

STATE OF ALABAMA)
SHELBY COUNTY)

**DECLARATION
OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, RIGHTS AND LIENS
OF WILD TIMBER**

KNOW ALL MEN BY THESES PRESENTS, That

WHEREAS, Wild Timber Development, L.L.C. ("Developer") owns certain land in Shelby County, Alabama (hereinafter sometimes referred to as the "Property"), more particularly described as Wild Timber, as recorded in Map Book 31, at Page 59, in the Probate Office of Shelby County, Alabama; and

WHEREAS, Developer desires to establish certain protective covenants with respect to the Property as set forth herein, which protective covenants will run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall insure to the benefit of each owner thereof.

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

**ARTICLE I
DEFINITIONS**

- 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 Article V below. The Additional Property may also include additional Common Areas.
- 1.2 **Architectural Review Committee.** The term or letters "ARC" shall mean the architectural review committee appointed pursuant to 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 prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of reviewing and approving all exterior Improvements, landscaping and any other Improvements which may be made to any Lot, Dwelling, 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, collectively, the annual and special assessments and individual assessments and/or any other charges assessed against an Owner by the Association pursuant to the terms of this Declaration.
- 1.6 **Association.** Wild Timber Homeowners’ Association, Inc., its successors and assigns (the Articles of Incorporation and Bylaws for which are recorded in the Office of the Judge of Probate of Shelby County, Alabama, concurrently herewith).
- 1.7 **Association Land.** That part of the Property, which may at any time hereafter, be owned by the Association for so long as the Association or successor thereof may be the owner thereof.
- 1.8 **Board.** The Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.
- 1.9 **Bylaws.** The Bylaws of the Association, as the same may be amended from time to time.
- 1.10 **Builder.** A builder licensed under the laws of the State of Alabama to construct residential dwellings.
- 1.11 **Common Areas.** 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.
- 1.12 **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.
- 1.13 **Declaration.** This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens for Wild Timber which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described herein.
- 1.14 **Developer.** The term “Developer” shall mean Wild Timber Development, L.L.C., an Alabama limited liability company, and any successor thereof and any purchaser from Wild Timber Development, L.L.C. of any portion of the Property to whom Wild Timber Development, L.L.C. also conveys and assigns its rights hereunder as Developer.
- 1.15 **Development.** The term “Development” shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.2 hereof.
- 1.16 **Development Plan.** The development plan for a Lot (including any future modification thereto), includes plat plans, grading plans, building plans, and specifications showing site and plot layout and all exterior elevations, exterior materials and colors thereof,

foundation plans, schedule of proposed materials, landscaping, irrigation and drainage plans, design and location of all Improvements including, without limitation, the Dwelling, mailboxes, and entrance columns and other construction related plans by the Architectural Review Committee.

- 1.17 **Dwelling.** The term “Dwelling” shall mean and refer to any improved Lot intended for use as single-family detached residential housing units or attached or detached single-family residential Dwellings, which may be constructed or situated upon any portion of any Lot.
- 1.18 **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 or over any Owner or Occupant.
- 1.19 **Improvement.** The term “Improvement” with an initial capital letter, shall mean and refer to all Dwellings, any Dwelling, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, wall enclosure, fence, mailbox, parking facility, storage facility, utility facility, or any other structure of any type, road, curb cut, landscaping (including removal of vegetation), excavation (including removal of trees), signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot, Dwelling, or Common Area, irrespective of whether the Improvement is temporary or permanent.
- 1.20 **Living Space.** The term “Living Space” shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.
- 1.21 **Lot.** The term “Lot” shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is re-subdivided pursuant to the provisions of Section 2.6 hereof, the re-subdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.
- 1.22 **Maintenance.** The term “Maintenance” shall mean the exercise of reasonable care to keep Lots and the Common Area, including buildings, easements of ingress, drainage easements, sign easements, utility easements, landscaping, lighting and other

related Improvements and fixtures in a condition comparable to their original condition. All drainage structures shall be constructed and maintained according to the various regulations of Shelby County, Alabama.

- 1.23 **Member.** The term "Member" shall mean and refer to any Lot owner.
- 1.24 **Mortgage.** The term "Mortgage" with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security devise encumbering a Lot, Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.
- 1.25 **Mortgagee.** The term "Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making Mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Probate Office of Shelby County, Alabama. The term "Mortgagee" shall not mean or refer to a lender holding a mortgage on lots unsold by Developer.
- 1.26 **Occupant.** The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All acts or omissions of any Occupant are and shall be deemed the act or omission of the Owner of such Lot or Dwelling.
- 1.27 **Owner.** The term "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, limited liability company, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchases such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.
- 1.28 **Property.** The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.
- 1.29 **Termination of Developer Voting Rights.** The date which is the earliest of (i) the date that dwellings have been constructed and sold on seventy-five per cent (75%) of the

lots that constitute the Property; (2) the date Developer notifies the Association in writing that Developer relinquishes and terminates Developer's control over the Association; or (3) two years from date.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

- 2.1 **General Declaration by Developer.** 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 or Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area thereof.
- 2.2 **Additional Property.** Developer reserves the right, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee, other than Developer's Mortgagee consenting hereto, and its successors and assigns, of any Lot or Dwelling) and shall (a) refer to this Declaration stating the book and page number where this Declaration has been recorded in the Probate Office of Shelby County, Alabama, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Shelby County, Alabama submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded,

supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.2 of this Declaration.

- 2.3 **Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2, above, modify the provisions of this Declaration as the same apply to any such Lot.
- 2.4 **Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Dwelling, and Common Area within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the 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 Dwelling in the Development, to make Improvements and changes to all Common Areas, whether owned by Developer or the Association, and to all Lots or Dwellings 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 Dwellings 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 and (iv) installation of security and trash and refuse facilities.
- 2.6 **Subdivision Plat.** 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, Dwellings, Common Areas, Natural Areas, Additional Property, public or private roads, public or private utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto 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 redivide, combine and re-subdivide any Lots owned by Developer.

ARTICLE III
EASEMENTS AND RESERVATION OF RIGHTS

3.1 Grant of Non-Exclusive Easements to Owners.

(a) Common Areas. 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, the Association, and their successors and assigns, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with the title to each Lot or Dwelling.

(b) Recreational Facilities. Subject to the terms and provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer, the Association, and each Owner and Occupant shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of the recreational areas, facilities and amenities now or hereafter located in the Common Areas. The easement and rights granted herein are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

(c) Benefit of Easements. The easements, rights and privileges granted in this Section 3.1 shall pass with each Lot and Dwelling as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot or Dwelling.

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 non-exclusive 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, bicycle paths, jogging paths, curbing, gutters and other Improvements thereon (ii) 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 or any other property owned by Developer situated in close proximity therewith, including, without limitation,

publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, 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 (iii) constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, informational and traffic directional signs and related Improvements thereon and (iv) doing all 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. 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 till 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 ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of providing ingress to and egress from each Lot and Dwelling for (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Dwelling or 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 Dwellings and other Improvements in and to any Lots and Dwellings; (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 Dwelling within the Development, Developer hereby establishes and reserves for itself, its successors and assigns, a permanent and perpetual, non-exclusive 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 Dwellings 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.

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 non-exclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development or neighboring properties, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or neighboring properties. 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, Walls 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, Dwelling, Common Area or Natural Area and any public or private roadway which is directly adjacent to and abuts such Lot, Dwelling, Common Area or Natural Area for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging 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 Environmental Easement. Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards, to effect storm water run-off, or to effect any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any applicable Governmental Authority. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

3.9 Establishment of Natural Areas.

(a) Developer does hereby establish and declare, for the benefit of Developer, the ARC and the Association and their respective successors and assigns, that the Natural Areas (i) shall be and remain a natural, undisturbed Natural 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 non-exclusive 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. 9 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.

3.10 Owner's Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) All provisions of this Declaration, any Plat of all or any part of the property, and the articles and Bylaws of the Association;

(b) Rules and Regulations adopted by the Association governing the use and enjoyment of the Common Areas;

(c) Restrictions contained on any and all Plats of all or any of the Common Area or filed separately with respect to all or any part or parts of the property;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

(e) Easements for installation and maintenance of utilities, drainage facilities and sign easements as shown on the recorded plat of the property as shown in Map Book 31, at Page 59, in the Office of the Judge of Probate of Shelby County, Alabama, and any amendments thereto concerning the various types of easements which have been reserved by the Declarant.

(f) Drainage Easement. The Association shall have a Drainage Easement over and across the Drainage Easement Area for the installation, maintenance, repair and replacement of drainage ditches, pipes, lines and systems to collect and discharge surface water and run-off. Maintenance of such Drainage Easement Area shall be the responsibility of the Association.

(g) Maintenance Easement. The Association, each Owner, and their respective agents, contractors and employees, shall have a Maintenance Easement for the purpose of access to the rear of the Lots in connection with (1) any construction, installation, maintenance, removal, repair or replacement by an Owner of structures, Improvements, equipment or other property situated on his Lot (provided that such easement right shall not authorize the construction or installation of any structure, Improvement or other item, except in accordance with the terms and provisions of the Declaration); and (2) access by the Association to effect such construction, installation, removal, repairs, replacement, or to effect such other actions as the Association may deem to be necessary or appropriate in exercising its rights under the Declaration, or under applicable law, or in enforcing the terms and provision of the Declaration. In order to facilitate the use of the Maintenance Easement, all fencing, barriers and other obstructions within the Maintenance Easement Area shall be constructed, designed and installed with gates or removable sections. The use and enjoyment of the Maintenance easement shall be subject to the following conditions and restrictions: (1) before undertaking any action pursuant to the Maintenance Easement which might materially affect any other party, the Owner of a Lot shall give not less than three (3) days prior notice to the Association; (2) the exercise and enjoyment of the Maintenance Easement shall be effected in a manner which will minimize any effect thereof on the Common Area and on any other Owners; (3) the Owner exercising the Maintenance Easement, after completion of his construction, installation, removal, repair, or

replacement, shall restore the Maintenance Easement Area, and any property of any other Owners or of the Association, to their condition prior to such use, to the extent reasonably practicable; and (4) each Owner shall be responsible for any and all damage to property, death, or injury to persons, or other claim, damage or expense of any nature, caused by the act or omission of such Owner, or of his agents, contractors and employees, in exercising the Maintenance Easement. In addition to the foregoing, the Association shall have the right, from time to time, to establish or appropriate in connection with the use and enjoyment of the Maintenance Easement

(h) Conveyances by Association. The Association shall have the right to convey easement rights, rights-of-way, licenses and other interest and rights in and to the Easement Areas, to governmental authorities, quasi-governmental agencies, or private parties, for the purpose of providing utilities or other services to the Property, within the scope of the Easements, or otherwise under circumstances which are not consistent with the scope and effect of the Easements. Further, should any Owner obtain ingress or egress to his or her Lot through the Common Area, any conveyance or encumbrance of such area is subject to the Owner's easement for ingress and egress.

(i) Maintenance of Easements. The Association shall have the power and authority to take such actions as may be necessary and appropriate to maintain the Easement Areas. The responsibility for maintaining facilities in any Easement Area may be transferred by the association in connection with any conveyance pursuant to Paragraph F, hereinabove, or otherwise, and in such event, the Association shall have the power and authority to enforce the maintenance obligations of the grantee or other party to such conveyance.

3.11 **Delegation of Use**. Any owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the Members of his family, his tenants, or contract purchasers who reside on the property.

3.12 **Right of Entry**. The Declarant, its successors and assigns, and the Association, through their duly authorized employees and contractors, shall have the right after reasonable notice of the owner thereof, to enter any Lot at any reasonable hour on any day to perform such maintenance as may be authorized herein. However, nothing contained in this paragraph shall be deemed a requirement on the part of the Declarant to perform such maintenance.

ARTICLE IV **ASSOCIATION**

4. 1 **Membership**. The Owner of each Lot or Dwelling 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 or Dwelling; provided, however, that (a) Developer shall be

deemed a Member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling 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 or Dwelling 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 or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all Membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such Membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each Member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the Members of the Association.

- 4.2 **Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any Member or Members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the 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 the foregoing. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.
- 4.3 **Voting Rights.** Subject to the rights reserved to Developer herein and in the Articles of Incorporation and Bylaws 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 or Dwelling shall be entitled to one (1) vote in any matters submitted to the Members of the Association for approval. No Owner, whether one or more persons, shall have more than one Membership and one vote per Lot or Dwelling owned. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the re-subdivision of any Lot by Developer pursuant to Section 2.6 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be

allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 4.3, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

- 4.4 **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 Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. 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 Dwellings 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 and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, 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 Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

- 4.5 **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 Bylaws. 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 Bylaws 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 Dwelling 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 Dwelling, 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, Dwellings, Common Areas and Natural 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 (including, specifically, the use of any of the recreational facilities, if any, situated within the Common 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.

- 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 Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers and directors liability insurance in order to fulfill its obligations under this Section 4.8 and the costs of such insurance shall constitute a Common Expense.

ARTICLE V

ARCHITECTURAL REVIEW COMMITTEE; ARCHITECTURAL CONTROL

- 5.1 **Architectural Review Committee.** The Architectural Review Committee shall be composed of the Developer, until such time as the Developer's control over the Association has terminated under one of the conditions set out in Article 1.29. Thereafter, the ARC shall be comprised of three (3) individuals who are Lot Owners who are elected by a majority of the fee simple Owners of the Lots within the Property and at such time, the affirmative vote of a majority of the members of the ARC shall be required in order to issue any permit and authorization set forth herein.
- 5.2 **Approval Required; Development Plan.** Before commencing the construction or alteration of any Improvement on any Lot, two (2) copies of the Development Plan must first be submitted in writing to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall have the right to establish and amend from time to time written rules, regulations and standards governing construction and alteration of any Dwellings or other Improvements on any

Lot, as well as the content and types of information required to be submitted to the Architectural Review Committee for its approval, each of which shall be in addition to the provisions and requirements set forth herein.

5.3 **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 Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other 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 Dwelling 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.

5.4 **Alterations.** Any exterior remodeling, reconstruction, alterations or additions to an existing Dwelling or any activity which would change or alter the exterior appearance of a Dwelling or other structure or other Improvement must be approved in writing by the Architectural Review Committee. Interior remodeling, reconstruction or alterations of a Dwelling not affecting the exterior appearance of the Dwelling shall not require the written approval of the Architectural Review Committee, but shall comply with all restrictions and covenants set forth herein.

5.5 **Application Process.**

(a) No Improvements shall be erected, placed, maintained or permitted on any Lot until two (2) copies of the Development Plan shall have been submitted in writing to and approved in writing by the Architectural Review Committee. The Development Plan shall be submitted in writing over the signature of any Owner or its authorized agent, and shall be accompanied by the request of any Owner or its agent, specifying for which part of the Development plan approval is sought.

(b) In any case in which the Architectural Review Committee shall disapprove a Development Plan or shall approve the Development Plan only upon specified modifications or conditions, the disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. Upon approval by the Architectural Review Committee of any Development Plan submitted hereunder, a copy of the Development Plan, as approved, shall be deposited for permanent record with the Architectural Review Committee.

(c) If the Architectural Review Committee fails either to approve or to disapprove the Development Plan within thirty (30) business days after the Development Plan has been submitted in writing to the Architectural Review Committee, it shall be conclusively presumed that the Architectural Review Committee has approved the

Development Plan, subject, however, to the covenants contained herein, and provided that the applicant provides conclusive proof that the Architectural Review Committee actually received the Development Plan. This proof may be provided only by an acknowledgment of receipt of the Development Plan signed by the Architectural Review Committee or by a return receipt for certified mail signed by the Architectural Review Committee, which certified mail forwarded the Development Plan to the Architectural Review Committee.

(d) The Architectural Review Committee shall, in its sole discretion, determine whether the Development Plan and other data submitted by any Owner for approval are acceptable. Any approval granted by the Architectural Review Committee shall be effective only if the approval is in writing. The Architectural Review Committee shall have the right to disapprove any Development Plan upon any ground which is consistent with the objectives and purposes of this Declaration, including, without limitation, purely aesthetic considerations, failure to comply with any of the provisions of this Declaration, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the Lot or for the Property, objection of any proposed Improvement on any Lot, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Dwellings or other Improvement on any Lot or any other matter which in the sole and absolute judgement of the Architectural Review Committee would render the proposed Dwelling or other Improvement inharmonious with the general plan of the development for the Property. The approval of the Development Plan for any one specific Dwelling or other Improvement shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve a similar Development Plan for any other Improvement to be constructed or located on any Lot within the Property.

5.6 Inspection Rights. The Developer, the Association or the Architectural Review Committee, or any agent or employee thereof, may at any reasonable time or times enter upon and inspect any Lot and any Improvement thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of any Improvement thereon are in compliance with the provisions hereof and neither Developer, nor the Association, nor the Architectural Review Committee, nor an agent-officer or employee thereof shall be deemed to have committed a trespass or other wrongful act by reason of the entry or inspection. Any inspection shall be for the sole purpose of determining compliance with this Declaration, and neither the making of any inspection, nor the failure to make any inspection, shall be relied upon by Owners or any third persons or entities for any purpose whatsoever; nor shall any inspection obligate Developer, the Association or the Architectural Review Committee to take any particular action based on the inspection.

5.7 Condition of Property. The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions. The approval of a Development Plan by the Architectural Review Committee shall not be construed in any

respect as a representation or warranty by the Architectural Review Committee, the Association or Developer or of any director, officer, employee or agent of any of them, to any Owner or any other person that the surface or subsurface conditions of any Lot are suitable for the construction of a Dwelling or other Improvement thereon. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and the subsurface conditions of the Lot. None of the entities or persons referred to in this Section shall be liable or responsible for any damage or injury suffered or incurred by any Owner or any other person as a result of surface or subsurface conditions affecting a Lot or any portion thereof, including, without limitation, any surface or subsurface drainage or underground mines, tunnels, sinkholes or other conditions or types of ground subsidence occurring on or under any Lot.

- 5.8 **Waiver of Liability.** THE SCOPE OF REVIEW BY THE ARCHITECTURAL REVIEW COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS. No Members of the Architectural Review Committee, the Association, the Developer, or any architect, agent, officer or employee of any of the foregoing, shall be responsible in any way for any failure of any Improvement to comply with requirements of this Declaration, even if a certificate of compliance has been issued, or for any defects in any Development Plan submitted, revised or approved, or for any structural or other defects in any work done according to any Development Plan. Further, all persons relying on approval of the Architectural Review Committee agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to in this Section and further agree to and do hereby release each of these entities and persons from any and every such cause. Each Owner, by acceptance of a deed to any Lot, hereby releases the Architectural Review Committee, the Association, the Developer and their respective agents, officers, directors, members and successors and assigns, from all liability of every nature whatsoever arising from damage, loss or expense suffered, claimed, paid or incurred by any Owner or from any injury to property or injury or death to any person, related in any way to any defects in any Development Plan submitted to or approved by the Architectural Review Committee, any defects resulting in any work done under the Development Plan or other data submitted, or any action taken or not taken by the Architectural Review Committee, Developer or the Association related thereto.
- 5.9 **Variances.** The Architectural Review Committee shall have the right, in its sole and absolute discretion, to grant any variances from any of the restrictions contained in this Declaration upon written application to the Architectural Review Committee requesting a variance; provided, however, that the grant of a variance to one party shall not vest in any party a right to receive the same or a similar variance. All variances shall be in writing and signed by the Chairman or Vice-Chairman of the Architectural Review Committee.

- 5.10 **Charges for Review of Plans, Certificates.** The Architectural Review Committee shall have the right to establish from time to time reasonable charges and fees for the review of any Development Plan, and for issuing any certificate or statement required by, or requested pursuant to, this Declaration. The Architectural Review Committee shall, upon request and at reasonable charges, furnish to any Owner a written certificate setting forth whether all necessary approvals have been obtained from the Architectural Review Committee in connection with any Dwelling or other Improvements on a Lot.
- 5.11 **Developer's Exemption.** Developer and any Lot or other portion of the Property owned by Developer shall be exempt from the covenants and other requirements contained in this Article V.

ARTICLE VI

GENERAL RESTRICTIONS

- 6.1 **Minimum Structure Size of Primary Dwelling.** No Lot shall contain more than one Primary Dwelling and no Primary Dwelling shall be erected on any Lot if such Dwelling contains less than 1800 square feet of living space, for a single story Dwelling, and not less than 2100 square feet of living space for a 1 ½ story Dwelling and not less than 2200 square feet of living space for 2 story Dwelling. Living Space is defined as heated and finished areas and does not include porches, garages, basements, carports or attics.
- 6.2 **Outbuildings.** No outbuildings, storage sheds, separate garages or detached buildings of any kind shall be allowed, unless approved in writing by the ARC.
- 6.3 **Exterior Material.** No Primary Dwelling shall use the following materials, which shall be visible on the exterior of any such building: (a) concrete block, (b) stucco over concrete block.
- 6.4 **Driveways.** All driveways servicing any Lot shall be concrete.
- 6.5 **Building Location.** No Structures, other than fences, shall be located any closer than 35 feet from Wild Timber Parkway and Timber Cove (the roads) nor shall any Structure other than fences be located any closer than 12 feet on one side and 13 feet on the other side from any non-Road Lot line.
- 6.6 **Fencing.** The ARC (as hereinafter defined) shall have the right to approve any proposed fencing, the materials and location of such fencing. No fencing visible from any Road shall be of chain link.
- 6.7 **Temporary Structures and Outbuildings.** No mobile homes or temporary dwellings shall be built and used for residential purposes. Guesthouses and other Outbuildings shall, subject to the approval of the ARC be allowed.

- 6.8 **Design Criteria.** The objective of the Architectural Review Committee hereinafter established is to provide for the quality development of all of the Lots within the Subdivision.
- 6.9 **Septic Tanks.** All septic tanks must be of an improved type, such tanks together with adequate field lines must be approved and completely acceptable to the Shelby County Health Department. No septic tank or field line shall be constructed within 10 feet of an adjoining Lot or property line. No sewer or drainage lines shall be constructed or laid which shall empty on or become a nuisance to an adjoining Lot, property line, or road.
- 6.10 **Windows.** Only wood, vinyl or pvc windows are permitted.
- 6.11 **Roof.** Pitch on any Structure shall not be less than 8 and 12 unless first approved in writing by the Architectural Review Committee.
- 6.12 **All.** All Structures are to be of traditional styling and approved in writing by the Architectural Review Committee. Primary Dwellings will have brick or stone type product on all sides of the foundation (no exposed block or concrete).
- 6.13 **No Cantilevered Chimney Shall Be Allowed on the Front or Sides of Any Structure.** All chimney chases on the front and side shall be supported by the foundation of the Structure and shall be constructed of the same material as used in the foundation. Cantilevered chimney chases may be allowed on the rear by specific approval of the Architectural Review Committee. Bay windows on the front or side of the Primary Dwelling must have a bottom return.
- 6.14 **Garages.** Garage doors shall not be permitted on the front of Primary Dwellings. In cases where it is unavoidable due to terrain, the garage interior shall be of sheetrock and painted, unless located on the side or rear of the Primary Dwelling.
- 6.15 **Construction of Improvements.** When the construction of any Structure is once begun, work thereon must be prosecuted diligently and continuously and must be completed as soon as is reasonably possible.
- 6.16 **Roof Vents and Pipes.** All roof vents and pipes shall be painted as near the color of the roof as possible, and shall be located on the rear of the structure and not be viewed from the street. All roofs shall be of weathered wood color.
- 6.17 **Pools.** Swimming pools shall only be allowed if approved in writing by the ARC.
- 6.18 **Obstruction of View at Intersections.** No tree, fence, wall, hedge, shrub or planting which obstructs lines of view at elevations between two (2) and six (6) feet above the Roads shall be placed or permitted to remain on any corner Lot. Trees shall be

permitted to remain provided the foliage line is kept trimmed so as to prevent obstruction of such lines of sight.

- 6.19 **Landscaping upon Completion of Primary Dwelling.** Upon completion of the Primary Dwelling, all front and side yards, which are not left in a natural state, will be landscaped with solid sod. The rear yard may sprigged, seeded or solid sod, or left in a natural state.
- 6.20 **Location of Air Conditioning Units and Vents.** Outside air conditioning units and plumbing and heating vents shall be placed only at the rear or at the sides of house not facing a road.
- 6.21 **Porches.** All porches on the front sides of any dwelling shall be supported by the foundation of the structure of the dwelling.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

7.1 Responsibilities of Owners.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, all Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his Lot or Dwelling as the case may be, in a reasonably neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot shall be landscaped in accordance with plans and specifications submitted to and approved by Developer or the ARC pursuant to Article V, above. All areas of any Lot which are not improved by the construction of a Dwelling 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 promptly 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 Dwelling 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 Article V, above or (ii) do any work which, in the reasonable

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 and Natural Areas, whether owned by Developer or the Association, which responsibility shall include the maintenance, repair and replacement of (i) walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, landscaped areas, recreational areas and other Improvements made by Developer or the Association within any of the Common Areas or Natural Areas, or within any of the easements encumbering the Lots or Dwellings as provided in Article III above, (ii) such entrance gates and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and Natural Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Areas or Natural Areas, (iv) all Natural Areas not otherwise conveyed to another entity subject to such entity's assumption of the Association's obligation to maintain such Natural Area, and (v) all lakes, streams, ponds and other water areas and facilities constructed by Developer or the Association, wherever located (either within or outside of the Development so long as the same are utilized for the benefit of the Development), including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. 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 caused by rain or other surface water which may leak or flow from any portion of the Common Areas or Natural Areas onto a Lot or Dwelling or (3) resulting from theft, burglary or other illegal entry into the Development, any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he 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 or omission of an Owner or Occupant, or their

respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Article VIII below.

ARTICLE VIII

COMMON AREA ASSESSMENTS

8.1 Computation of Annual Assessments. 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 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, Natural 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 and Natural 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 charges;
- (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 Dwellings; and
- (ix) The establishment and maintenance of a reasonable reserve fund or funds, if determined necessary by the Board (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.

8.2 Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual Assessments or charges, and (2) special Assessments for capital improvements to be established and collected as hereinafter provided. The annual and special Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

- 8.3 **Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments or other charges authorized herein with respect to any Lot or Dwelling in the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.2 above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments 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 this Article VIII, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments 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 or Dwelling.
- 8.4 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Areas and of the homes situated upon the premises.
- 8.5 **Maximum Annual Assessment.**
- (a) Until January 1 the year immediately following the conveyance of the last Lot to an Owner, the maximum annual Assessment shall be Two Hundred Dollars (\$200.00) per Lot.
- (b) From and after January 1 of the year immediately following the conveyance of the last Lot to an Owner, the maximum annual Assessment may be increased each year not more than 5% above the maximum Assessment for the previous year without a vote of the Members.
- (c) From and after January 1 of the year immediately following the conveyance of the last Lot of an Owner, the maximum annual Assessment may be increased above 5% by a vote of two-thirds (2/3) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (d) The Board of Directors may fix the annual Assessment at an amount not in excess of the maximum.

- 8.6 **Special Assessments for Capital Improvements.** In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent to two-thirds (2/3) of the votes of Lots owned by Members of the Wild Timber Homeowners' Association, Inc. Declarant shall have the sole responsibility of contracting for maintenance services for the common areas for any year in which it owns at least one Lot in the development.
- 8.7 **Certificates.** The Association (or any officer or authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

9.1 **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, provided that such Assessment is ratified by a two-thirds (2/3) vote of the Owners. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

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

9.3 **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 public liability, property damage, title and all other types of insurance with respect to his Lot, Dwelling and all other Improvements situated thereon. The Board may require all Owners and the Association to carry public liability insurance with respect to their

respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot or Dwelling, does hereby waive and release the Developer, the Association and the ARC, and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors from any and all liabilities, damages or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage is caused by the fault or negligence of the Association, Developer, the ARC or any of their respective agents, employees, representatives, partners, shareholders, members, managers, 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 of at least two-thirds (2/3) or more of the Lots or Dwellings within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Shelby County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.
- 10.2 **Amendment by Developer.** For so long as Developer owns any Lot or Dwelling within the Property, Developer, or its successor in interest, 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. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, 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 or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot or Dwelling or (iv)

necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings 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) At any annual or special meeting of the Members of the Association, an amendment to this Declaration may be proposed by either the Board of 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 Dwelling 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 2.2 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, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board of the Association from time to time, then the Developer, 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 Dwelling 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 family members, guests and tenants) to use any of the recreational 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 or Dwelling 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 BYLAWS, 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 or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Section 4.2 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.
- 12.2 **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 any of their respective agents and representatives, undertake any legal or equitable action which either 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, and their respective 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 ARC or the Board 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 amid 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.
- 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, the ARC, the Association, 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.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This

Declaration shall be construed under and in accordance with the laws of the State of Alabama.

- 12.10 **Rights of Third Parties.** This Declaration shall be recorded for the benefit of 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.
- 12.11 **No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot, Dwelling or Townhouse Area, the entering thereon and the taking of such action shall not be deemed a trespass.
- 12.12 **No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.
- 12.13 **Standards for Review.** Whenever in this Declaration Developer, the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the ARC or the Association, as the case may be.
- 12.14 **Oral Statements.** Oral statements or representations by Developer, the ARC or the Association or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the ARC or the Association.
- 12.15 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Development.
- 12.16 **Assignment.** Subject to the provisions of Section 12.19 below, 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.
- 12.17 **Further Assurances.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably

requested by Developer, the ARC or the Association for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

- 12.18 **No Waiver.** All rights, remedies and privileges granted to Developer, the ARC and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.
- 12.19 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling 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 specific rights created in this Declaration which Developer is transferring to any such third party.

ARTICLE XIII

MEMBERSHIP AND VOTING RIGHTS

- 13.1 **Member of Association.** Every owner of a Lot which is subject to Assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.
- 13.2 **Two Classes of Membership.** The Association shall have two classes of Membership, Class A and Class B. The Class A Membership shall be all Owners except the Class B Member, if any. The Developer, or any successor to whom Class B Membership has been specifically conveyed through an instrument filed of record in the Office of the Judge of Probate of Shelby County, Alabama, shall be the Class B Member. The Class B Member's rights are more specifically described in the Bylaws. The Class A Members shall be entitled to one vote per Lot. The voting rights of any Member may be limited and suspended in accordance with the provisions of this Declaration or the Bylaws. Any change of Membership shall be evidenced by filing for record a deed or other appropriate instrument in the Office of the Judge of Probate of Shelby County, Alabama, and which deed or other instrument shall establish record title to a Lot or other real property subject to the Declaration, which deed or other instrument shall be deemed to qualify as written notice to the Association of such change in ownership. The Grantee designated in such deed or other instrument automatically becomes a Class A Member of the Association, with the Membership of the prior owner being contemporaneously terminated. The Class B Membership shall terminate upon the earlier of (a) the Developer ceases to own any Lot within the Development; (b) the

Developer notifies the Association in writing that Developer relinquishes and terminates Developer's control over the Association; or (c) two years from date.

ARTICLE XIV **EXTERIOR MAINTENANCE**

In the event an Owner of any Lot in the Property shall fail to maintain the premises and the Improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, after approval by two-thirds (2/3) vote of the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other Improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the Assessment to which such Lot is subject.

ARTICLE XV **GENERAL PROVISIONS**

- 15.1 **Enforcement.** The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provision of this Declaration. Failure by the Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 15.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 15.3 **Scrivener's Error.** Notwithstanding provisions elsewhere herein for amendments, until the time of conveyance of the common areas to the Association, any scrivener's error or omission may be corrected by the filing of any amendment to this Declaration by the Declarant without the express consent of the Owner of any Lot affected.
- 15.5 **Notice and Quorum For Any Action Authorized Under Articles III and IV.** Written notice of any meeting called for the purpose of taking any action authorized under Articles III or IV shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the presiding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 15.6 **Uniform Rate Assessment.** Both annual and special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

- 15.7 **Date of Commencement of Annual Assessments; Due Dates.** The annual Assessments provided for herein shall commence upon initiation of the Association by the Declarant, its successors or assigns. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.
- 15.8 **Effect of Nonpayment of Assessments; Remedies of the Association.** Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
- 15.9 **Subordination of Lien to Mortgages.** The lien for the Assessments provided herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal on this the 29 day of April, 2003.

WILD TIMBER DEVELOPMENT, L.L.C.

By: 
Delton Lane Clayton,
as its Member

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Delton Lane Clayton, whose name as Member of Wild Timber Development, L.L.C., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, he, in his capacity as such Member, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 29th day of April, 2003.

Carole C. Leavor
Notary Public

My commission expires: 5-27-03

CONSENT OF MORTGAGEE

South Trust Bank ("Mortgagee"), as the holder of that certain Mortgage recorded as Instrument Number 20030425000 255 780 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"), has joined in the execution of this Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens of Wild Timber (the "Declaration") for the purpose of consenting to the execution of the Declaration and all of the terms and provisions set forth therein; provided, however, that such consent shall not be deemed a consent to any amendment to the terms and provisions of the Declaration.

Dated as of the 30 day of April, 2003.

"MORTGAGEE"

By: Alan Nickelsen
As its: Assistant Vice President

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Alan Nickelsen, whose name as Asst Vice President of SouthTrust Bank, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 30th day of April, 2003.

Carolyn C. Lenson
Notary Public

My commission expires: 5-27-03

EXHIBIT "A"

**LEGAL DESCRIPTION OF THE PROPERTY
MADE THE SUBJECT OF
THE DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, RIGHTS AND LIENS OF
WILD TIMBER**