the Lot, (iii) be paved to provide dust-free, all weather surfaces, (iv) meet at grade with existing public or private roads, (v) contain curbing, sidewalks, walkways and proper drainage as approved by the ARC, (vi) be subject to such additional specifications or requirements as may from time to time be required by the ARC and (vii) satisfy and comply with the rules and regulations of all Governmental Authorities. All curb cuts to any public or private roads within the Development shall be subject to the prior written approval of the ARC.

(c) No Lot may be utilized to provide access, ingress to or egress from any property which is not within the Development without the ARC's prior written approval.

6.9 **Loading and Storage.** Each Lot shall include a service yard or service area of adequate size and location to facilitate trash removal and for the loading and unloading of merchandise, materials, and otherwise handling deliveries. Such service yard or service area shall be paved, be accessible to a public or private street within the Development, be located (to the extent practicable) at the rear or the side of the Building on such Lot, and be screened (to the extent practicable) from view from any public or private streets by walls, fencing and/or landscaping as may be approved by the ARC. No materials, supplies, equipment or machinery shall be stored outside of a Building nor shall any outside operations be conducted on any Lot without the prior approval of the ARC.

6.10 **Emissions.** Except as may be otherwise approved in writing by the ARC, no use shall be permitted to exist or operate upon any Lot or from any Improvements thereon which:

(a) Emits dust, sweepings, dirt, cinders, fumes, odors, radiation, gases or vapors or which discharges liquid or solid wastes or any other harmful matter into the atmosphere or into any stream, river or other body of water. No water or any substance or materials of any kind shall be discharged in violation of any regulations of any of the Governmental Authorities;

(b) Produces intense glare or heat unless such use is performed only within an enclosed or screened area and then only in such manner that the glare or heat emitted will not be discernible from the boundary lines of any Lot;

(c) Creates a sound pressure level in violation of any regulation of any of the Governmental Authorities or which is offensive and creates a nuisance to any other Owner or Occupant;

(d) Allows emissions which would violate any regulation of any of the Governmental Authorities;

(e) Creates a ground vibration that is perceptible, without instruments, at any point beyond the boundary lines of any Lot; or

(f) Results in the production, generation, transportation, treatment, storage, discharge, disposal or use of any petroleum products or any toxic or hazardous chemical, material, substance, pollutants or waste in such quantities or concentrations which would violate the environmental or other rules, regulations, statutes, laws, ordinances or decrees of any of the Governmental Authorities.

6.11 **Utility Meters and HVAC Equipment.** Except as otherwise approved by the ARC, all electrical, gas, telephone and cable television meters and junction boxes, if any, shall to the greatest extent possible be located at the rear of all Buildings and shall otherwise be screened so as not to be visible from any public or private street. Except as otherwise approved by the ARC, all exterior heating, ventilating and air conditioning compressor units and equipment shall be located either within a wholly enclosed penthouse (equipment room) on top of the Building or on the ground level of such Building in such a location and with appropriate screening of either walls or landscaping so that, to the greatest extent possible, the same is not visible from any street.

6.12 **Satellite Dishes and Antennae.** No satellite dishes, no radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Building or any other portion of the Development unless the location and appearance of same is approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Building which may interfere with the reception of radio or television signals within the Development.

6. 13 **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 Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Building which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Buildings within the Development. Noxious or offensive activities shall not be carried on in or from any Lot or Building and each Owner and Occupant shall refrain from any act or use of a Lot or Building 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 Development or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Building or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) All outdoor refuse collection areas for each Lot shall be located, to the greatest extent practicable, at the rear of the Building on such Lot, shall be visually screened, to the greatest

extent practicable, so as not to be visible from or any other street or roadway or any adjacent Lot or Building and shall be maintained in such a manner as to prevent unsightly, unsanitary or offensive odors or accumulations of trash, garbage, debris, rubbish or refuse.

6.14 **Recreational Vehicles and Machinery and Equipment.** No mobile homes, motor homes, trailers, trucks (except as provided below), tractors, tools, construction machinery and equipment of any nature, boats and any other type of water craft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall be permitted, stored or allowed to remain on any Lot, unless the same is placed, stored and maintained either within an enclosed structure or within a loading dock area. Any such enclosed structure must be approved by the ARC. Notwithstanding the foregoing, the temporary parking of (i) automobiles, pick-up trucks and motorcycles by employees, tenants, licensees or invitees of any Owner on any Lot during business hours or while working in any Building and (h) delivery trucks, vans or other vehicles which are making deliveries to any Building shall be permitted so long as such vehicles park in designated parking spaces approved by the ARC and otherwise comply with the terms of the Declaration.

6.15 **Signage and Window Treatments.** All signage (whether attached to a Building or constructed as a freestanding sign) must be approved by the ARC. The approval of any signs and posters, including, without limitation, "for sale", "for lease or rent" signs, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC. All window treatments (i.e., blinds, shades, draperies, etc..) shall be approved by the ARC.

6.16 **Above or Below Ground Tanks and Wells.** No above-ground or below ground tank for the storage of fuel, water or any other substances shall be located on any Lot. No private water wells may be drilled or maintained and no septic tanks or similar on-site sewage facilities may be installed or maintained on any Lot.

6.17 **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 Building; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions or (b) construction trailers utilized during the construction of any Buildings.

6.18 **Construction of Improvements.**

(a) During the construction of any Improvements on any Lot, all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Development on a regular basis. Used construction materials may be burned on-site so long as such burning does not create a nuisance to other Owners or Occupants, the owners of adjacent properties or violate the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials or any materials classified by any Governmental Authority as toxic, hazardous or harmful to the health or safety of any person, whether new or used, be buried on or beneath any Lot, Building, Common Area or any other portion of the Development.

(b) During construction, signage, in size and color to be approved by the ARC may be posted advertising a Building for sale or lease or containing information identifying the contractor or lender providing financing for the construction of such Building or otherwise identifying what will be constructed on the Lot. All such signs shall be properly removed upon issuance of a certificate of occupancy for such Building.

(c) Upon completion of construction of any Improvements or any Building, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be removed from the Lot and such Lot and all Improvements thereto shall be kept and maintained in a clean and uncluttered condition.

(d) All Buildings and any other Improvements shall be constructed in compliance with all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

6.19 **Subdivision.** No Lot may be subdivided or re-subdivided without the prior written approval of the ARC. Notwithstanding this section 6.19, subject to the approval of the appropriate Governmental Authority, Lots 5 may be further subdivided.

6.20 **Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

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

6.22 **Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective tenants, guests, agents, employees or invitees of any Owner or Occupant, then the Developer or the Association shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated directors, officers, agents, employees, representatives and independent contractors, enter upon such Lot or Building and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Developer or 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 any noncompliance or the

removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Developer or the Association in connection therewith, shall be paid by such Owner or Occupant who has violated or breached any of the provisions of this Article VI, shall constitute an individual Assessment to such Owner pursuant to Section 8.6 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.1 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Developer or the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Developer or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration.

ARTICLE VII **MAINTENANCE RESPONSIBILITIES**

7.1 Responsibilities of Owners.

(a) The maintenance and repair of all Lots, Buildings, all other Improvements and all landscaping and grounds on or within a Lot shall be the responsibility of the Owner of such Lot. An Owner's maintenance obligations hereunder shall also include the landscaping and grounds, if any, between the exterior boundary of the Owner's Lot and the paved surface of the adjacent right-of-way (the "Perimeter Grounds"). Each Owner shall be responsible for maintaining his or its Lot, Building and all Improvements thereto in a neat, clean and sanitary condition, both inside and outside of any Buildings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all painted or stained surfaces of any Improvements, repaving all drives and parking areas as needed, replacing light fixtures when necessary and maintaining all areas of the Lot in a clean, uncluttered, trash-free condition. No exterior changes, alterations or Improvements shall be made to any Lot or Building without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot and its Perimeter Grounds shall be landscaped by the Owner in accordance with plans and specifications submitted to and approved by the ARC pursuant to Section 5.6 above. All areas of any Lot and its Perimeter Grounds which are not improved by the construction of a Building or other Improvements thereon shall at all times be maintained by the Owner in a landscaped condition utilizing ground cover and/or shrubbery and trees. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be removed from any Lot and properly disposed of outside of the Development.

(c) No Owner shall (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Building or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC as provided in Sections 5.5 and 5.6 above or (ii) do any work which, in the opinion of the ARC, would jeopardize the soundness and safety of the Development, reduce the value thereof or impair any easement or

hereditament thereto, without in every such case obtaining the prior written approval of the ARC.

7.2 Responsibilities of Association.

(a) The Association henceforth shall, to the extent it has received sufficient funds from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas including, but not limited to, the Natural Areas, the Lake and the Common Area Detention Basin. Neither the Association nor the Developer shall 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 or caused by rain or other surface water which may leak or flow from any portion of the Common Areas onto a Lot (3) resulting from theft, burglary or other illegal entry into the Development, any Lot or Building thereof or resulting from the use of the Lake. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly its obligations with regard to the maintenance, cleaning, repair or replacement of items for which it is responsible hereunder, or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective tenants, employees, guests, servants, agents, invitees, licensees or contractors and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.1 below.

ARTICLE VIII **ASSESSMENTS**

8.1 Assessments and Creation of Lien. Each Owner of a Lot, 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 Assessments, as established and to be collected as provided in Section 8.4 below, (b) special Assessments, to be established and collected as provided in Section 8.5 below, and (c) individual Assessments against any particular Lot or Building which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Building in accordance with the provisions of this Declaration.

All Assessments, together with interest as provided in Section 8.9(a) below, 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 for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.9(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with interest at the Applicable Rate, as specified in Section 8.9(a) below, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person or entity who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid within thirty (30) days of billing of the same. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire, or other casualty, any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot or Building or any other portion of the Development or any other cause or reason of any nature.

8.2 Purpose of Assessments. The annual and special Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Lake, the Common Areas and any improvements thereto, all as may be more specifically authorized from time to time by the Board.

8.3 Uniform Rate of Assessments.

(a) Both annual and special Assessments, as described in Sections 8.4 and 8.5 below, shall be assessed against each Lot or Building in the Property at a uniform rate, with the Owner of each Lot or Building being required to pay his prorate portion of the total aggregate amount of such annual and/or special Assessments. The prorate share of annual and special Assessments payable by each Owner shall be determined as follows: All expenses associated with the Lake and the operation thereof shall be determined (the Lake Expenses). The Lake Expenses shall be deducted from all other expenses, the remainder being referred to herein as the Other Expenses. Lake Expenses shall be paid in percentages wherein the number of Lots within the Property from time to time (including any Additional Property) are added to the number of Lake Lots. This will determine the denominator for

Lake Expenses. The numerator for the purpose of Lake Expenses shall be 2 for each Lake Lot and 1 or each Lot that is not a Lake Lot. The Other Expenses shall be allocated among the Owners at the same percentage as Voting Rights as set out and established in Section 4.3. Such expenses and the obligation for the payment thereof shall be determined at the time any such annual or special Assessment is levied.

(b) Notwithstanding anything provided in Section 8.3(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots and/or Buildings within the Additional Property shall be subject to the same annual or special Assessments (as determined in accordance with Section 8.3 (a) above) then being paid by the Owners of all other Lots and Buildings in the Development, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Development.

8.4 Computation of Annual Assessments.

(a) The Board and Developer, so long as Developer owns any Lot or Building within the Development, shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if determined necessary by the Board for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorata share of the same as provided in Section 8.3) above. A copy of the budget approved by the Board and Developer, so long as Developer owns any Lot or Building within the Development, setting forth the amount of annual Assessments to be levied against the Lots and Buildings for the following year shall be delivered to each Owner.

(b) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may modify the budget for the then applicable year and increase the amount of annual Assessments payable by each Owner upon written notice to all Owners. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, including but not limited to full time and part time employees, agents, officers, members of the Board and any third party contractors;

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

(iii) Utility charges for street lights and any utilities serving any of the Common

Areas and Natural Areas and charges for other common services for the Property, including, without limitation, trash collection and security services, if any;

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

(v) Expenses of maintaining, operating and repairing the Common Areas, amenities and facilities serving the Development, whether located within or without the Development, which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair;

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas as of the date hereof and for all subsequent tax years;

(vii) The expenses of the ARC which are not defrayed by plan review;

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

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

8.5 Special Assessments. In addition to the annual Assessments authorized in Section 8.4 above, the Board may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 9.1 (b) and 9.3 (a)(i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 8.7 below and (ii) Developer, for so long as Developer owns any Lot within the Development. The Board may make such special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.3 above.

8.6 **Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective tenants, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Buildings. The individual Assessments provided for in this Section 8.6 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.6 shall apply, without limitation, to any individual Assessments levied pursuant to Article V, Article VI and Section 7.2(b) above and Article XI below.

8.7 **Notice of Meetings and Quorum.** Written notice of any meeting of the Association, including, without limitation, any meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all Owners in accordance with the By-Laws. With respect to such meetings, the presence in person or by proxy of Owners entitled to cast over fifty percent (50%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitle to cast at least one-third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of (i) a majority in interest of the Owners who are voting in person or by proxy at such meeting and (ii) Developer, so long as Developer owns any Lot or Building within the Development, shall be required to approve any matter in which all of the members of the Association are entitled to vote.

8.8 **Date of Commencement of Assessments.** The annual Assessment for Developer for the year 2001 shall be in the amount of the Common Expenses incurred during the year 2001 and shall be due and payable upon the Association's receipt of the invoices for such Common Expenses; provided, however, that Developer shall receive a credit toward Developer's year 2001, annual Assessment for annual Assessments prorated pursuant to Section 8.3) above and this Section 8.8 and collected from the purchaser of each Lot sold by Developer during the year 2001. The annual Assessments provided for herein shall commence as to each Lot or Building on the day on which such Lot or Building is conveyed to a person other than Developer and shall be due and payable at the closing of such conveyance and thereafter in such manner and on such schedule as may be established from time to time by the Board. Annual Assessments and any outstanding special Assessments shall be adjusted for each Lot or Building according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Building is conveyed. Annual and special Assessments for Lots and Buildings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Building on the date on which such Lot or Building is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence.

8.9 **Effect of Non-payment.**

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the

Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid within thirty (30) days of the billing date for the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day following the billing date until the same is paid in full. In the event the Association employs an, attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot for Assessments as provided above shall also include interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within thirty (30) days after the billing date of the same, then, in addition to all other rights and remedies provided at law or in equity, the Association may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include interest at the Applicable Rate, as specified in Section 8.9(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot and interest at the Applicable Rate assessed pursuant to Section 8.9(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days after the billing date of the same, then the Association may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by the Board, contain the following information and be recorded in the Probate Office of Shelby County, Alabama:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot upon which the lien claim is made;
- (iii) The total amount claimed to be due including interest at the Applicable

Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(iv) A statement that the claim of lien is made pursuant to this Declaration and is claimed against such Lot in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default) and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.10 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot in the Development is and shall be subordinate to the lien of any Mortgage held by a Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Shelby County, Alabama Power to the filing of a claim of lien by Developer pursuant to Section 8.9(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.9(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by a Mortgagee on such Owner's Lot.

8.11 Certificates. The Association or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be established by the Association, furnish to any Owner a certificate in writing setting forth whether any unpaid Assessments are due from such Owner and, if applicable, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE IX **CASUALTY, CONDEMNATION AND INSURANCE**

9.1 Damage or Destruction to Common Areas.

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

(b) Notwithstanding anything provided in Section 9.1 (a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a special Assessment against all Owners pursuant to Section 8.5, in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Building be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.2 **Damage or Destruction to Lots and Buildings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot, Building or any other Improvements thereto, then the Owner of such damaged Lot or Building shall either (i) promptly repair and otherwise restore such Lot, Building or other Improvements to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities or (ii) if such restoration is impractical or economically infeasible, then such Owner shall promptly clear away the Improvements damaged or destroyed by such fire or casualty and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition (including installing appropriate landscaping as approved by the ARC pursuant to Section 5.6 above). Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

9.3 Condemnation of Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or

by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.5, in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Further special Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner.

9.4 Condemnation of Lots and Buildings. In the event that all or any portion of a Lot, Building or any other Improvements thereto is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Building shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot, Building or any Improvements thereto, as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot, Building or other Improvements is impracticable, is economically infeasible or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition (including installing appropriate landscaping as approved by the ARC pursuant to Section 5.6 above).

9.5 Insurance.

(a) The Board shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate for the benefit of the Association insuring all insurable Improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association, its Board and all members, officers, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the Association, the members of the Board and all officers, agents and employees of the Association, including the manager for the Development and the Association, the Owners and the family members, servants, agents, tenants and guests of the Owners and shall also name Developer as an additional insured.

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

ARTICLE X **TERM AND AMENDMENTS**

10.1 **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration

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

10.2 Amendment by Developer. Until the latter to occur of the following: (a) the expiration of fifteen (15) years from the date of this Declaration or (b) at such time as Developer no longer is the Owner of any Lot within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Shelby County, Alabama, without obtaining the approval of any Owner or Mortgagee. Any amendment made pursuant to this Section 10.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of any Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state of federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot, Buildings or other Improvements or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots within the Development.

10.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.2 above, shall be proposed and adopted by the Association in the following manner:

(a) An amendment to this Declaration may be proposed by either the Board or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially, substantially and adversely affects the security, title or interest of any Mortgagee must be approved by such Mortgagee and (ii) during any period in which Developer owns any Lot or Building within the Development, then Developer must approve such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.3(a) above shall be executed by all parties whose consent to the same is

required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Notwithstanding anything provided in this Section 10.3(b) to the contrary, Developer shall have the right, at its option, to add Additional Property to the Declaration as provided in Section 2.3 above.

ARTICLE XI **ENFORCEMENT**

11.1 Authority and Enforcement. In addition to the rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, guests, contractors, employees, licensees or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the By-Laws or any other rules and regulations adopted by the Board from time to time, then the Developer, the Association, the Board and the ARC shall each, jointly and severally, having the power and right, at their option, to (a) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and shall be a personal obligation of such Owner which is guilty of such violation, (b) suspend an Owner's right to vote in the Association, (c) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's agents, employees, guests and tenants) to use any of the facilities located in or upon the Common Areas, (d) enjoin such violation or noncompliance and/or (e) through their respective designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. The Board shall have the power to impose all or any combination of any of the foregoing sanctions and any suspension of rights may be for the duration of the infraction. All costs and expenses incurred by the Association, the Board, the ARC, or Developer in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of this Declaration and all such costs shall be deemed individual Assessments pursuant to Section 8.6 above. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association, the Board, the ARC and Developer set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by any of them either at law or in equity in the event of any violation or breach by any Owner or Occupant of any of the terms and provisions of this Declaration.

ARTICLE XII **MISCELLANEOUS PROVISIONS**

12.1 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION,

THE BY-LAWS, OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Section 4.2 above.

12.2 Legal Expenses. In addition to the rights and remedies set forth in this Declaration, in the event either the Developer, the Association, the Board or the ARC, or through their agents or representatives, undertakes any legal or equitable action which it deems necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The Developer, the Association, the Board and the ARC, or their agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by the Developer, the Association, the Board or the ARC to cure such violation or breach.

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

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

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

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

12.7 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and

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

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

12.9 **Interpretation.** The provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of the development for the Property. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

12.10 **No Trespass.** Whenever Developer, the Association, the Board, the ARC, and their agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Building, the entering thereon and the taking of such action shall not be deemed a trespass.

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

12.12 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Building by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the rights created in this Declaration which Developer is transferring to any such third party. .

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

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

12.15 **Assignment.** Subject to the provisions of Section 12.12 above, Developer, the Association, and the ARC shall have the right to assign any and all of the rights, powers, reservations

and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer, the Association and the ARC, respectively.

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

12.17 **No Waiver.** All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.18 **Rights of Third Parties.** This Declaration shall be recorded for the benefit of the

Developer, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Development or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

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

FOOTHILLS PARTNERS, LLC

By: William D. Acton
It's Member PARTNER

STATE OF ALABAMA)

SHAY BY COUNTY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that WILLIAM D. ACTON as managing PARTNER of FOOTHILLS PARTNERS, LLC, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, in their capacity as such member, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 30 th day of OCT, 2001.

Jackie A. Davis

Notary Public

My Commission Expires: *4-4-01*

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 5, 6 and 7 according to the survey of Foothills of Chelsea, 1st Sector, as recorded in Map Book 29, page 31 in the Probate Office of Shelby County, Alabama.

CONSENT OF MORTGAGEE

PLW
Frontier National Bank (Mortgagee) as the holder of that certain mortgage
dated JULY 18 2000, given by Foothills Partners, LLC and recorded in Instrument
No. 2000-25056 in the Probate Office of Shelby County, Alabama, as such mortgage
is amended or modified from time to time, has joined in the execution of this The Foothills
Commercial Declaration of Covenants, Conditions and Restrictions (the Declaration) for the
purpose of consenting to the execution of the Declaration and all of the terms and provisions set
forth therein.

Done this 30 day of OCTOBER, 2001.

FRONTIER NATIONAL BANK

By: Russell Scrugg
Its: Assistant Vice President

STATE OF ALABAMA)

SHELBY COUNTY)

CORPORATION ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that
Russell Scrugg, whose name as ASSIST VICE PRESIDENT of
FRONTIER NATIONAL BANK, a corporation is signed to the foregoing instrument, and who is
known to me, acknowledged before me this day that, being informed of the contents of the
instrument, he, as such officer and with full authority, executed the same voluntarily for and as the
act of the corporation.

Given under my hand and official seal this 30 day of OCTOBER, 2001.

Linda K. Palmer
Notary Public
My Commission Exp. 12-28-02

Inst. # 2001-52423

12/04/2001-52423
08:15 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
045 CH 143.00