



20030905000595780 Pg 1/53 167.00
Shelby Cnty Judge of Probate, AL
09/05/2003 14:30:00 FILED/CERTIFIED

**ARBOR HILLS
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

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

✓ Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 521-8429

TABLE OF CONTENTS
OF
ARBOR HILLS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I
DEFINITIONS

1.01	ADDITIONAL PROPERTY	1
1.02	AFFILIATE	1
1.03	ARC	2
1.04	ARTICLES OF INCORPORATION	2
1.05	ARCHITECTURAL STANDARDS	2
1.06	ASSESSMENT	2
1.07	ASSOCIATION	2
1.08	BOARD	2
1.09	BYLAWS	2
1.10	COMMON AREAS	2
1.11	COMMON EXPENSES	3
1.12	DECLARATION	3
1.13	DEVELOPER	3
1.14	DWELLING	3
1.15	GOVERNMENTAL AUTHORITY	3
1.16	IMPROVEMENT	3
1.17	LIVING SPACE	3
1.18	LOT	3
1.19	MORTGAGE	4
1.20	MORTGAGEE	4
1.21	OCCUPANT	4
1.22	OWNER	4
1.23	PERSON	4
1.24	PROBATE OFFICE	4
1.25	PROPERTY	4
1.26	RECREATIONAL FACILITIES	4
1.27	TURNOVER DATE	4

ARTICLE II
PROPERTY SUBJECT TO THE DECLARATION

2.01	GENERAL DECLARATION	5
2.02	ADDITIONAL PROPERTY	5
2.03	RIGHT OF DEVELOPER TO MODIFY RESTRICTIONS WITH RESPECT TO LOTS OWNED BY DEVELOPER	6
2.04	MUTUALITY OF BENEFIT AND OBLIGATION	6
2.05	DEVELOPMENT OF PROPERTY	6

2.06	SUBDIVISION	6
------	-------------------	---

ARTICLE III

EASEMENTS

3.01	GRANT OF NON-EXCLUSIVE EASEMENTS TO COMMON AREAS	7
3.02	GRANT OF EASEMENT TO GOVERNMENTAL AUTHORITIES	7
3.03	RESERVATION OF GENERAL ACCESS AND MAINTENANCE EASEMENT.....	7
3.04	RESERVATION OF EASEMENTS WITH RESPECT TO COMMON AREAS	8
3.05	RESERVATION OF EASEMENT FOR UTILITIES.....	8
3.06	RESERVATION OF EASEMENTS FOR SIGNS, WALKS, TRAILS, WALLS AND FENCES.....	9
3.07	RESERVATION OF ENVIRONMENTAL EASEMENT	9
3.08	RESERVATION OF EASEMENT WITH RESPECT TO WATERFRONT LOTS.....	9

ARTICLE IV

ASSOCIATION

4.01	MEMBERSHIP	10
4.02	BOARD	10
4.03	VOTING RIGHTS	10
4.04	DUTIES AND POWERS OF ASSOCIATION.....	11
4.05	AGREEMENTS.....	11
4.06	MANAGEMENT BY DEVELOPER OR ITS AFFILIATES	12
4.07	RULES AND REGULATIONS.....	12
4.08	INDEMNIFICATION	12
4.09	TRANSFER FEES.	13

ARTICLE V

ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

5.01	COMMITTEE COMPOSITION	13
5.02	APPOINTMENT AND REMOVAL OF ARC MEMBERS	13
5.03	PROCEDURE AND MEETINGS	13
5.04	ARCHITECTURAL STANDARDS	14
5.05	APPROVAL OF PLANS AND SPECIFICATIONS	14
5.06	LANDSCAPING APPROVAL.....	17
5.07	CONSTRUCTION WITHOUT APPROVAL	17
5.08	INSPECTION.....	17
5.09	SUBSURFACE CONDITIONS	17
5.10	LIMITATION OF LIABILITY.....	17
5.11	COMMENCEMENT AND COMPLETION OF CONSTRUCTION.....	18
5.12	ENFORCEMENT AND REMEDIES	18
5.13	COMPLIANCE CERTIFICATION	18
5.14	INDEMNIFICATION.....	18

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

6.01	USE RESTRICTIONS	19
------	------------------------	----

6.02	PLAN APPROVAL	19
6.03	UNDERGROUND UTILITIES	19
6.04	BUILDING SETBACKS	19
6.05	SITING OF DWELLINGS	19
6.06	HEIGHT LIMITATIONS.....	20
6.07	MINIMUM LIVING SPACE	20
6.08	LANDSCAPING AND TREES	20
6.09	ROOFING	21
6.10	EXTERIOR LIGHTING	21
6.11	EXTERIOR MATERIALS AND FINISHES	21
6.12	OFF-STREET PARKING AND GARAGES	22
6.13	FENCES	22
6.14	WINDOWS, WINDOW TREATMENTS AND DOORS.....	22
6.15	MAILBOXES	23
6.16	UTILITY METERS AND HVAC EQUIPMENT	23
6.17	SATELLITE DISHES AND ANTENNAE.....	23
6.18	DRIVEWAYS AND SIDEWALKS.....	23
6.19	SOIL EROSION AND DRAINAGE.....	23
6.20	OUTDOOR FURNITURE, RECREATIONAL FACILITIES AND CLOTHESLINES	24
6.21	PETS AND ANIMALS	24
6.22	TRASH, RUBBISH AND NUISANCES.....	25
6.23	RECREATIONAL VEHICLES AND MACHINERY AND EQUIPMENT.....	25
6.24	SIGNAGE	26
6.25	ABOVE OR BELOW GROUND TANKS AND WELLS.....	26
6.26	TEMPORARY STRUCTURES	26
6.27	CONSTRUCTION OF IMPROVEMENTS.....	27
6.28	SUBDIVISION AND INTERVAL OWNERSHIP.....	27
6.29	SWIMMING POOLS AND TENNIS COURTS.....	28
6.30	WATERFRONT LOTS AND RECREATIONAL AREAS	28
6.31	COMPLIANCE WITH GOVERNMENTAL REGULATIONS	29
6.32	ADDITIONAL REGULATIONS.....	29
6.33	VARIANCES	29
6.34	ENFORCEMENT AND REMEDIES	30

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

7.01	RESPONSIBILITIES OF OWNERS.....	30
7.02	RESPONSIBILITIES OF ASSOCIATION	31

ARTICLE VIII

COMMON AREA ASSESSMENTS

8.01	ASSESSMENTS AND CREATION OF LIEN.....	32
8.02	UNIFORM RATE OF ASSESSMENTS.....	32
8.03	COMPUTATION OF ANNUAL ASSESSMENTS	33
8.04	SPECIAL ASSESSMENTS	34
8.05	INDIVIDUAL ASSESSMENTS	35

8.06	DATE OF COMMENCEMENT OF ASSESSMENTS	35
8.07	EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION	35
8.08	SUBORDINATION OF LIEN.....	37
8.09	CERTIFICATES	37

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

9.01	DAMAGE OR DESTRUCTION TO COMMON AREAS.....	37
9.02	DAMAGE OR DESTRUCTION TO LOTS OR DWELLINGS.....	38
9.03	CONDEMNATION OF COMMON AREAS.....	38
9.04	CONDEMNATION OF LOTS OR DWELLINGS.....	39
9.05	INSURANCE	39

ARTICLE X

TERM AND AMENDMENTS

10.01	TERM	40
10.02	AMENDMENTS PRIOR TO TURNOVER DATE.....	40
10.03	AMENDMENTS AFTER TURNOVER DATE.....	40
10.04	RESTRICTIONS ON AMENDMENT	41

ARTICLE XI

DENIAL OF USE PRIVILEGES

11.01	AUTHORITY AND ENFORCEMENT	41
11.02	PROCEDURE	41
11.03	NON-EXCLUSIVE REMEDIES	42

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.01	CONTROL BY DEVELOPER	42
12.02	LEGAL EXPENSES.....	42
12.03	SEVERABILITY.....	42
12.04	CAPTIONS AND HEADINGS	42
12.05	PRONOUNS AND PLURALS	43
12.06	BINDING EFFECT	43
12.07	CONFLICT OR AMBIGUITY	43
12.08	NO REVERTER.....	43
12.09	INTERPRETATION	43
12.10	RIGHTS OF THIRD PARTIES.....	43
12.11	NO TRESPASS.....	43
12.12	NO PARTITION.....	43
12.13	STANDARDS FOR REVIEW.....	44
12.14	ORAL STATEMENTS.....	44
12.15	NOTICES.....	44
12.16	ASSIGNMENT.....	44
12.17	FURTHER ASSURANCES.....	44

12.18 NO WAIVER 45

12.19 PERPETUITIES..... 45

ARBOR HILLS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS ARBOR HILLS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the ___ day of _____, 2003 by ARBOR HILLS, LLC, an Alabama limited liability company (together with its successors and assigns, "Developer").

RECITALS:

Developer is the owner of the Property, as described in Section 1.25 below, and desires to own, develop, improve, lease and sell the Property for single-family attached and detached residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration and maintenance of the Property.

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

ARTICLE I
DEFINITIONS

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

1.01 **ADDITIONAL PROPERTY.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

1.02 **AFFILIATE.** The term "Affiliate" shall mean and refer to (a) any Person which directly or indirectly through one or more intermediaries controls or is controlled by or under common control with the specified Person, (b) any Person who is an officer of, partner in, member or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, general or limited partner, member, manager or trustee, or with respect by which the specified Person serves in a similar capacity and (c) any Person who, directly or indirectly through one or more intermediaries, is the beneficial owner of more than five percent (5%) of any class of voting security or any interest in the specified Person or of which the specified Person is directly or indirectly through one or more subsidiaries the owner of more than five percent (5%) of any class of voting security or any interest therein.

1.03 **ARC**. The term or letters “ARC” shall mean the architectural review committee for the Association appointed by the Board pursuant to Article V hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration and any additional rights as may be authorized by the Board.

1.04 **ARTICLES OF INCORPORATION**. The term “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.05 **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 or Dwelling.

1.06 **ASSESSMENT**. The term “Assessment” shall mean, collectively, the Annual Assessments (as defined in Section 8.03 below), Special Assessments (as defined in Section 8.04 below), and Individual Assessments (as defined in Section 8.05 below).

1.07 **ASSOCIATION**. The term “Association” shall mean Arbor Hills Homeowners’ Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

1.08 **BOARD**. The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

1.09 **BYLAWS**. The term “Bylaws” shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

1.10 **COMMON AREAS**. The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall also mean and include (regardless of whether legal title to the same has been conveyed to the Association) (a) all private roadways or easements upon which private roadways providing ingress to and from the Property have been constructed within the boundaries of the Property, (b) all private roadways or easements upon which private roadways providing ingress to and egress from the Property have been constructed which may be adjacent to or in close proximity with (but otherwise outside of) the Property (other than any such private roadways or easements which are located solely within the boundary lines of any Lot or Dwelling), (c) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, Improvements, landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians within any public or private roadways, whether the same are located within the boundaries of the Property or on any public or private roadways which may be adjacent to or in close proximity with the Property which provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling), (d) all lakes, water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling), (e) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers), (f) all maintenance areas and parking areas located on any portion of the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling) and (g) the Recreational Facilities, if any, and all parks, nature trails and all other recreational facilities and areas and any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land

and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

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

1.12 **DECLARATION**. The term "Declaration" shall mean and refer to this Arbor Hills Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.13 **DEVELOPER**. The term "Developer" shall mean Arbor Hills, LLC, an Alabama limited liability company, and its successors and assigns.

1.14 **DWELLING**. The term "Dwelling", with an initial capital letter, shall mean and refer to any improved Lot intended for use as a single-family attached or detached residential housing unit, including, without limitation, townhouses, condominiums, duplexes, zero-lot-line homes and cluster, patio and garden homes. Common Areas shall not constitute Lots or Dwellings.

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

1.16 **IMPROVEMENT**. The term "Improvement", with an initial capital letter, shall mean and refer to all Dwellings and any building, structure or device constructed, erected or placed upon any Lot or Dwelling which in any way affects, alters or causes a change in the exterior appearance of any Lot or Dwelling. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, treehouses, playhouses, swingsets, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling and any fixtures, appurtenances, personal property or other devices installed, erected, constructed, attached, placed or maintained on the exterior of any Dwelling or any other buildings situated on any Lot or Dwelling. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.17 **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.

1.18 **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 (other than any lots designated thereon as Common Areas or which subsequently become Common Areas) 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 completion of construction of such Improvements, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by Developer pursuant to the provisions of Section 2.06 hereof, the

resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots. Common Areas shall not constitute Lots or Dwellings.

1.19 **MORTGAGE**. The term "Mortgage", with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office.

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

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

1.22 **OWNER**. The term "Owner", with an initial capital letter, shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot or Dwelling, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased 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 and Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

1.23 **PERSON**. The term "Person" with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

1.24 **PROBATE OFFICE**. The term "Probate Office" shall mean and refer to the Office of the Judge of Probate of Shelby County, Alabama and any successor thereto which serves as the official public registry for the public recording of real estate documents in Shelby County, Alabama.

1.25 **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, together with all private roadways depicted on any subdivision plats for any of the Property and any and all rights-of-way therefore and any other private roadways and the rights-of-way therefore which are not located within the Property but provide access to and from the Property or any part thereof. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof.

1.26 **RECREATIONAL FACILITIES**. The term "Recreational Facilities" shall mean and refer to any swimming pool, tennis courts, parks, playgrounds, walking trails and other recreational amenities or facilities, if any, constructed by Developer on the Property which shall, subject to the terms and provisions of Section 3.01(b) below, constitute Common Areas to be used in common by all Owners. **Notwithstanding anything provided herein to the contrary, in no event shall Developer be obligated to construct or otherwise provide any Recreational Facilities within any portion of the Property.**

1.27 **TURNOVER DATE**. The term "Turnover Date" shall mean the earlier of (a) the date on which Developer no longer owns any of the Property or (b) the date on which Developer elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Board pursuant to Section 4.02 below and (ii) all voting rights in the Association reserved to Developer pursuant to Section 4.03(c) below.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.01 **GENERAL DECLARATION**. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling or 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 all Owners and Occupants of the Property and any Lot, Dwelling or Common Area thereof. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer) but this Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration.

2.02 **ADDITIONAL PROPERTY**. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. 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, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may 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 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 this Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, 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 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, then this Declaration may be amended in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of any Owner or Mortgagee be obtained, including, without limitation, without any consents or approvals required pursuant to Section 10.02 below.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.01 **GENERAL DECLARATION.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling or 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 all Owners and Occupants of the Property and any Lot, Dwelling or Common Area thereof. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer) but this Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration.

2.02 **ADDITIONAL PROPERTY.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. 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, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may 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 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 this Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, 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 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, then this Declaration may be amended in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of any Owner or Mortgagee be obtained, including, without limitation, without any consents or approvals required pursuant to Section 10.02 below.

2.03 **RIGHT OF DEVELOPER TO MODIFY RESTRICTIONS WITH RESPECT TO LOTS OWNED BY DEVELOPER.** With respect to any Lot or Dwelling owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.02 above, modify the provisions of this Declaration as the same apply to any such Lot or Dwelling.

2.04 **MUTUALITY OF BENEFIT AND OBLIGATION.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and Dwelling are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.05 **DEVELOPMENT OF PROPERTY.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling within the Property, to make improvements and changes to all Common Areas and to all Lots and Dwellings owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots or Dwellings owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) installation and maintenance of any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas and (e) installation and maintenance of gates, guardhouses and other limited access devices and trash and refuse facilities on or within any of the Common Areas. Furthermore, Developer shall have the right, but not the obligation, to (i) make improvements and changes to all Lots, Dwellings and to any other portions of the Property owned by Developer and (ii) change the location of the property lines or boundaries of any Lots, Dwellings or any other portion of the Property owned by Developer. The exercise by Developer of any of the rights set forth in this Section 2.05 may be exercised solely by Developer without any requirement that the consent or approval of any Owners be obtained. Each Owner, by acceptance of a deed to any Lot or Dwelling, acknowledges and agrees that Developer or affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.02 above.

2.06 **SUBDIVISION.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more subdivision plats setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats and 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, the rights reserved by Developer pursuant to this Section 2.06 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Dwellings, Common Areas and other portions of the Property owned by Developer and (b) amend from time to time and at any time Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property.

ARTICLE III

EASEMENTS

3.01 GRANT OF NON-EXCLUSIVE EASEMENTS TO COMMON AREAS.

(a) Subject to the rights of the Association to limit and prohibit access to and the use of the Recreational Facilities, if any, as provided in Sections 3.01(b) and 11.01 below, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other Owners, Occupants and other parties having any rights or interest therein. Subject to the rights of the Association to limit and prohibit access to and the use of the Common Areas and the Recreational Facilities, if any, as provided in Sections 3.01(b), and 11.01 below, the easement and rights granted pursuant to this Section 3.01(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

(b) Subject to the limitations, restrictions, terms and provisions set forth in this Section 3.01(b) and in Section 11.01 below, Developer does hereby grant to each Owner and the respective family members of each Owner the right and privilege to use and enjoy the Recreational Facilities in common with Developer, its successors and assigns, all other Owners and their respective family members and any other parties who have rights to use the Recreational Facilities, as determined by the Board from time to time. Notwithstanding anything provided herein to the contrary, access to and the use and enjoyment of the Recreational Facilities (i) shall be subject to any and all rules and regulations established from time to time by the Board pursuant to Section 4.07 below, (ii) shall be limited to the Owners, their spouses and their dependent children (as may be defined from time to time by the Board, in its sole discretion) and any other persons authorized by the Board from time to time to use the same and (iii) may be suspended or permanently revoked by the Board for any Owner or the respective family members of any Owner who (1) violates any of the rules and regulations applicable to the use and enjoyment of the Recreational Facilities or (2) fails to timely pay all Assessments due and payable by such Owner to the Association. The easement and rights granted pursuant to this Section 3.01(b) 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.

3.02 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 all of the private roadways within the Property for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.03 RESERVATION OF GENERAL ACCESS AND MAINTENANCE 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 (a) 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 Dwelling directly affected thereby and (b) mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

3.04 RESERVATION OF EASEMENTS WITH RESPECT TO COMMON AREAS.

(a) Subject to the rights of the Association to limit, restrict or prohibit access and use of the Recreational Facilities as provided in Sections 3.01(b) and 11.01 hereof, 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, Dwellings and Common Areas (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) Developer does hereby establish and reserve for itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas. Developer hereby establishes and reserves for itself and 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 all of the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.05 RESERVATION OF EASEMENT FOR UTILITIES. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property or any other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary 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 any other real property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.05 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.05 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, (ii) Developer shall use good faith efforts to attempt to

cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.05 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein and (iii) the establishment and reservation of easements pursuant to this Section 3.05 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.05.

3.06 RESERVATION OF EASEMENTS FOR SIGNS, WALKS, TRAILS, WALLS AND FENCES.

(a) Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling and any public or private roadway which is directly adjacent to and abuts such Lot or Dwelling 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.

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

3.07 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, through 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 and 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 Governmental Authorities, including, without limitation, any watershed, soil erosion, stormwater discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the ARC or the Association of the rights reserved in this Section 3.07 shall not unreasonably interfere with the use or occupancy of any Dwelling.

3.08 RESERVATION OF EASEMENT WITH RESPECT TO WATERFRONT LOTS. A thirty (30) foot natural, undisturbed buffer area, free from any Improvements of any nature shall remain and at all times be maintained on that portion of any Lot and Dwelling which abuts and is contiguous to any lakes or other water features within the Property. Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any portion of any Lot or Dwelling lying within thirty (30) feet of any lakes or other water features which abut or are contiguous to any such Lot or Dwelling for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash therefrom so as to maintain reasonable standards of health, fire, safety and appearance

within the Property; provided, however, that the reservation of the foregoing easements shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing action.

ARTICLE IV

ASSOCIATION

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

4.02 **BOARD.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the Turnover Date, the number of members of the Board shall increase to five (5) and the Owners shall have the exclusive right to appoint and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot or Dwelling, vests in Developer the authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

4.03 **VOTING RIGHTS.**

(a) Subject to the rights reserved by Developer in Section 4.03(c) below and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, following the Turnover Date, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matter 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. To the extent any matter is presented to the members of the

Association for a vote or approval at any time following the Turnover Date (or if, prior to the Turnover Date, a Special Assessment is contemplated pursuant to Section 8.04 below which requires the vote of the Owners), then the voting requirements specified in the Bylaws shall at all times govern. Only those Owners who hold legal title to a Lot or Dwelling shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.03, at all times prior to and after the Turnover Date, Developer shall be deemed the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

(b) Each Owner, by acceptance of a deed to a Lot or Dwelling, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.06 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.

(c) Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, until the occurrence of the Turnover Date, Developer shall have the sole and exclusive right to exercise all voting rights in the Association; provided, however, that with respect to any Special Assessments to be made pursuant to Section 8.04 hereof which would require the consent and approval of a specified percentage in interest of the Owners, then, except for voting rights held by Developer by virtue of its ownership of a Lot or Dwelling, Developer shall submit to the Owners for approval (in accordance with the voting requirements set forth in the Bylaws) any Special Assessments which would be made in accordance with the terms and provisions of Section 8.04 hereof.

4.04 **DUTIES AND POWERS OF ASSOCIATION.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, 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. The powers and authority granted herein and in the Articles of Incorporation and Bylaws of the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.05 **AGREEMENTS.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be Affiliates of 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 Common Areas, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association 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 reserved to the Board or the officers of the Association by this 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 cost 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 administration and operation of the Property and the Association, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

4.06 **MANAGEMENT BY DEVELOPER OR ITS AFFILIATES.** Developer or any Affiliates thereof may be employed as the manager of the Association and for the Property until the Turnover Date 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 Property.

4.07 **RULES AND REGULATIONS.** In addition to the terms and provisions set forth in this Declaration, the Board may establish and enforce rules and regulations governing the use, improvement, maintenance and repair of all Lots, Dwellings and Common Areas, including, specifically, the Recreational Facilities. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas by Owners and Occupants, including, specifically, rules and regulations which (a) allow persons other than Owners the right, subject to the payment of any applicable fees, to utilize the Recreational Facilities, if any, situated within the Common Areas, (b) restrict or limit the number of guests of any Owner utilizing the Recreational Facilities, (c) specify the hours and days on which any of the Recreational Facilities may be utilized or (d) prohibit the use of all or any portion of the Recreational Facilities by those Owners who have violated the rules and regulations of the Association or who have not paid all Assessments hereunder. In addition, the Board may adopt rules and regulations which establish bird sanctuaries, wildlife and wild flower areas within the Property and provide for the enforcement of the terms and provisions of this Declaration and establishing other rules and regulations limiting, restricting or prohibiting the application of fertilizers, pesticides and other chemicals within the Property. Such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the vote of the members of the Association entitled to vote thereon at any regular or special meeting of the Association or any ballot vote held in accordance with the terms and provisions of the Bylaws.

4.08 **INDEMNIFICATION.** The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding, including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall not be liable for any mistake in judgment, negligence or otherwise except for their own wilful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by 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 Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such

officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) harmless from and against 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 member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) may be entitled, including anything provided to the contrary 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 4.08 and the costs of such insurance shall constitute a Common Expense.

4.09 **TRANSFER FEES.** The Board may adopt and establish a transfer fee in an amount which is subject to change from time to time, as determined by the Board, in its sole discretion, which will be charged to each transferee or grantee of any Lot or Dwelling, which transfer fee shall be charged to partially defer the costs and expenses of the Association or its management agent in updating the Association's membership roll, providing entry stickers, decals or other devices for entry onto the Property and otherwise providing copies of the Articles, Bylaws and this Declaration to any such transferee or grantee. Notwithstanding the foregoing, no such transfer fee shall be payable with respect to the initial transfer or sale of any Lot or Dwelling by Developer to a third party purchaser.

ARTICLE V

ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

5.01 **COMMITTEE COMPOSITION.** For the purposes of this Declaration, the ARC shall be deemed a committee of the Association. The Board shall appoint not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below, to serve as agents of the Association on the ARC. The persons designated by the Board to serve, on behalf of the Association, on the ARC shall be agents and representatives of the Association may, but shall not be required to be, members of the Association or Owners of any Lot or Dwelling. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.02 below. Each member of the ARC shall be deemed an agent of the Association.

5.02 **APPOINTMENT AND REMOVAL OF ARC MEMBERS.** Subject to the terms and provisions of this Section 5.02, the Board shall have the sole and exclusive right to appoint and remove all persons who serve as agents and representatives of the Association on the ARC. Any person appointed as a member of the ARC may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC, then the Board shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigned member for the remainder of the term of such former member. Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, Developer may, in its sole and absolute discretion, elect to reserve the right following the Turnover Date to exercise all rights and functions of the ARC set forth herein with respect to any Lots owned by Developer as of the Turnover Date and any Additional Property which Developer may on its sole discretion, elect to add to this Declaration at any time after the Turnover Date.

5.03 **PROCEDURE AND MEETINGS.** The ARC shall elect a chairman and he or she, or in his or her absence, any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the total number of members of the ARC shall

constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses and shall be paid by the Association. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

5.04 **ARCHITECTURAL STANDARDS.** The ARC is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and any other Improvements on any Lot or Dwelling, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot or Dwelling 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 or Dwelling. 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.

5.05 **APPROVAL OF PLANS AND SPECIFICATIONS.**

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING OTHER THAN BY DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, PLAY EQUIPMENT, AWNINGS, WEATHER VANES, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT'S QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW.**

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which shall include the following:

(i) Three (3) copies of a professionally and accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling;

(ii) Three (3) copies of a foundation plan, floor plans, lighting plans (including specifically, any exterior lighting to be utilized with respect to such Lot or Dwelling) and exterior elevation drawings of the front, back and sides of the Dwelling or other Improvements to be constructed on the Lot;

(iii) Three (3) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwelling;

(iv) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below, together with the irrigation (underground sprinkler) plan for such Lot or Dwelling; and

(v) such other plans, specifications or other information or documentation as may be required by the ARC or the Architectural Standards.

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

specifications or any of the features or elements for the Improvements for any other Lot or Dwelling. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other two (2) copies shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within such Owner's Dwelling that do not affect the exterior appearance of such Dwelling without the necessity or requirement that the approval or consent of the ARC be obtained.

(d) The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot or Dwelling to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot or Dwelling and the compliance with all of the terms, conditions and provisions of this Declaration and interest, if any, earned on said deposit shall belong to and remain the property of the Association. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot or Dwelling and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her agents, employees or independent contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her agents, employees or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's builder, to execute a soil erosion indemnity in favor of the ARC, the Association and Developer.

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

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

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

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

5.07 **CONSTRUCTION WITHOUT APPROVAL.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.12 below.

5.08 **INSPECTION.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or Dwelling or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

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

5.10 **LIMITATION OF LIABILITY.** Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot or Dwelling, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (vi) any other loss, claim, damage, liability or expense, including court costs and

attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling or any Improvements situated thereon.

5.11 **COMMENCEMENT AND COMPLETION OF CONSTRUCTION.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction (unless an extension is granted in writing by the ARC), such completion to be evidenced by a final certificate of occupancy issued by the appropriate Governmental Authorities.

5.12 **ENFORCEMENT AND REMEDIES.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.12 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

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

5.14 **INDEMNIFICATION.** The Association shall and does hereby indemnify, defend and agree to hold each member of the ARC harmless from and against any and all costs and expenses, including court costs and reasonably attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding) to which such person may be made a party by reason of being or having been a member of the ARC. The members of the ARC shall not be liable for any mistake in judgment, negligence or otherwise except for their own wilful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the ARC shall be deemed agents of the Association and shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC and the Association shall and does hereby indemnify, agree to defend and hold each member of the ARC harmless from any and all liability to others on account of any such contract or commitment entered into by any member of the ARC in furtherance of their respective duties and responsibilities under this Declaration. The Association shall maintain adequate general liability and, to the extent financially feasible, directors' and officers' liability insurance (which shall also name the members of the ARC as

agents of the Association as additional insureds thereunder), in order to fulfill its obligations under this Section 5.14 and the costs of such insurance shall constitute a Common Expense.

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

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

6.02 **PLAN APPROVAL.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling or Improvements have been approved by the ARC in the manner set forth in Article V above.

6.03 **UNDERGROUND UTILITIES.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer (to the extent available), cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.04 **BUILDING SETBACKS.**

(a) Subject to the provisions of Section 6.05 below, minimum building setback lines for all Dwellings shall be established either (i) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development) or (ii) in the deed from Developer to the Owner of such Lot or Dwelling.

(b) No Dwelling shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above or Section 6.05 below. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.04.

6.05 **SITING OF DWELLINGS.** Prior to commencing any construction-related activities on any Lot or Dwelling (including any grading or clearing), the location of any Dwelling to be constructed thereon (or any alterations to the existing Dwelling situated thereon) shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.05(b) above. Notwithstanding anything provided in Section 6.04 above to the contrary, subject to the terms and provisions of this Section 6.05, the ARC may require building setback requirements different from those described in or established pursuant to Section 6.04, including building setbacks which are less than or greater than those specified in or established pursuant to Section 6.04 above.

6.06 **HEIGHT LIMITATIONS.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed two and one-half (2½) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

6.07 **MINIMUM LIVING SPACE.** Minimum Living Space requirements for all Dwellings shall be established either (a) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development for the Property) or (b) in the deed from Developer to the initial Owner of such Lot or Dwelling.

6.08 **LANDSCAPING AND TREES.**

(a) Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner (other than Developer) shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of six (6) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit (i) the cutting and removal of any dead or diseased trees, (ii) Developer from cutting or removing trees to the extent required to construct roads or Common Areas within the Property or installing underground utilities within the Property or (iii) Developer from exercising any of its easement rights pursuant to Article III above.

(b) Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his or her Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot. The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which must be utilized on any Lot or Dwelling, which rules and regulations may also prescribe that a minimum dollar amount be established and utilized as a landscaping budget for each Lot or Dwelling.

(c) All front and side yards of each Lot or Dwelling shall, unless otherwise approved by the ARC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass. All front and side yards of each Lot or Dwelling shall have underground irrigation (sprinkler) systems, which must be installed at the time the initial landscaping for such Lot or Dwelling is installed.

(d) All landscaping for a Lot or Dwelling shall be completed in accordance with the landscaping plan approved by the ARC no later than the date of occupancy of any Dwelling situated thereon.

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

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

or side yards of any Lot or Dwelling or which would be visible from any roadway within or adjacent to the Property.

(g) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling.

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

(i) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) may not be placed on any Lot or Dwelling more than 40 days prior to such holiday and shall be promptly removed from each Lot or Dwelling no later than 30 days following the date of such holiday.

6.09 **ROOFING.** The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling. No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling. All plumbing and heating vents, stacks and other projections of any nature on the roof shall (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, not be visible from any roadways within or adjacent to the Property. No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

6.10 **EXTERIOR LIGHTING.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting, accent lighting and utility (e.g., flood) lighting, must be approved by the ARC.

6.11 **EXTERIOR MATERIALS AND FINISHES.**

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

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

(c) The exterior of all chimneys shall be constructed of materials approved by the ARC. If a fireplace utilizes a metal spark arrester or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

6.12 OFF-STREET PARKING AND GARAGES.

(a) Each Dwelling shall provide for off-street parking for at least two (2) automobiles in enclosed garages (which must be equipped with garage doors). All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited; provided, however, that gravel and loose stone walkways at the rear of a Dwelling and which are not visible from any roadways within or adjacent to the Property shall be allowed if approved by the ARC. Garage doors shall be constructed of such materials as are approved by the ARC.

(b) Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC. Garage doors may open directly onto a street subject to the following requirements: (i) garage doors and driveways for each Dwelling shall be staggered so that the garage door and driveway for any Dwelling located directly across the street from such Dwelling shall not be located in the same location and (ii) front opening garage doors must be approved in writing by the ARC. All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in such garages to the extent that garage space is available and garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein.

(c) In no event shall any automobiles or other vehicles, machinery or equipment be parked or left unattended on or within (i) any areas of a Lot or Dwelling which are not paved driveways or enclosed garages, (ii) any Common Areas or (iii) any of the public roadways within the Property (unless parking on or within such roadways is required for guests or invitees or any Owner or Occupant due to full utilization of any off-street parking for such Lot or Dwelling and then, only to the extent that such vehicles do not remain parked on or within such roadways for more than 24 hours). Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Vehicles shall be parked only in driveways or in garages. Vehicles shall not be parked on any landscaped or natural areas of a Lot or Dwelling or within any of the Common Areas.

(d) No portion of any Lot or Dwelling may be utilized to provide access, ingress to or egress from any property outside the boundaries of the Property without the express prior written consent of the ARC, which consent may be withheld by the ARC in its sole and absolute discretion.

6.13 FENCES. No fences of any kind or material shall be permitted within the Property except as approved in writing by the ARC.

6.14 WINDOWS, WINDOW TREATMENTS AND DOORS.

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be constructed on any Dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

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

6.16 **UTILITY METERS AND HVAC EQUIPMENT.** All electrical, gas, telephone and cable television meters shall be located on each Lot so as not to be visible from any roadways within or adjacent to the Property. No window mounted heating or air conditioning units or window fans shall be permitted.

6.17 **SATELLITE DISHES AND ANTENNAE.** No satellite dishes shall be allowed on any Lot or Dwelling; provided, however, that one (1) satellite dish no more than two (2) feet in diameter may be installed on a Dwelling so long as (a) the same is not visible from any roadway within or adjacent to the Property and (b) the location of such satellite dish is approved by the ARC. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling unless the same is (i) contained entirely within the interior of a building or other structure, (ii) not visible from any roadway within or adjacent to the Property or any adjacent Lot or Dwelling and (iii) approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.

6.18 **DRIVEWAYS AND SIDEWALKS.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of concrete. Other materials (e.g., brick or asphalt) may be used but only if approved in writing by the ARC. All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited; provided, however, that sidewalks situated along the side or in the rear of any Dwelling which are not otherwise visible from any roadway within or adjacent to the Property need not be paved. To the extent any Owner or Occupant or any of their respective builders, contractors, subcontractors, agents, employees, guests or invitees damage or destroy any sidewalks, curbing or gutters within the Property which constitutes part of the Common Areas, then the Owner of such Lot or Dwelling shall promptly cause, at his, her or its sole cost and expense, such damaged sidewalk, curbing or gutters to be repaired and replaced in accordance with any and all requirements of the Association.

6.19 **SOIL EROSION AND DRAINAGE.** Each Owner shall provide and maintain on his or her Lot or Dwelling adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff resulting from any Improvements being or having been constructed on such Owner's Lot or Dwelling. Each Owner shall also insure that his or her Lot or Dwelling and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all stormwater drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any Governmental Authority. **Each Owner, by acceptance of a deed to his or her Lot or Dwelling, shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees, and any and all other amounts suffered, paid or incurred by Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding)**

to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 6.19.

6.20 OUTDOOR FURNITURE, RECREATIONAL FACILITIES AND CLOTHESLINES.

(a) Unless otherwise specifically approved by the ARC, any yard (exterior) furniture placed, kept, installed, maintained or located in or on any Lot or Dwelling shall, to the greatest extent practicable, be located so that the same will not be visible from any roadways within or adjacent to the Property. No interior furniture or furnishings (*i.e.*, sofas, appliances, etc.) shall be allowed outside any Dwelling.

(b) Wood piles, free-standing playhouses, treehouses, children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational or play equipment and appurtenances shall be located (i) so that the same are not visible from any roadways within or adjacent to the Property and (ii) in a location approved in writing by the ARC.

(c) Basketball backboards shall be located so as not to be visible from any roadways within or adjacent to the Property. Basketball goal backboards should be of clear Plexiglas or acrylic.

(d) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from any roadways within or adjacent to the Property and from any adjacent Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and shall not be visible from any roadways within or adjacent to the Property.

(f) Bird feeders, wood carvings, plaques and other types of home crafts shall not be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of home crafts shall be located only at the rear of a Dwelling and shall not be visible from any roadways within or adjacent to the Property.

(g) The location, color, type and size of any of the matters set forth in Sections 6.20(a) through 6.20(f) above, to the extent permitted by the provisions of Sections 6.20(a) through 6.20(f) above, must be approved by the ARC.

6.21 PETS AND ANIMALS. No animals, livestock, reptiles, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, Dwelling or other portion of the Property; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot or Dwelling so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas and spaces) shall be located only at the rear of a Dwelling, shall not be visible from any roadways within or adjacent to the Property and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of

any other Owner or within any street right-of-way or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any of the laws, statutes, ordinances, rules or regulations of the City of Hoover, Alabama with respect to any pets or other animals maintained by such Owner or Occupant on or within any Lot or Dwelling or within any portion of the Property, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the City of Hoover, Alabama and not the Association.

6.22 TRASH, RUBBISH AND NUISANCES.

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

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from all roadways within or adjacent to the Property and all adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers may be moved to the side or front yard of any Dwelling on trash collection days so long as such trash cans and containers are removed from the front and side yard promptly after trash has been collected.

(c) No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or Dwelling unless the same is undertaken in strict accordance with the laws, statutes, ordinances, rules and regulations of the City of Hoover, Alabama and all other Governmental Authorities. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any of the laws, statutes, ordinances, rules or regulations of the City of Hoover, Alabama with respect to the outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the City of Hoover, Alabama and not the Association.

6.23 RECREATIONAL VEHICLES AND MACHINERY AND EQUIPMENT.

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any type or nature, golf carts, boats and any other type of watercraft, including boat trailers,

and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ARC. Neither the Common Areas nor the roadways within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(b) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then, only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.

(c) The Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, motor homes, tractors, equipment, machinery, trailers (with or without wheels), trucks (other than pick-up trucks), vans (other than mini-vans used solely for passenger uses), commercial vehicles of any type, campers, motorized campers or trailers, boats or other water craft, boat trailers, motorcycles, motorized bicycles, golf carts, all-terrain vehicles, motorized go-carts and other forms of transportation. No motorcycles, motorized bicycles, all-terrain vehicles or motorized go-carts shall be allowed to be operated on any of the private streets within the Property in violation of any of the laws, statutes, ordinances, rules and regulations of the City of Hoover, Alabama or any other Governmental Authorities.

6.24 **SIGNAGE.** No signs or advertising posters of any kind (other than one (1) “for sale” or “for rent” sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC, in its sole and absolute discretion. Notwithstanding the foregoing, the restrictions set forth in this Section 6.24 shall not be applicable to any signs erected pursuant to Section 6.27(b) below.

6.25 **ABOVE OR BELOW GROUND TANKS AND WELLS.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or Dwelling or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwelling without the prior written consent of the ARC. To the extent available, each Lot and Dwelling shall utilize public sewage systems for the discharge of sewage from any Lot or Dwelling.

6.26 **TEMPORARY STRUCTURES.** No temporary house, trailer, shack, tent, barn, shed, storage shed, utility building, portable building, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) any detached garages or other structures which are approved in writing by the ARC, (b) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all roadways within or adjacent to the Property and all adjacent Lots and Dwellings, (c) temporary structures for social functions as may be permitted by the rules and regulations of the Board and (d) construction trailers and/or sales offices of Developer.

6.27 CONSTRUCTION OF IMPROVEMENTS.

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly. Used construction materials may be burned on-site only in accordance with the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any roadways within or adjacent to the Property.

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

(c) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas, (ii) utilize off-street parking only, (iii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling, and (iv) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.08 above, are to be preserved. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

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

6.28 SUBDIVISION AND INTERVAL OWNERSHIP. No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.28 shall not be applicable to the subdivision, resubdivision or combination of any Lots or other real property owned by Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.29 **SWIMMING POOLS AND TENNIS COURTS.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling but only to the extent that the ARC has approved the same in writing and the construction of the same satisfy all restrictions and requirements imposed by the ARC with respect thereto. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water facilities and amenities and tennis courts within the Property.

6.30 **WATERFRONT LOTS AND RECREATIONAL AREAS.**

(a) The Owner of each Lot or Dwelling which abuts or is contiguous to any lakes or other water features within the Property shall at all times maintain all such lakefront or waterfront areas of such Owner's Lot or Dwelling in a safe and attractive condition.

(b) Owners and Occupants of Lots or Dwellings adjacent to all waterfront areas within the Property, as well as their respective family members, guests, agents and invitees, shall refrain from any actions or activities which would interfere with the use of such lakes, waterfront areas and water features by other Owners and Occupants, as determined by the ARC, in its sole discretion. Such prohibited activities shall include, without limitation, burning materials where the smoke would interfere with the reasonable use and enjoyment of any such lakes and water features, maintenance of dogs or other pets which interfere with the use of such lakes or water features due to loud barking or odors, playing of loud radios, televisions, stereos, or musical instruments or allowing trash, rubbish, weeds or undergrowth to remain or grow on any Lot or Dwelling which is unsightly, as determined by the ARC, in its sole discretion.

(c) In addition to the easements and rights established and reserved by Developer pursuant to Article III hereof, Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual easement appurtenant over, across, through and upon a strip of land twenty (20) feet in width lying parallel to and running along the common boundaries of any Lots or Dwellings lying directly adjacent to and contiguous with any lakes or water features within the Property, which easement shall allow and be used for the flow and drainage of surface water accumulating in, upon or as a result of the construction and maintenance of any such lakes or water features on or within the Property and to otherwise allow for the rise and fall of the water level of such lakes or water features.

(d) The Recreational Facilities, if any, provided by the Association for the use and benefit of all Owners and Occupants and the use of any lakes or water features within the Property by any Owners or Occupants are provided without lifeguards or other supervisory personnel and neither the Association nor Developer will provide any such lifeguards or supervisory personnel in connection with the utilization of the Recreational Facilities, if any, or such lakes or water features by any Person.

(e) **The Owner of each Lot or Dwelling, for himself or herself and any Occupant of such Lot or Dwelling and their respective heirs, executors, personal representatives, administrators, successors and assigns, by acceptance of a deed to such Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot or Dwelling, for themselves and their respective successors and assigns, do hereby:**

(i) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association and each Governmental Authority and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of

action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of: (1) any loss, damage or injury to person or property, including death, as a result of any entry onto any lakes or water features, or the Recreational Facilities, if any, by any such Owner, Occupant, Mortgagee or any of their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns; and (2) the rise and fall of the water level of any lake or water feature, including, without limitation, the flow of water onto and out of such lakes or water features which could result in or cause damage, by flooding or otherwise, to any Improvements or any other personal property situated on any portion of such Lot or Dwelling, or which would result in or cause any Improvements situated on or adjacent to any such lakes or water features to be unusable due to low or high water levels; and

(ii) Acknowledge and agree that: (1) neither Developer, the ARC, the Association, any Governmental Authority nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about any such lakes or water features or the Recreational Facilities, if any; (2) the use of any such lakes or water features, and the Recreational Facilities, if any, by any such Owner or Occupant or any of their respective family members, guests, invitees or heirs, executors, personal representatives, administrators, successors and assigns, shall be at the sole risk and expense of the person or entity using such lakes or water features and Recreational Facilities, if any; (3) neither Developer, the Association, the ARC, any Governmental Authority nor any of their respective agents, employees, representatives, successors or assigns, shall be obligated to take any action to maintain a specific water level for any such lakes or water features on, within or adjacent to the Property; and (4) any lakes and water features on, within or adjacent to the Property and the Recreational Facilities, if any, as with any other body of water, pose a potential threat of life threatening harm and each Owner or Occupant and their respective family members, guests and invitees should exercise utmost care and safety precautions in and around any such lakes or water features, including specifically, the Recreational Facilities, if any.

6.31 COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the City of Hoover, Alabama and all other Governmental Authorities.

6.32 ADDITIONAL REGULATIONS. In addition to the restrictions set forth in this Declaration, the (a) ARC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling, and (b) Board shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interest of all Owners, which rules and regulations shall be binding on all Owners, Lots and Dwellings.

6.33 VARIANCES. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article V above and this Article VI. Any

variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC.

6.34 **ENFORCEMENT AND REMEDIES.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwellings, and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 6.34 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

7.01 **RESPONSIBILITIES OF OWNERS.**

(a) The maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or her Lot and Dwelling in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner or as may be required by the ARC. 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 and Dwelling shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.06(b) above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner thereof in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of the roadway abutting such Lot or Dwelling and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot or Dwelling 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, trash, refuse,

rubbish, debris, garbage and waste material shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Property. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot or Dwelling nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any Lot or Dwelling or the landscaping, grounds or other Improvements within a Lot or Dwelling unless such decoration, change or alteration is first approved, in writing, by the ARC.

7.02 RESPONSIBILITIES OF ASSOCIATION.

(a) Except as otherwise provided in this Declaration to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas. The Association shall not be liable for injuries or damages to any person or property (i) caused by the elements, acts of God or any Owner or other person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling or (iii) resulting from thief, burglary or other illegal entry onto the Property or any Lot or Dwelling. 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, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by either the negligence or willful act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have seven (7) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such seven (7) 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, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.07 below. If, and to the extent that, the Association undertakes any action pursuant to this Section 7.02(b) on behalf of any Owner then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

ARTICLE VIII

COMMON AREA ASSESSMENTS

8.01 ASSESSMENTS AND CREATION OF LIEN. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.07(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.07(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he or she is the Owner of a Lot or Dwelling and his or her grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.07(a) below, court costs and attorneys' fees incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall commence as to each Lot or Dwelling as provided in Section 8.06 below and be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Board. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

8.02 UNIFORM RATE OF ASSESSMENTS.

(a) Both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against each Lot or Dwelling at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as determined by a fraction, the numerator of which shall be the total number of Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings within the Property at the time such Annual Assessments or Special Assessments are levied.

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then the Lots and/or Dwellings within the

Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Property.

(c) Each Owner of a Lot or Dwelling, by acceptance of a deed to such Lot or Dwelling, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or any Lots or Dwellings are combined, subdivided or resubdivided by Developer pursuant to Section 2.06 above or (ii) any portion of the Property becomes Common Areas.

8.03 COMPUTATION OF ANNUAL ASSESSMENTS.

(a) The Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association and (ii) the amount of Annual Assessments which shall be payable by each Lot or Dwelling. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Property for the then applicable year and each Owner shall pay his or her prorata share of the same as provided in Section 8.02 above. As used herein, the term “Annual Assessments” with respect to each Lot or Dwelling shall mean the prorata portion of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of this Section 8.03. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

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

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

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

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such

other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors' and officers' liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association (including members of the ARC);

(v) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

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

(vii) The expenses of the ARC which are not paid in full by plan review charges;

(viii) The costs and expenses for conducting recreational, cultural or other related programs for the benefit of the Owners and Occupants;

(ix) 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

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

8.04 SPECIAL ASSESSMENTS. In addition to the Annual Assessments authorized in Section 8.03 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below) must be approved by a majority of the members of the Association voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 8.04 or Sections 9.01(b) and 9.03(a)(i) below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

8.05 INDIVIDUAL ASSESSMENTS. The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot or Dwelling: (a) fines against an Owner and such Owner's Lot or Dwelling in accordance with the terms and provisions of Sections 4.07 or 11.01 hereof, (b) any costs or expenses, including, without limitation, collection costs, attorneys' fees, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors, to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association pursuant to Sections 5.12, 6.34, 7.02(b), 8.07, 11.01, 11.02 or 11.03 hereof and (c) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board. The Individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner.

8.06 DATE OF COMMENCEMENT OF ASSESSMENTS. Assessments shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board, subject to proration for the remainder of the then calendar year in which such Lot or Dwelling was conveyed to a person other than Developer or any Affiliate thereof. Assessments for Lots and Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such Additional Property was added to the terms of this Declaration. Notwithstanding anything provided herein to the contrary, Developer shall have the option, in its sole discretion, to either pay Annual Assessments on Lots or Dwellings owned by Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual cost incurred by the Association for Common Expenses in any particular year. At such time as Developer no longer has any interest in any Lot or Dwelling, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

8.07 EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION.

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association, all Assessments provided for herein. The Association shall provide written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of such Lot or Dwelling shall be deemed in default hereunder and (ii) a late fee in the amount of \$25.00 (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot or Dwelling. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner

agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late fee charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days following the due date for the payment of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

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

(ii) The Association may enforce the lien created pursuant to Sections 8.01 and 8.07(c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late fees or charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office in the county in which such Lot or Dwelling is located:

(i) The name of the delinquent Owner;

(ii) The legal description and street address, if any, of the Lot or Dwelling upon which the lien claim is made;

(iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

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

The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall

have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

(d) In addition to the other rights and remedies provided herein, in the event any Owner fails to pay any Assessments within thirty days from the statement billing date for such Assessments, then the Association shall have the right to suspend the privileges of such Owner, his or her Occupants, family members, guests and invitees from using any of the Recreational Facilities, if any.

8.08 SUBORDINATION OF LIEN. Notwithstanding anything provided herein to the contrary, the lien for Assessments and 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 prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments 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 prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and 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 Mortgagee on such Owner's Lot or Dwelling.

8.09 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

9.01 DAMAGE OR DESTRUCTION TO COMMON AREAS.

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

(b) Notwithstanding anything to the contrary provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is

insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner equally as provided in Section 8.02 above. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 **DAMAGE OR DESTRUCTION TO LOTS OR DWELLINGS.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

9.03 **CONDEMNATION OF COMMON AREAS.**

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (1) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (2) levied against each Owner equally as provided in Section 8.02 above; and

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

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

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

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

9.05 **INSURANCE.**

(a) The Board shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Board may from time to time deem appropriate for the benefit of the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Board in its sole and absolute discretion.

(b) 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 or her Lot, Dwelling and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot or Dwelling, does hereby waive and release the Association, the ARC, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims 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 has been caused by the fault or negligence of the Association, the ARC, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

ARTICLE X

TERM AND AMENDMENTS

10.01 **TERM**. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) 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 ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least seventy-five percent (75%) of all Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 **AMENDMENTS PRIOR TO TURNOVER DATE**. Until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee; provided, however, that in the event any amendment proposed by Developer (other than an amendment to add Additional Property to this Declaration) materially and adversely alters or changes the rights of any Owner to the use of his or her Lot or Dwelling, as determined solely by Developer, in its reasonable discretion, then such amendment shall be valid only upon the written consent or ballot vote of both (a) Developer and (b) fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Notwithstanding anything provided to the contrary in this Section 10.02, each Owner, by acceptance of a deed to any Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot or Dwelling, acknowledges and agrees that the addition of any Additional Property to this Declaration pursuant to Section 2.02 above and the amendment of this Declaration to add Additional Property to the terms and provisions hereof (i) shall not and does not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of his or her Lot or Dwelling and (ii) shall not require the consent or approval of any Owner or Mortgagee. Any amendment made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed 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 10.02. Except as specifically provided in Section 10.04 below and in this Section 10.02 (with respect to any amendments proposed by Developer which materially and adversely alter or change the rights of any Owner to the use of his or her Lot or Dwelling), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

10.03 **AMENDMENTS AFTER TURNOVER DATE**. After the occurrence of the Turnover Date, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative,

the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

10.04 **RESTRICTIONS ON AMENDMENT.** Notwithstanding anything provided in this Declaration to the contrary, none of the provisions of Articles II and III hereof may be amended or modified without the prior written consent of Developer.

ARTICLE XI

DENIAL OF USE PRIVILEGES

11.01 **AUTHORITY AND ENFORCEMENT.** In addition to the other 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 from time to time, then the Board shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment, (b) suspend an Owner's right, if any, to vote in the Association, and (c) suspend or terminate an Owner's or Occupant's privilege (and the privilege of such Owner's or Occupant's family members, guests and tenants) to use all or any of the Recreational Facilities, if any. Any action to be taken by the Board pursuant to this Section 11.01 shall be subject to the satisfaction of the terms and provisions of Section 11.02 below.

11.02 **PROCEDURE.**

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend or terminate any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Section 11.02(b) below and providing such Owner the opportunity to appear before and be heard by the Board.

(b) Any notices required by Section 11.02(a) above shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation;

(iii) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions; and

(iv) The date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear before the Board and be heard.

(c) The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

11.03 **NON-EXCLUSIVE REMEDIES.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.01 **CONTROL BY DEVELOPER.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT THE OWNERS ARE ENTITLED TO VOTE ON (i) SPECIAL ASSESSMENTS PURSUANT TO SECTION 8.04 ABOVE AND (ii) OTHER MATTERS AS PROVIDED IN SECTION 10.02 ABOVE).

12.02 **LEGAL EXPENSES.** In addition to all of the other rights and remedies set forth in this Declaration, in the event either Developer, the Board, the Association, the ARC or any of their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any 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 Association and its agents and representatives, including the ARC, and the Board 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 violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure any such violation or breach by any Owner.

12.03 **SEVERABILITY.** If any provision of this Declaration or the application thereof to any person or circumstance 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 hereof shall be valid and enforceable to the fullest extent permitted by law.

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

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

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

12.07 **CONFLICT OR AMBIGUITY.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, any laws, regulations or ordinances of The City of Hoover, 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, any laws, regulations or ordinances of The City of Hoover, 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.

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

12.09 **INTERPRETATION.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of 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 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 Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

12.11 **NO TRESPASS.** Whenever the Association, Developer, 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 or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

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

12.13 **STANDARDS FOR REVIEW.** Whenever in this Declaration 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 the ARC or the Association, as the case may be.

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

12.15 **NOTICES.** Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot or Dwelling of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot or Dwelling shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Lot or Dwelling of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Association that all notices be submitted to such Owner by facsimile transmission or through the Internet utilizing a specific electronic mailbox for that particular Owner. All notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Association (or if no address has been furnished, then to the Lot or Dwelling of such Owner), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the Dwelling, if any, situated on an Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of such Lot or Dwelling, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such facsimile notice or (d) sent by Internet to an electronic mailbox address provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Association. All notices to the Association (or to the ARC) shall be delivered or sent to the following address:

Arbor Hills Homeowners' Association, Inc.
2236 Cahaba Valley Drive
Suite 100
Birmingham, Alabama 35242

or to such other address as the Association (or ARC) may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other address as Developer may notify the Association.

12.16 **ASSIGNMENT.** Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. 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 to constitute 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 has transferred to any such third party.

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, conformatory or

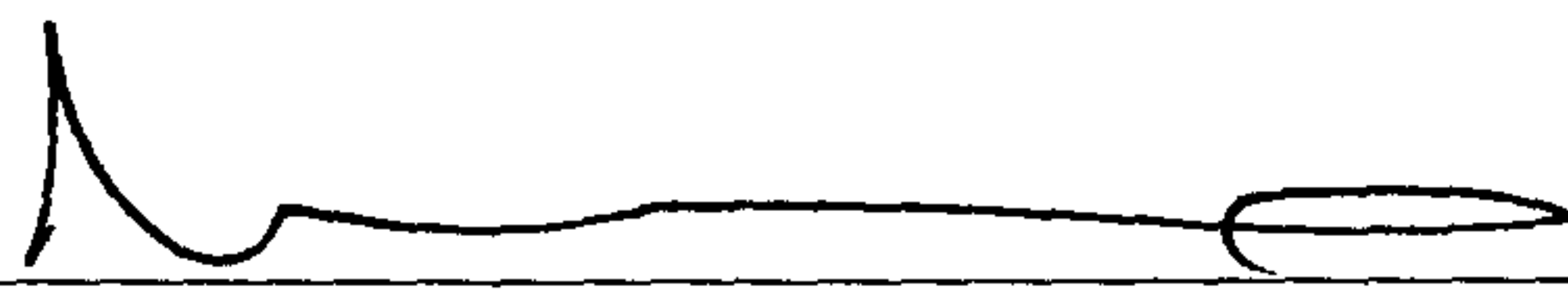
otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

12.18 **NO WAIVER.** All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising 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 by Developer, the ARC or the Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

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

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

ARBOR HILLS, LLC, an Alabama limited liability company

By: 
Its: MANAGING MEMBER

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that ALAN C. HOWARD whose name as Manager of Arbor Hills, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of such limited liability company.

Given under my hand and official seal this the 2nd day of September, 2003.


Notary Public

My Commission Expires: 05-08-07

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land situated in the NW 1/4 of the NW 1/4 of Section 25, and the NE 1/4 of Section 26, all in Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of Section 25, Township 19 South, Range 3 West; thence in an Easterly direction along the North line of said section a distance of 443.58 feet to a point on the Southwesterly Right-of-Way line of Old Montgomery Highway; thence $61^{\circ}03'15''$ to the right in a Southeasterly direction along said right-of-way line a distance of 671.75 feet to the POINT OF BEGINNING; thence $90^{\circ}00'$ to the right in a Southwesterly direction (leaving said right-of-way line) a distance of 78.30 feet to the P.C. (Point of Curve) of a curve to the left having a radius of 750.00 feet and a central angle of $21^{\circ}03'11''$; thence in a Southwesterly direction along the arc of said curve a distance of 275.58 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 83.54 feet to a point; thence $90^{\circ}00'$ to the right in a Northwesterly direction a distance of 133.58 feet to a point; thence $86^{\circ}19'06''$ to the left in a Southwesterly direction a distance of 42.41 feet to a point; thence $9^{\circ}56'24''$ to the left in a Southwesterly direction a distance of 129.97 feet to a point; thence $25^{\circ}30'35''$ to the right in a Southwesterly direction a distance of 151.42 feet to a point; thence $21^{\circ}32'21''$ to the right in a Westerly direction a distance of 34.15 feet to a point; thence $64^{\circ}19'39''$ to the right in a Northwesterly direction a distance of 339.46 feet to a point; thence $90^{\circ}00'$ to the left in a Southwesterly direction a distance of 182.89 feet to a point; thence $90^{\circ}00'$ to the left in a Southeasterly direction a distance of 27.88 feet to the P.C. (Point of Curve) of a curve to the right having a radius of 25.00 feet and a central angle of $90^{\circ}00'00''$; thence in a Southeasterly, Southerly and Southwesterly direction along the arc of said curve a distance of 39.27 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 90.00 feet to a point; thence $90^{\circ}00'$ to the left in a Southeasterly direction a distance of 174.00 feet to a point; thence $90^{\circ}00'$ to the right in a Southwesterly direction a distance of 180.00 feet to a point; thence $11^{\circ}52'49''$ to the left in a Southwesterly direction a distance of 111.61 feet to a point; thence $40^{\circ}33'32''$ to the left in a Southerly direction a distance of 68.81 feet to a point; thence $13^{\circ}19'53''$ to the left in a Southeasterly direction a distance of 100.44 feet to a point; thence $13^{\circ}04'37''$ to the left in a Southeasterly direction a distance of 140.23 feet to a point; thence $80^{\circ}55'55''$ to the left in a Northeasterly direction a distance of 54.85 feet to a point; thence $6^{\circ}53'37''$ to the left in a Northeasterly direction a distance of 45.23 feet to a point; thence $7^{\circ}42'21''$ to the left in a Northeasterly direction a distance of 49.36 feet to a point; thence $4^{\circ}47'44''$ to the left in a Northeasterly direction a distance of 226.95 to a point at the Southwest corner of a parcel for a pumping station, said point also being on the East line of Lot 53, Chase Plantation 4th Sector, as recorded in Map Book 9, Page 156 A and B in the office of the Judge of Probate of Shelby County, Alabama; thence $55^{\circ}51'44''$ to the left in a Northerly direction along the common line between said pumping station parcel and said Lot 53 a distance of 50.08 feet to a point on the South line of the NE 1/4 of the NE 1/4 of Section 26, Township 19 South, Range 3 West; thence $90^{\circ}02'47''$ to the right in an Easterly direction along the South line of said 1/4-1/4 section and the North line of the Resurvey of Lots 1, 2, 3, 4, 5, 6, 7 & 8 Chase plantation 3rd Sector, as recorded

in Map Book 9, page 62 in the office of the Judge of Probate of Shelby County, Alabama a distance of 83.99 feet to the Southeast corner of said 1/4-1/4 section; thence $0^{\circ}14'20''$ to the left in an Easterly direction along the South line of the NW 1/4 of the NW 1/4 of Section 25, Township 19 South, Range 3 West and the North line of the Resurvey of Lots 1, 2, 3, 4, 5, 6, 7 & 8 Chase Plantation 3rd Sector, the North line of Chase Plantation 3rd Sector, as recorded in Map Book 9, page 47 A and B in the office of the Judge of Probate of Shelby County, Alabama, the North line of A Resurvey of Lots 15, 16, 17, 18, 19 & 20 Chase Plantation 3rd Sector, as recorded in Map Book 9, Page 118 in the office of the Judge of Probate of Shelby County, Alabama, the North line of a Resurvey of Lots 14, 15, 16, & 17 Amended Map of Chase Plantation, as recorded in Map Book 8, Page 92 in the office of the Judge of Probate of Shelby County, Alabama, the North line of a Resurvey of Lots 18, 19, 20, 21, 22, 23 and 24 Amended Map of Chase Plantation, as recorded in Map Book 8, Page 111 in the office of the Judge of Probate of Shelby County, Alabama and the North line of a Resurvey of Lots 25, 26, 27, 28, 29, 30, 31 and 32 Amended Map of Chase Plantation, as recorded in Map Book 8, Page 117 in the office of the Judge of Probate of Shelby County, Alabama a distance of 1177.15 feet to a point on the Southwesterly Right-of-Way line of Old Montgomery Highway, said point being on a curve to the right having a radius of 368.32 feet and a central angle of $16^{\circ}44'49''$; thence $135^{\circ}34'57''$ to the left (Angle Measured to Tangent) in a Northwesterly direction along the arc of said curve and along said right-of-way line a distance of 107.66 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Northwesterly direction along said right-of-way line a distance of 743.62 feet to the Point of Beginning.

Containing 782,900 square feet or 17.973 acres.

File: ARBOR-HILLS-PH-I-BDY.doc