

STATE OF ALABAMA     )

COUNTY OF SHELBY     )

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**DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS  
AND RESTRICTIONS**

**FOR**

**CROSSCREEK COVE**  
a Residential Subdivision

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This Instrument Prepared By:  
Peter E. Barber, Esq.  
Wallace, Jordan, Ratliff & Brandt, L.L.C.  
Post Office Box 530910  
Birmingham, Alabama 35253

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THIS DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS, AND RESTRICTIONS (the "Declaration") is made effective as of the 16<sup>th</sup> day of December, 2003, by **GIBSON & ANDERSON CONSTRUCTION, INC.**, an Alabama corporation (together with its successors and assigns, referred to herein as the "Developer"). Developer owns all of that certain real property described on Exhibit A hereto said Exhibit A being hereby incorporated by reference (the "Property"). Developer declares that the Property is and shall be divided, developed, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens, delegations of rights, powers-of-attorney and duties hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants"). **ALIENT BANK**, an Alabama state banking corporation, is mortgagee of the Property on the date of the filing of this Declaration and indicates its consent to the filing of this Declaration by executing the Consent attached hereto.

Pursuant to the Declaration, the Developer grants certain rights and obligations to **CROSSCREEK COVE HOMEOWNERS' ASSOCIATION, INC.**, an Alabama non-profit corporation (the "Association"). The Association executes this Declaration to accept such rights and obligations and to consent and agree to the filing of this Declaration on and against the Common Areas and the Property (each as hereinafter defined).

In accordance with Article 10.18, the Developer may in the future sell the Property to another developer or developers and may grant to such developer or developers its rights and duties under this Declaration, including without limitation the right to control the Association until such time as such subsequent developer or developers no longer owns any Lot.

W I T N E S S E T H:

**WHEREAS**, Developer acquired the Property and is developing said Property into a residential subdivision with single family Lots and Common Areas as part of a planned community of garden homes and townhomes to be known as **CROSSCREEK COVE**, the purpose of which is to be used as primary residences by the Owners and their families;



**WHEREAS**, Developer desires to establish and enforce uniform standards of development and to provide for the effective preservation of the appearance and value of the Property, which will be of benefit to all Owners of any portion of the Property and desires to subject said Property to the easements, protective covenants and restrictions contained herein, all of which are for the benefit of the said Property and each Owner of any portion thereof;

**WHEREAS**, Developer desires to establish certain protective and restrictive covenants providing for the maintenance and repair of the Common Areas and for the regulation of the use of such Common Areas and desires to subject the Property, together with such additions thereto as may hereafter be made, to the easements, restrictions and covenants of this Declaration, all of which are for the benefit of said Property and each Owner of any portion thereof; and

**WHEREAS**, the Association has been created and the Developer herein delegates to the Association the responsibility for the management and regulation of the Common Areas of the Property and assigns to the Association the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Development and assigns to the Association the power to levy Assessments against the Owners of Lots within the Development to enable the Association to perform such obligations; provided, however, the Developer shall retain such rights for itself to be exercised concurrently with the Association, until such time as the Developer no longer owns any Lots or until such time as it voluntarily relinquishes such rights.

**NOW, THEREFORE**, Developer does hereby declare that the Property shall be held, developed, improved, transferred, sold, conveyed, occupied and used subject to the following covenants, restrictions, easements, charges, liens, delegations of rights, powers-of-attorney, duties 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.

## **ARTICLE I** **DEFINITIONS**

**1.1 Architectural Review Board.** The term "Architectural Review Board" shall mean a board consisting of three (3) people who shall be appointed and serve in accordance with Article V hereof.

**1.2 Assessment.** The term "Assessment" shall mean the monetary charges to be assessed against the Owners of Lots pursuant to the authority vested in the Association and such term shall include Common Area Assessments and individual assessments where no distinction is required. The Assessment shall be allocated among Lot Owners as provided in Article VII of this Declaration.

**1.3 Association.** The term "Association" shall mean **Crosscreek Cove Homeowners' Association, Inc.**, an Alabama non-profit corporation.



**1.4 Common Areas.** The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned or otherwise acquired by lease, easement or otherwise, by the Developer or the Association for the common use and enjoyment of the Owners, whether located within the Property, adjacent to the Property or in close proximity to the Property. The Common Areas shall include, without limitation, common area improvements such as recreational areas, signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, landscaping, all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances, including without limitation, any areas labeled as "Common Areas" or "Common Easements" on that certain plat recorded in Map Book 32, Page 72 of the records of the Probate Court of Shelby County, Alabama, and any areas labeled as "Common Areas" or "Common Easements" on subsequent subdivision maps or plats recorded by Developer for any portion of the Property. "Common Areas" shall also include, without limitation the surface water drainage ditch which is labeled as an "Easement" and runs along and through portions of Lots 17, 18, 27 and 28 according to the subdivision of Crosscreek Cove as recorded in Map Book 32, Page 72 in the Probate records of Shelby County, Alabama and along and through portions of Property described in Exhibit A, item 2, which portions are proposed to be Lots 3, 4, 5, 6, 7, 8, 27 and 28 of a subdivision map for Crosscreek Cove that is to be filed after the recording of this Declaration.

**1.5 Common Area Assessment.** The Common Area Assessment shall mean and refer to any and all Assessments imposed by the Association to pay expenses related to the Common Areas in accordance with the provisions of Article VII of this Declaration. The Assessment shall be divided as provided in Article VII of this Declaration.

**1.6 Declaration.** The term "Declaration" shall mean and refer to this **Declaration of Easements, Protective Covenants and Restrictions for Crosscreek Cove**, a Residential Subdivision, and all amendments hereto.

**1.7 Development.** The term "Development" shall mean and refer to the Property and Common Areas outside the Property and all Improvements thereon submitted to the provisions of this Declaration as a Lot or Common Area together with Improvements thereon, including any property subjected to the restrictions of this Declaration after the date hereof by amendment to this Declaration.

**1.8 Dwelling.** The term "Dwelling" shall mean and refer to any improvement intended for use as a single family detached residential housing unit, or housing unit attached to other housing units as a part of a group of townhomes.

**1.9 Improvement.** The term "Improvement" shall mean and refer to any building, structure, fixture, or device constructed, erected or placed upon any Lot or Common Area which in any way affects the appearance of any Lot, Dwelling, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, overhead and underground utilities, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot. "Improvements" shall also mean any grading, any



excavation or fill, the volume of which exceeds eight (8) cubic yards.

**1.10 Lot.** The term "Lot" shall mean and refer to any portion of the Property (including any real property hereafter subjected to this Declaration by amendment) upon which a Dwelling has been constructed or upon which it is intended by the Developer or Lot Owner that a Dwelling be constructed thereon. No Dwelling can be constructed on that portion of the Property described on Exhibit B hereto and, therefore, neither such portion of the Property, nor the owner of such portion of the Property shall be subject to any annual or special Assessment hereunder.

**1.11 Member.** The term "Member" shall mean a natural person having membership rights in the Association by virtue of ownership of a Lot.

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

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

**1.14 Occupant.** The term "Occupant" shall mean and include any Owner (including any member of their respective Immediate Families) and tenants, guests, agents, servants, employees or invitees of any Owner and any other person who occupies or uses any Lot within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot.

**1.15 Officers.** The term "Officers" shall mean and refer to the Officers of the Association and their duly elected successors as may be provided in the Articles of Incorporation and the Association Bylaws.

**1.16 Owner.** The term "Owner" shall mean and refer to the record Owner of fee simple title to any Lot, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage or accepted a deed in lieu of foreclosure, or (ii) any purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

**1.17 Property.** The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described on Exhibit A, and shall also hereafter include any real property subjected to the restrictions of the Declaration by the Developer after the date hereof by amendment to this Declaration.

**1.18 Super-Majority.** Two-thirds (2/3) of the total number of votes of the Members of the Association.

**1.19 Transfer.** The term "Transfer" means any conveyance or transfer, whatsoever,



absolute or for security, whether by deed, bill of sale, mortgage, pledge, assignment, will or intestacy, and whether or not for any consideration or by gift, and shall be deemed to include any transaction whereby the Owner contributes all or any portion of a Lot, or the Owner's beneficial interest therein, to a partnership, corporation, limited liability company, trust, or other entity, in exchange for an interest in such entity; and the verb "Transfer" means any action taken to accomplish any Transfer.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THE DECLARATION**

**2.1 General Declaration.** Developer hereby declares that the Property is and shall be subject to the covenants, restrictions, easements, charges, liens, delegations of rights, powers-of-attorney, duties and regulations hereinafter set forth in this Declaration and the Property, any part thereof and each Lot, Dwelling, and all Common Areas included therein shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which covenants, restrictions, easements, charges, liens, delegations of rights, powers-of-attorney, duties and regulations shall run with the title to the Property, or any portion thereof including without limitation any Lot, and shall be binding upon and inure to the benefit of the Developer (until such time as it no longer owns any Lot), the Association and upon all Owners and Occupants of the Property and any Lot and Common Area thereof. This Declaration shall not apply to any other property owned by Developer unless the same is subjected to this Declaration specifically by written instrument.

**2.2 Right of Super-Majority to Modify Restrictions with Respect to Lots.** With respect to any Lot or Common Areas a Super-Majority of the Members may, by deed, contract or other instrument filed for record, modify or amend the provisions of this Declaration as the same apply to any Lot or Common Areas; provided, however, that this Declaration may not be modified or amended to exempt any Lot from the payment of the Assessments and further provided that, until such time as the Developer no longer owns any Lot, this Declaration may not be amended without the written consent of the Developer upon any deed, contract or other instrument filed for record.

**2.3 Right of Developer to Modify Restrictions with Respect to Lots.** Until such time as the Developer no longer owns any Lot, the provisions of this Declaration with respect to any Lot or the Common Areas, may be modified by the Developer, without the consent of the Association or any other Lot Owner, by deed, contract or other instrument filed for record.

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



### **ARTICLE III**

#### **EASEMENTS**

**3.1 Reservation of Easement for Utilities.** Developer does hereby establish and reserve for the Developer, the Association and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, natural gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, basins, dams, spillways and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. 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. The rights herein reserved by the Developer and the Association shall include, without limitation, the right to grant easements to the providers of utilities for the purposes herein established, and each of the Owners hereby appoint Developer or the Association (provided the Association may not act without the Developer's consent until such time as the Developer no longer owns any Lots), as the case may be, irrevocably, as their attorney in fact, for the purpose of executing such documents as may be necessary and appropriate in connection with the granting of such easements. Notwithstanding anything provided in this Section 3.1 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.1 shall not unreasonably interfere with the use or occupancy of any Lot, and (ii) 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 3.1 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 shall be used.

**3.2 Reservation of Easements.** In addition to any easements shown on the recorded plat for the Development, easements in favor of the utility companies and for private drainage are reserved within five (5) feet of each side of all interior Lot lines.

### **ARTICLE IV**

#### **THE ASSOCIATION**

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



**4.2 Membership.** The Members of the Association shall consist of all of the Owners of record of any Lot in the Property. Changes of membership in the Association shall be established by the recording in the public records of Shelby County, Alabama, of a deed or other instrument establishing a record title to a Lot, and delivery to the Association of a certified copy of the instrument. The new Lot Owner designated by such instrument shall thereupon become a Member of the Association, and the membership of the prior Lot Owner shall thereby be terminated. The share of a Member in the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to such Member's Lot.

**4.3 Responsibilities of the Association.** Except as may be otherwise provided herein to the contrary, the Association shall maintain and keep in good repair and condition all portions of the Common Areas, which responsibility shall include, without limitation, the maintenance, repair and replacement of any improvements made by the Association within any of the Common Areas or within any of the easements encumbering the Lots. Such responsibilities shall specifically include, without limitation the maintenance obligations listed below with respect to the surface water drainage ditch which is labeled as an "Easement" and runs along and through portions of Lots 17, 18, 27 and 28 according to the subdivision of Crosscreek Cove as recorded in Map Book 32, Page 72 in the Probate records of Shelby County, Alabama and along and through portions of Property described in Exhibit A, item 2, which portions are proposed to be Lots 3, 4, 5, 6, 7, 8, 27 and 28 of a subdivision map for Crosscreek Cove that is to be filed after the recording of this Declaration:

(a) The surface water drainage ditch, which extends through the Property, shall be maintained in good condition by and at the expense of the Association. Said maintenance by Association shall include keeping the surface water drainage ditch clear of fallen trees, growth of vegetation, debris, or other materials which might impede the flow of surface waters or cause the surface water drainage ditch to fail to function appropriately.

(b) The surface water drainage shall be deemed a part of the Common Area and the expense for the maintenance of the surface water drainage ditch, as described in the preceding paragraph, shall be assessed by the Association against the owners of Lots within the Property, as Common Area Assessments.

(c) Every purchaser of a Lot within the Property shall, by acceptance of the deed of conveyance, be deemed to have acknowledged the obligation of the Association with respect to the maintenance of the surface water drainage ditch and the assessment and collection from the Owners of Lots within the Property of the expenses incurred in connection therewith. These provisions with respect to the maintenance of the surface water drainage ditch shall be binding upon the owners of all Lots within the Property and their respective heirs, successors and assigns, and shall bind and run with the Property forever.

The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner, Occupant or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property whether



caused by rain or other surface water which may leak or flow from any portion of any Common Area onto a Lot or Dwelling or any other cause, or (3) resulting from theft, burglary or other illegal entry into the Development, any Lot or Dwelling therein. No diminution or abatement of Common Area 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.

## **ARTICLE V**

### **ARCHITECTURAL STANDARDS**

**5.1 Architectural Review Board and Developer.** For the purpose of further ensuring the development of the Lots as an area of high quality residential construction and an aesthetically pleasant development, the Developer hereby reserves unto itself until such time as the Developer no longer owns any Lots, the power to control, review and approve of the construction, materials and design of each Dwelling, building, structure, and other Improvement placed on each Lot, as well as to make such exceptions to the reservations, restrictions and covenants contained herein as the Developer shall deem necessary, appropriate, or proper. The Developer further grants unto an Architectural Review Board, which shall consist of three (3) people, the power to control, review and approve of the construction, materials and design of the Dwelling, buildings, structures, and other improvements placed on each Lot, as well as to make such exceptions to the reservations, restrictions and covenants contained herein as the Developer and the Architectural Review Board shall deem necessary, appropriate, or proper. The Developer shall have the right to appoint the members of the Architectural Review Board until such time as the Developer no longer owns any Lots or until such time as the Developer delegates the right to appoint the members of the Architectural Review Board to the Association; thereafter, the members of the Architectural Review Board shall be elected and appointed by the Members of the Association. Until such time as the Developer no longer owns any Lots, the power to control, review and approve of the construction, materials and design of the Dwelling, buildings, structures, and other improvements on each Lot shall be concurrently and jointly vested in the Developer and the Architectural Review Board, and shall require the unanimous consent of the Developer and the Architectural Review Board. At such time as the Developer no longer owns any Lots, such powers and responsibilities shall be vested solely in the Architectural Review Board.

**5.2 Approval Required.** Whether or not specifically stated in any instrument of conveyance for a Lot made by the Developer, the Owner or occupant of each and every Lot, by acceptance of title or by taking possession thereof, covenants and agrees that no Dwelling, building, wall or other Improvement or structure shall be placed upon a Lot unless and until the plans and specifications therefor and plot plan have been approved in writing by the Architectural Review Board and, so long as the Developer owns any Lots, the Developer. Each Dwelling, building, wall, Improvement or other structure shall be placed on a Lot only in accordance with the approved plans and specifications and the approved plot plan. Refusal to approve plans and specifications by the



Developer and the Architectural Review Board may be based on any ground, including purely aesthetic grounds which, in the sole and uncontrolled discretion of the Developer and the Architectural Review Board, shall seem sufficient. No alteration in the exterior appearance of the Dwelling, buildings, Improvements or other structures shall be made without like approval.

### **5.3 Approval of Plans and Specifications.**

(a) Prior to the commencement of construction of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the Architectural Review Board and, until such time as the Developer no longer owns any Lots, the Developer, duplicate copies of the plans and specifications and related data for all such Improvements, which shall include the following:

(i) A copy of an 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. All eaves, steps, porches, terraces, septic systems decks and patios shall be deemed a part of the Dwelling for purposes of locating the Dwelling on the site development plan. The site plan shall reflect the location of the proposed Improvement as such location relates to the boundaries of the Lot.

(ii) A copy of floor plans and exterior elevation drawings of the front of the Dwelling to be constructed on the Lot.

(iii) A copy of written specifications and, if requested by the Officers, 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.

(b) One copy of the plans and specifications submitted in accordance with 5.3(a) above shall be returned to the Owner submitting the same marked "approved," "approved as noted" or "disapproved" by both the Developer, if it owns any Lots at the time of submission, and the Architectural Review Board. The other copy shall be retained by the Developer, or if it no longer owns any Lots, the Association.

(c) In any case in which the Architectural Review Board shall disapprove any plans and specifications or shall approve same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. In any such event, the Architectural Review Board shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval. Upon approval by the Architectural Review Board of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Review Board.

(d) If the Architectural Review Board fails either to approve or disapprove such plans and



specifications within thirty (30) business days after the same have been submitted in writing to it, or fails to include in any disapproval the statement required in subparagraph (c) above, by written notice to the applicant, it shall be conclusively presumed that the Architectural Review Board has approved said plans and specifications, subject, however, to the covenant contained herein.

**5.4 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither the Developer, the Architectural Review Board, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director of any of them, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any 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) and any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or Dwelling or any Improvements situated thereon.

## **ARTICLE VI**

### **USE AND DEVELOPMENT RESTRICTIONS**

**6.1 General.** Except as otherwise provided to the contrary herein, each Lot shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot. Notwithstanding the foregoing, it is expressly understood that home offices are allowed so long as such home offices do not create extraordinary traffic of business invitees of the Owner of a Lot along any Common Road or public road.

**6.2 Fences.** The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the Architectural Review Board, subject to the requirement that all fences are to be constructed of natural wood and not painted or stained. No chain link, barbed wire, razor wire, chicken wire or similar fences shall be permitted. No fences are permitted in any front yard.

**6.3 Nuisances.** No trash, garbage, rubbish or debris of any kind shall be dumped, place or permitted to accumulate upon any portion of the Lots nor shall any nuisance or odors be permitted to



exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Common Areas. No noxious, noisome or offensive trades or activities shall be carried on or upon any Lot, nor shall anything be permitted which may become an annoyance or nuisance to the neighborhood.

**6.4 Trailers, Boats and Commercial Trucks.** Excluding one or more sales, construction or marketing trailers or portable buildings belonging to Developer, which may in addition serve as the office of the Architectural Review Board, no trailer, mobile home, camper, motorbike, motor scooter, boat, house trailer, golf cart, construction equipment, commercial truck or vehicle, tractor, or recreational vehicle shall be parked in any driveway or on any Lot except in a garage or storage area not visible from the street and as approved in writing by the Architectural Review Board.

**6.5 Subdividing Parcels.** No Lot may be subdivided or resubdivided. No Lot shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

**6.6 Animals.**

(a) No animals, livestock, birds, or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or other portion of the Property; provided, however that no more than three (3) domesticated animals, except in the case of any new-born litter of any such animal, may be kept on a Lot so long as they are not kept for breeding or commercial purposes.

(b) No pet shall be allowed to make an unreasonable amount of noise or become a nuisance.

(c) No pet shall be allowed to enter upon any other Lot within the Property.

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

**6.7 Responsibilities of Owners.**

(a) Each Owner shall be responsible for maintaining his or her Lot in a neat, clean and sanitary condition, both inside and outside of any Dwelling 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.

(b) Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition.

(c) If, in the opinion of the Association, any Owner fails to perform the duties imposed by paragraphs (a) and (b) above after thirty (30) days written notice from the Association to the Owner



to remedy the condition in question, the Association shall have the right, through its agents and employees, to enter upon the Lot in question (or upon the improvements which may be appurtenant thereto) and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as an Assessment) upon the Lot in question.

**6.8 Antennas.** No satellite dish, solar panel, windmill, television antenna, radio or satellite antenna over eighteen (18) inches in height or diameter shall be allowed. No satellite dish, solar panel, windmill, television antenna, radio or satellite antenna shall be allowed in any front yard or located on any Lot in any manner such that it is visible from any street unless approved in advance in writing by the Architectural Review Board. No yard art shall be permitted on any Lot.

**6.9 Clotheslines.** No outside clothesline or other item(s) detrimental to the appearance of the Lot or subdivision as determined by the Architectural Review Board shall be allowed.

**6.10 Signs.** Excluding any Lot owned by Developer, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than 24 inches x 36 inches advertising the property for sale or rent, or signs used by a builder to advertise during the construction and sales period. No signs shall be nailed to trees.

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

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

**6.13 Mail Boxes.** A mailbox of a standard and quality designated by the Developer shall be maintained by each Owner. No mailbox shall vary from such standard without the written permission of the Association.

## **ARTICLE VII** **ASSESSMENTS**

**7.1 Creation of Lien and Personal Obligation of Assessments.** The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay to the Association: (i) an annual Assessment; (ii) special assessments for capital improvements as provided herein; and (iii) such other assessments as are established and collected as hereinafter provided. The annual Assessments and any special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on each Lot and shall be a continuing lien upon the Lot



against which such annual Assessment or special assessment is made.

**7.2 Purpose of Assessments.** The annual Common Area Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto.

**7.3 Subordination of Lien to Mortgage.** The lien of Assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of Assessment as to payment that became due prior to the sale or transfer. No sale or transfer shall relieve the Lot or its Owner from liability for any Assessment thereafter becoming due.

## **ARTICLE VIII**

### **CASUALTY, CONDEMNATION AND INSURANCE**

#### **8.1 Insurance.**

(a) The Officers of the Association shall have the authority to obtain and maintain at all times such policies of insurance in such form as the Officers deem appropriate for the benefit of the Association with such insurance carriers, at such costs and with such deductibles as the Officers, in their sole discretion, may determine.

(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 Lot. The Officers may require all Owners to carry public liability insurance with respect to their respective Lots and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does hereby waive and release all of the Officers of the Association and the Development and their respective agents, employees, representatives, partners, shareholders, members, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

## **ARTICLE IX**

### **TERM AND AMENDMENTS**

**9.1 Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of the Developer, 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 twenty-one (21) years from and after the death of the last survivor of the now living descendants of any of them at which time this Declaration



shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless at such time an agreement executed by the Super-Majority agreeing to terminate this Declaration has been recorded in the Probate Office of Shelby County, Alabama, provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

**9.2 Amendments by Association.** Amendments to this Declaration shall be proposed and adopted by the Members of the Association in the following manner:

(a) Any such proposed amendment must be approved by the Super Majority and, if the Developer still owns any Lot, the Developer.

(b) Any and all amendments which have been approved in accordance with the provisions above shall be executed by all parties whose consent to the same is required, including the Owners composing the Super Majority and shall be filed for record with the Probate Court of Shelby County, Alabama.

**9.3 Amendments by Developer.** The Developer may make amendments to this Declaration unilaterally and without the approval of the Association until such time as it no longer owns any Lot by filing an instrument amending this Declaration for record with the Probate Court of Shelby County, Alabama.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

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

**10.2 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 and any cover page to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

**10.3 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.

**10.4 Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and the respective heirs, executors, administrators, personal



representatives, successors and assigns of each Owner, Occupant and Mortgagee, and shall inure to the benefit of the Association and its Members, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

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

**10.6 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.

**10.7 Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and give that interpretation or construction which, in the opinion of the Officers, 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.

**10.8 Rights of Third Parties.** This Declaration shall be recorded for the benefit of the Developer, the Association and its Members, the Owners and their respective Mortgagees and by such recording, no other adjoining property Owner or third party shall have any right, title or interest whatsoever in the Development of 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.

**10.9 No Trespass.** Whenever the Association, the Developer, the Officers 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.

**10.10 No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the common area.

**10.11 Standards for Review.** Whenever in this Declaration the Association or the Officers 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 Association or the Officers, as the case may be.



**10.12 Oral Statements.** Oral statements or representations by the Developer, the Association, the Officers or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on the Developer, the Association or the Officers.

**10.13 Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Development. Until such time as the Developer no longer owns any Lots, all notices to the Association or to the Officers shall be delivered or sent in care of Developer to the following address:

Gibson & Anderson Construction, Inc.  
2539 Rocky Ridge Road  
Vestavia Hills, Alabama 35243

or to such other address as the Association or the Officers may from time to time specify in a notice to the Owners.

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

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

**10.16 Indemnity for Damages.** Each and every Owner and future Owner, in accepting a deed or contract for any Lot subject to this Declaration, agrees to indemnify Developer and the Association from and against (i) any damage caused by such Owner, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Developer or the Association, or for which Developer or the Association has responsibility, at the time of such damage, and (ii) any loss, damage, claim or liability that the Developer or Association might suffer, including costs of defense and attorney's fees, arising out of any breach or violation of the provisions of this Declaration.



**10.17 No Development Scheme.** The size, configuration, style, location and any other of the characteristics of any particular Lots or Improvements thereto shall not in any manner bind or restrict the Developer with respect to the characteristics of the development of any other portion of the Property. The Developer shall have the right to redesign the entrances on the Property and to change the size, configuration, style, location and other characteristics of any Lots to be created within the Property in such manner as the Developer deems appropriate, including, but not limited to, the right to increase or decrease the size of the Lots and Improvements thereon, develop and construct residential buildings of such sizes and configurations as the Developer might deem appropriate.

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

**10.19 Authority and Enforcement.** In the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, or the Architectural Standards promulgated thereunder, the Articles of Incorporation, the Association Bylaws or any rules and regulations adopted by the Officers of the Association from time to time, the Developer, Officers, their successors and assigns, or any other party to whose benefit this Declaration inures, shall have the power to (i) impose reasonable monetary fines which shall constitute a personal obligation of such Owner which is guilty of such violation, or (ii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, and guests) to use any of the recreational facilities located in or upon the Common Areas. Any such suspension of rights may be for the duration of the infraction. In the event an Owner or Occupant has committed such a violation of this Declaration and, after thirty (30) days written notice and right to cure, said Owner or Occupant has not cured such violation, the Developer or the Association may cure such violation and may assess its expenses in so curing, including reasonable attorney's fees as an Assessment against the Lot owned by such violating Owner. The Developer and the Officers shall not impose a fine, or infringe upon or suspend any other rights pursuant to this Section unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations (provided, however, no such demand shall be required in the event the violation is, in the sole discretion of the Developer or the Association, an emergency or dangerous condition) which demand shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated 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 or the Architectural Standards promulgated thereunder, the Articles of Incorporation, the Association Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions.

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

Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article 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 Officers, would have the right to exercise at law or in equity.

**10.18 Assignment of Rights by Developer.** Gibson & Anderson Construction, Inc. may assign in writing all of its rights and duties as the Developer under this Declaration, including without limitation its right to control the Association until such time as it no longer owns any Lots, to any subsequent developer which shall there after be the "Developer" hereunder.



IN WITNESS WHEREOF, Developer and the Association have each caused this Declaration to be executed by their duly authorized members or officers, as the case may be, as of the day and year first above written.

DEVELOPER:

**GIBSON & ANDERSON  
CONSTRUCTION, INC.**

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

Earl M. Gibson  
Its President

ASSOCIATION:

**CROSSCREEK COVE HOMEOWNERS=  
ASSOCIATION, INC.**  
an Alabama non-profit corporation

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

Earl M. Gibson  
Its President

**CONSENT OF ALIANT BANK**

**ALIANT BANK**, an Alabama state banking corporation, as mortgagee of the Property described herein, hereby consents to the filing of this Declaration and agrees that the Property is and shall be owned, held and transferred subject to this Declaration.

IN WITNESS WHEREOF, Developer and the Association have each caused this Declaration to be executed by their duly authorized members or officers, as the case may be, as of the day and year first above written.

**ALIANT BANK**, an Alabama state  
Banking corporation

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

Jimmy C. Maples [print name]  
Its SR. VICE-PRESIDENT



STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Earl M. Gibson, whose name as President of Gibson & Anderson Construction, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

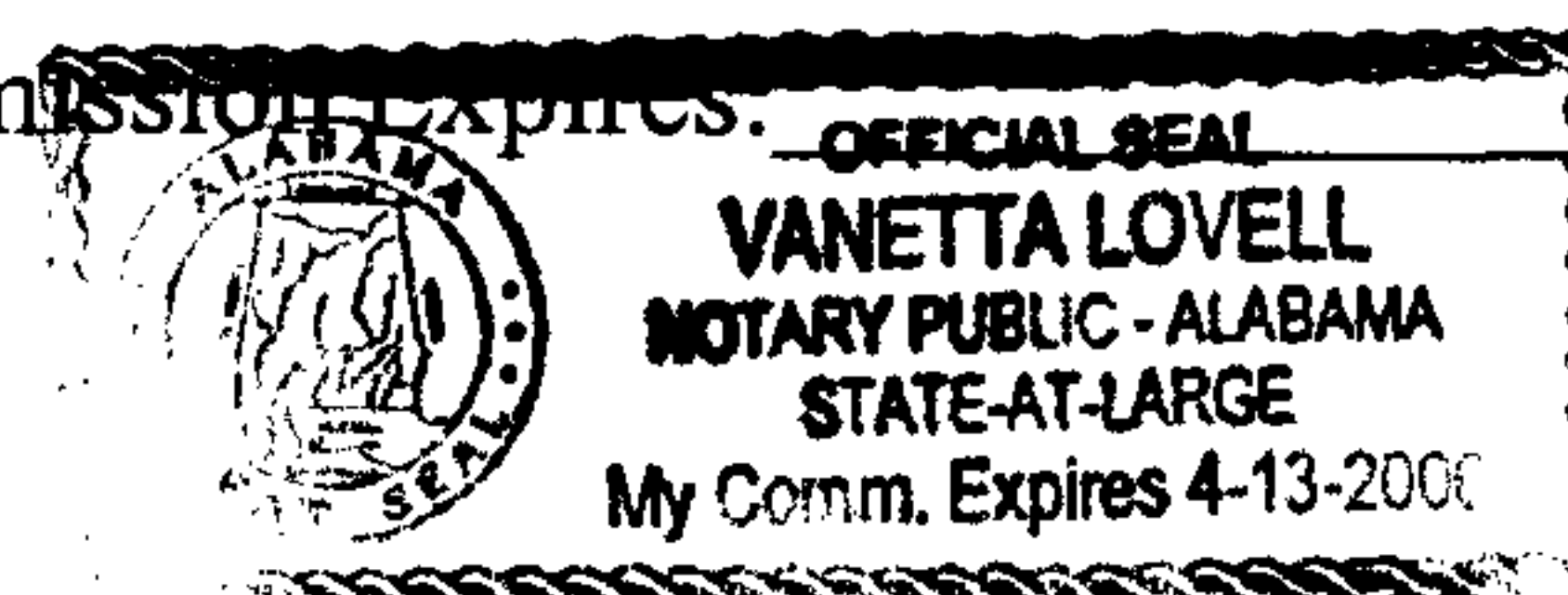
Given under my hand and official seal, this the 15 day of December 2003.

Vanetta K Lovell

Notary Public

My Commission Expires:

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )



I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Earl M. Gibson, whose name as President of Crosscreek Cove Homeowners' Association, Inc., a non-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

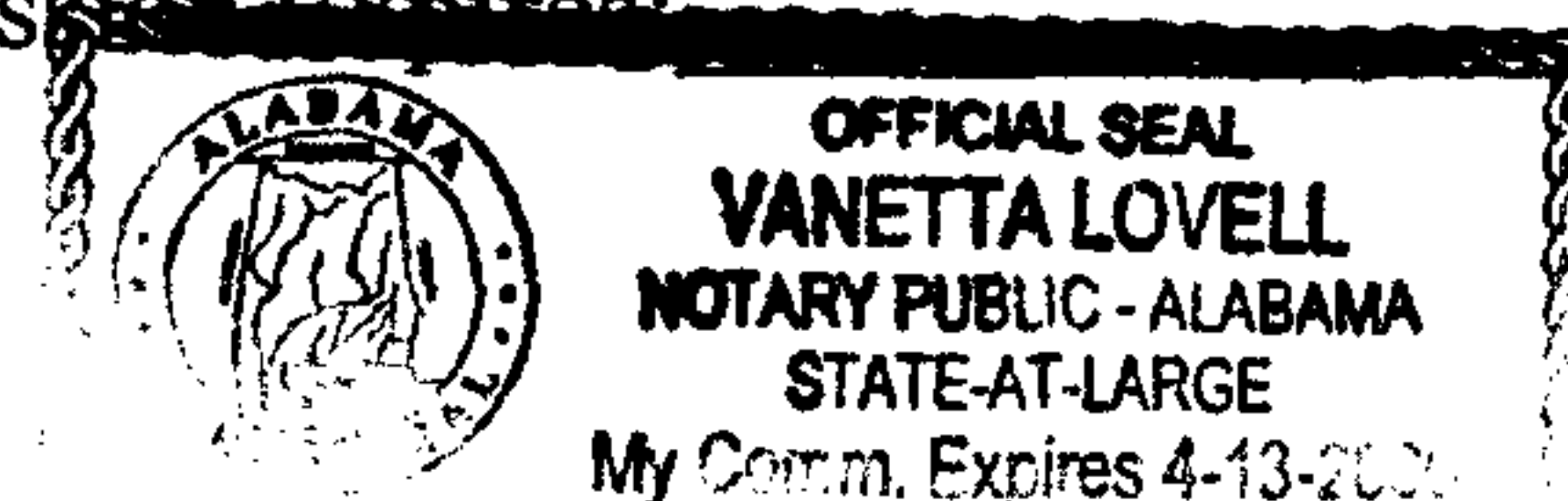
Given under my hand and official seal, this the 15 day of December 2003.

Vanetta K Lovell

Notary Public

My Commission Expires:

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )



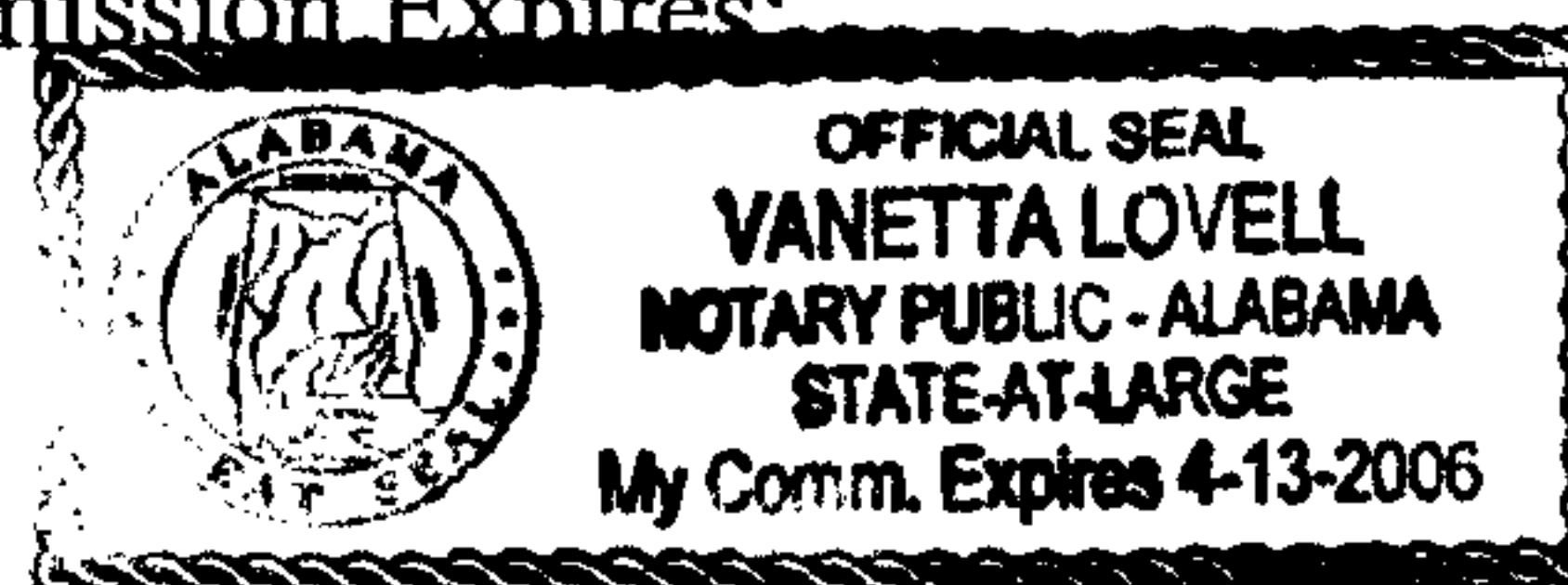
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jimmy C. Maples, whose name as Senior Vice President of Aliant Bank, a corporation, is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 15 day of December, 2003.

Vanetta K Lovell

Notary Public

My Commission Expires:





**EXHIBIT A  
LEGAL DESCRIPTION  
OF PROPERTY SUBJECT TO CROSSCREEK COVE  
DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS  
AND RESTRICTIONS**

The following property is subject to the Declaration:

1. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 according to the subdivision of Crosscreek Cove as recorded in Map Book 32, Page 72 in the Probate records of Shelby County, Alabama.
2. Part of the SW 1/4 of the NW 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at the most southerly corner of Lot 21-A, Resurvey of Lots 21, 22, 23, 24 and Vacated Portion of Cahaba Manor Trail, Cahaba Manor Townhomes Third Addition, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 10, Page 73, run in a northeasterly direction along the southeast line of said Lot 21-A for a distance of 70.02 feet to the southwest corner of Lot 20, Cahaba Manor Townhomes Third Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, Page 158; thence turn an angle to the right of 35° -45' and run in an easterly direction along the south line of said Lot 20 and 19 and 18 of said subdivision for a distance of 110.0 feet; thence turn an angle to the right of 90° and run in a southerly direction for a distance of 10.0 feet; thence turn an angle to the left of 90° and run in an easterly direction for a distance of 125.0 feet; thence turn an angle to the left of 90° and run in a northerly direction for a distance of 10.0 feet to the southeast corner of Lot 4, Cahaba Manor Townhomes First Addition, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, Page 57; thence turn an angle to the right and run in an easterly direction along the end of the existing road right-of-way for a distance of 50.0 feet to the southwest corner of Lot 5 of said Cahaba Manor Townhomes First Addition; thence turn an angle to the right of 90° and run in a southerly direction for a distance of 10.0 feet; thence turn an angle to the left of 90° and run in an easterly direction for a distance of 130.0 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 90° and run in a southerly direction for a distance of 189.36 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 25° -0' and run in a southwesterly direction for a distance of 243.68 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 67° -44'-34" and run in a southeasterly direction for a distance of 37.82 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 67° -44'-34" and run in a southwesterly direction for a distance of 296.97 feet to an



existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of  $92^{\circ} - 07' - 18''$  and run in a northwesterly direction for a distance of 340.23 feet to the most southerly corner of the Meadow Wood Apartments property; thence turn an angle to the right of  $89^{\circ} - 59' - 12''$  and run in a northeasterly direction for a distance of 359.79 feet; thence turn an angle to the left of  $60^{\circ} - 02' - 18''$  and run in a northwesterly direction for a distance of 239.32 feet, more or less, to the point of beginning.



**EXHIBIT B  
TO CROSSCREEK COVE  
DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS  
AND RESTRICTIONS**

Part of the SW 1/4 of the NW 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

From the SW corner of Lot 5, Cahaba Manor Townhomes - First Addition, a map of which is recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, Page 57, run in a southerly direction along an extension of the west line of said Lot 5 or the east right-of-way line of Cahaba Manor Drive for a distance of 10.0 feet to the southerly edge of an existing 10 foot dedicated alley; thence turn an angle to the left of 90 degrees and run in an easterly direction for a distance of 130.0 feet to an existing iron rebar; thence turn an angle to the right of 90 degrees and run in a southerly direction for a distance of 189.36 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 25 degrees 0 minutes and run in a southwesterly direction for a distance of 135.86 feet to the point of beginning; thence continue in a southwesterly direction along last mentioned course for a distance of 50.0 feet; thence turn an angle to the right of 90 degrees and run in a northwesterly direction for a distance of 130.0 feet; thence turn an angle to the right of 90 degrees and run in a northeasterly direction for a distance of 50.0 feet; thence turn an angle to the right of 90 degrees and run in a southeasterly direction for a distance of 130.0 feet, more or less, to the point of beginning.

STATE OF ALABAMA        )

COUNTY OF SHELBY        )

**BY-LAWS OF  
CROSSCREEK COVE HOMEOWNERS' ASSOCIATION, INC.**

Comes now the undersigned constituting the Board of Directors of Crosscreek Cove Homeowners' Association, Inc. (the "Association") pursuant to the powers granted in the Articles of Incorporation of the Association and in furtherance of the duties and obligations imposed upon the Association in that certain Declaration of Easements, Protective Covenants, and Restrictions for Crosscreek Cove, a Residential Subdivision, dated of even date herewith and filed immediately after the Articles of Incorporation and these Bylaws of the Association in the Office of the Judge of Probate, Shelby County, Alabama Probate Office (the "Declaration") and for the purpose of stating the By-Laws of Crosscreek Cove Homeowners' Association, these By-Laws are hereby adopted.

These By-Laws are promulgated for the purposes of governing the Association, a not-for-profit corporation organized under the provisions of the Alabama Non-Profit Corporation Act, Code of Alabama (1975), Section 10-3A-1, et seq., as amended, as an association of Owners of Lots in the Crosscreek Cove subdivision. Capitalized terms not otherwise defined herein shall have the meaning attributed thereto in the Declaration.

The provisions of these By-Laws are applicable to the Property and to the use and occupancy thereof. The term "Property" as used herein shall include the real property made subject to the Declaration (subject to the easements and restrictions therein set forth or reserved), and all improvements and structures now existing or hereafter placed thereon, all easements, rights or appurtenances thereto, and all personal property now or hereafter provided by the Developer and intended for use in connection therewith

All present and future Owners, mortgagees, lessees and occupants of the Lots in the Property and their invitees, guests, tenants, employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration, any Rules and Regulations adopted by the Association and all covenants, agreements, restrictions and easements of record ("title conditions"). The acceptance of a deed or the occupancy of a Dwelling on a Lot shall constitute an agreement that these By-Laws and the title conditions, as they may be hereafter amended, are accepted and ratified, and will be complied with. In the event of a conflict between these Bylaws and the Declaration, the Declaration shall control.

The initial address of the office of the Association shall be 5198 Cahaba Beach Road, Birmingham, Alabama 35242.



The fiscal year of the Association shall end on the last day of December of each year, unless otherwise determined by the Board of Directors.

**ARTICLE I.**  
**MEMBERSHIP AND MEMBERSHIP MEETINGS**

1. **Qualifications.** There shall be one Member of the Association for each Lot within the Development Property.

2. **Change of Membership.** Change of membership in the Association shall be established by the recording in the public records of Shelby County, Alabama of a deed or other instrument establishing a record title to a Lot in the Development, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a Member of the Association. The membership of the prior Owner shall be thereby terminated. If a Lot is owned by more than one (1) person, the Member of the Association shall be designated by a certificate signed by all of the record Owners of the Lot and filed with the Association.

3. **Voting Rights.** Voting shall be on a Lot by Lot basis, with each Lot of the Development entitled to one vote. The vote for a Lot shall be cast by the Member designated for such Lot, or by his proxy designated in the manner hereinafter provided for.

4. **Annual Meetings.** Annual meetings of Members shall be held at the Development, on the second Sunday in January of each year, at 2:00 p.m. The annual meeting shall be held for the purposes of electing directors, adopting the annual budget, approving of Common Area Assessments, considering the need for special assessments, and of transacting any other business authorized to be transacted by the Members.

5. **Special Meetings.** Special meetings of the Members may be called by the Board of Directors, the President or by any three Members of the Association, for the purpose of considering and acting upon any matters of interest to the Association and its membership, and taking any other action not inconsistent with these By-Laws and the Articles of Incorporation, including the adoption of resolutions declaring the desirability of any further action recommended by the membership.

6. **Notice of Meetings.** Notice of all Members' meetings stating the date, time, place and object for which the meeting is called shall be mailed to each Member not less than ten (10) nor more than thirty (30) days prior to the date of such meeting. Such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, postage prepaid. Notice of meetings may be waived either before or after meetings.

7. **Voting in Person or by Proxy.** A Member may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid except for



the particular meeting designated therein, and no proxy shall be honored unless filed with the secretary of the Association before the appointed time of the meeting.

8. **Quorum.** At a meeting of the Members, a quorum shall consist of persons entitled to cast a majority of the votes of the entire membership.

9. **Vote Required to Transact Business.** When a quorum is present at any meeting, the holders of a majority of the voting rights present in person or represented by written proxy shall decide any questions brought before the meeting, unless the question is one upon which, by express provision of law, the Declaration, Articles of Incorporation, or the By-Laws, a different number is required, in which case the express provision shall govern and control the decision in question.

10. **Consents.** Any action which may be taken by a vote of the Members may also be taken by written consent to such action, signed by the Members required to take such action if such Members were present and voting.

11. **Adjourned Meetings.** If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

12. **Order of Business.** The order of business at annual Members' meetings and, as far as practical, at all other Members' meetings shall be according to the latest edition of Robert's Rules of Order.

## **ARTICLE II.**

### **BOARD OF DIRECTORS**

1. **Directors.** Until such time as the Developer no longer owns any Lots, the Board of Directors of the Association shall consist of two (2) directors. Thereafter, the Board of Directors of the Association shall consist of at least two (2) and up to seven (7) directors, as shall, from time to time, be determined and fixed by the vote a majority of the Members present at any annual meeting of the Members. Except for directors appointed by the Developer, only Members may serve as directors. Each director shall hold office for the term of one (1) year or until his successor shall have been elected and qualified. Notwithstanding anything to the contrary contained in these Bylaws or the Declaration, until such time as Gibson & Anderson Construction, Inc., or its successor to the development rights of the Property, no longer owns any Lot, the Board of Directors shall consist of only those persons listed in the Articles of Incorporation of the Association or designees appointed by the Developer. This provision may be amended only with the consent of Gibson & Anderson Construction, Inc. or its successor to the development rights of the Property.

2. **Election.** At each annual meeting of the Members of the Association, one director shall be elected to replace each director whose term has expired. Each Member of the Association shall have one vote for each director to be elected.



3. **Removal.** Any director may be removed for cause by the vote of a majority of the Members present in person or represented by written proxy at any annual or special meeting of the Members of the Association at which a quorum is present.

4. **Vacancies.** Any vacancy occurring in the Board of Directors, including vacancies occurring from the removal of a director, may be filled by majority vote of remaining members of the Board of Directors at any annual or special meeting.

5. **Annual Meeting.** The annual meeting of the Board of Directors shall be held on the fourth Sunday in January of each year at the Development at 2:00 P.M.. Notice of the place and hour of each such meeting shall be given to each director at least five (5) days prior to each such meeting. Such notice may be given either in writing or by telephone.

6. **Special Meeting.** Special meetings of the Board of Directors for any purpose may be called by the president or upon the written request of any two (2) directors, upon at least five (5) days' notice to each director and shall be held at such place or places as may be determined by the directors, or as shall be stated in the call of meeting. Such notice may be given either in writing or by telephone.

7. **Waiver of Notice.** Any director may waive notice of a meeting either before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

8. **Quorum.** A quorum shall consist of the directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Board of Directors approved by a majority of the directors present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

9. **Power and Duties.** The Board of Directors shall have the following powers and duties:

- (a) To elect the officers of the Association as hereinafter provided;
- (b) To administer the affairs of the Association and the Property of the Development;
- (c) To estimate the amount of the annual budget and to make and collect assessments, including annual, special and supplemental assessments as set forth in the Declaration or to delegate to the officers such powers, against Lot Owners to defray the costs, expenses and losses of the Development;
- (d) To use the proceeds of assessments in the exercise of its powers and duties;

- (e) to maintain, repair, replace and operate the Common Areas ;
- (f) To purchase insurance upon the Property and insurance, including fidelity bond coverage, for the protection of the Association and its members;
- (g) To reconstruct improvements after casualty and to further improve the Property;
- (h) To make and amend reasonable rules and regulations respecting the use of the Property and the operation of the Development;
- (i) To contract for the management of the Property of the Development and to delegate to such managing agent all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.
- (j) To contract for the management or operation of portions of the Common Areas of the Development susceptible to separate management or operation;
- (k) To retain legal counsel;
- (l) To employ personnel to perform the services required for proper operation of the Development;
- (m) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Members, as expressed in the resolution duly adopted at any annual or special meeting of the Members;
- (n) To give notice to first mortgagees of certain events or occurrences as set forth in the Declaration.

10. **Compensation.** No director shall be compensated for his services as such.

11. **Insurance.** The Board of Directors shall obtain insurance for the Common Areas which shall include the following: (1) broad form comprehensive coverage insuring the Common Areas of the Development Property and the interests of the Lot Owners and their mortgagees, as their interests may appear, in the Common Areas, in the amount determined by the Board of Directors, in accordance with the requirements set forth in the Declaration, each of which policies shall contain standard mortgagee clauses in favor of each mortgagee of a Lot; (2) public liability insurance in such amounts and with such coverage as the Board of Directors may determine; and (3) such other insurance, including fidelity bond coverage, as the Board of Directors may determine. Such insurance shall be written on the Property in the name of the Association as Trustee for the Lot Owners and their mortgagees in the fractions established in the Declaration. The premiums shall be



included in Common Area Assessments. The shares and disposition of the proceeds of insurance shall be as set forth in the Declaration.

All insurance on the Development Property shall provide for the following insofar as applicable:

- (a) That the Property insured shall mean all of the Common Areas comprising the Development Property as defined in the Declaration, together with all mechanical systems and installations providing service to more than one dwelling and any other items comprising Common Areas as more particularly described in the Declaration. The Property insured shall not include the Dwelling or Improvements, situated within the Boundaries of a Lot;
- (b) That the insurer waives its rights of subrogation of any claims against any directors, officers, the managing agent, the individual Owners and their respective household members;
- (c) That the insurance policies on the Development Property cannot be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or the managing agent without a prior written demand in writing delivered to the Association and to all mortgagees of Lots to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;
- (d) That any "no other insurance" clause contained in any policy shall expressly exclude individual Lot Owner's policies from its operation;
- (e) That until the expiration of thirty (30) days after the insurer is given notice in writing to the mortgagee of any Lot, the mortgagee's insurance coverage will not be affected or jeopardized by the act or conduct of the Owner of such Lot, the other Lot Owners, the Board, or any of their agents, employees or household members nor canceled for non-payment of premiums;
- (f) That any policy may not be canceled or substantially modified without at least thirty (30) days' prior notice in writing to the Board of Directors and all mortgagees of Lots.

At the time of issuance of each policy of insurance, the agent providing same shall furnish the Association a certification that such policy complies with the above provisions.

12. **Liability of the Board of Directors.** The members of the Board of Directors shall not be liable to the Lot Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Lot Owners shall indemnify and hold harmless each of the members of the Board of Directors on behalf of the Development unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these By-Laws. It is understood and permissible for the Board of Directors, whether employed by the Developer or not, to contract with the Developer without fear of being charged with self-dealing.

It is also intended that the liability of any Lot Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the Common Areas bears to the interests of all the Lot Owners in the Common Areas.

### **ARTICLE III** **OFFICERS**

1. **Election.** At each annual meeting, the Board of Directors shall elect the following officers of the Association:

- (a) A president, who shall be a director and who shall preside over the meetings of the Board of Directors and of the members, and who shall be the chief executive officer of the Association;
- (b) A vice-president, who shall, in the absence or disability of the president, perform the duties and exercise the powers of the president;
- (c) A secretary, who shall keep the minutes of all meetings of the Board of Directors and of the members, and the minute book wherein resolutions enacted at such meetings shall be recorded, and who shall, in general, perform all the duties incident to the office of secretary;
- (d) A treasurer, who shall keep the financial records and books of the account;
- (e) Such additional officers as the Board of Directors shall see fit to elect;
- (a) Consolidation of different officers is permitted.

2. **Powers.** The respective officers shall have the general powers usually vested in such officer of a not-for-profit corporation; provided that the Board of Directors may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board of Directors may see fit.

3. **Term.** Each officer shall hold office for the term of one (1) year and until his successor shall have been elected and qualified.

4. **Vacancies.** Vacancies in any office shall be filled by the Board of Directors at special meetings thereof. Any office may be removed at any time by a majority vote of the Board of Directors at a special meeting thereof.

5. **Compensation.** The compensation of all officers shall be fixed by the Board of Directors. This provision shall not preclude the Board of Directors from employing a director as an employee of the Association nor preclude the contracting with a director for the management of the



Development. The officers shall receive no compensation for their services unless otherwise expressly provided in a resolution duly adopted by the Board of Directors.

#### **ARTICLE IV**

#### **RESPONSIBILITY FOR MAINTENANCE AND REPAIR**

1. **Accounting Records.** The Board of Directors shall provide for the maintenance of accounting records for the Association, such records to be maintained in accordance with generally accepted accounting principles.

2. **Budget.** During the month of October each year, the Board of Directors shall cause to be prepared an estimated annual budget for the following fiscal year of the Association. Such budget shall take into account the estimated Common Area expenses, and each requirement for the year, including salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, ad valorem taxes, insurance, fuel, power and their expenses (as distinguished from individual mortgage payments, real estate taxes and individual expenses for utility services billed or charges to the separate Lot Owners on an individual or separate basis rather than a common basis). The Common Area Assessments shall be those expenses designated by the Board of Directors pursuant to these By-Laws and the Declaration. The annual budget shall provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis. The annual budget shall provide for amounts required to make up for contingencies for the year, and a reserve for replacements in reasonable amounts as determined by the Board of Directors. To the extent that the assessments collected from the Lot Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account.

3. **Assessments.** The estimated budget for each fiscal year shall be approved by the Board of Directors, and copies thereof shall be furnished by the Board of Directors to each Lot Owner not later than ten days before the annual meeting. The adoption of the annual budget shall be subject to a vote of the Members. The annual assessment shall be paid semi-annually in advance by each Lot Owner. The assessment of the Common Area Assessments shall be as set forth in the Declaration. If the Board of Directors shall not approve an estimated annual budget or shall fail to determine new assessments for any year, or shall be delayed in doing so, each Lot Owner shall continue to pay the amount of his assessment on or before the date due in the preceding year to the Treasurer or as may be otherwise directed by the Board. No Lot Owner (other than the Developer) shall be relieved of his obligation to pay his assessments by abandoning or not using his Lot or the Common Areas.

4. **Proration of Assessments.** Commencing with the date of closing of his Lot by each Owner, he shall pay his assessment for the current year, which assessment shall be in prorated based upon the number of months and days remaining in the current assessment period.



5. **Annual Statements.** Within forty-five (45) days after the end of each year covered by an annual budget or as soon thereafter as shall be practicable, the Board of Directors shall cause to be furnished to each Lot Owner and the first mortgagee of each Lot, if so requested in writing, a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

6. **Accounts.** The Board of Directors shall cause to be kept a separate account record for each Lot Owner showing the assessments charged to and paid by such Lot Owner, and the status of his account from time to time.

Upon ten (10) days' notice to the Board of Directors any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from each Lot Owner. A Lot Owner shall make no more than one request per month.

7. **Supplemental Budget and Assessments.** If during the course of any year, it shall appear to the Board of Directors that the current assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Area expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget as provided for in the Declaration covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Lot Owner, and thereupon a supplemental assessment shall be made to each Lot Owner for his proportionate share of such supplemental budget.

8. **Payment of Assessments.** It shall be the duty of every Lot Owner to pay his proportionate share of the Common Area Assessments in the manner herein provided. If any Lot Owner shall fail or refuse to make any such payments when due, the Association and the Board of Directors shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Declaration or these By-Laws, or otherwise available at law or in equity, for the collection of all unpaid assessments.

9. **Records.** The Board of Directors shall cause to be kept detailed an accurate record in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the expenses incurred, and such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Lot Owners and the first mortgagee of any Lot at convenient hours of week days. Such payment vouchers may be approved in such manner as the Board of Directors may determine.

10. **Liens.** The Board of Directors may cause the Association to discharge any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property, the Common Areas, or any Lot or private element in the Development, and the Association shall thereupon have a lien in such amount, together with the amount of any costs and attorney's fees incurred in connection therewith, on each Lot responsible for the payment thereof, and the Board of Directors shall thereupon perfect any such lien by recording an appropriate claim of lien



prepared and filed for record. Any and all liens, claims or rights of the Association in or with respect to any Lot, or Lot Owner, for the discharge of any mechanic's lien or other encumbrances provided for hereunder shall be subordinate to the lien of any mortgage upon any Lot recorded prior to the date of such lien, claim or right.

## **ARTICLE V**

### **MISCELLANEOUS**

1.     **Seal.** The seal of the Association shall be circular in form and shall contain the name of the Association and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

2.     **Bank Accounts.** The Board of Directors may, from time to time, by resolution authorize the maintenance of one or more deposit accounts by the Association. All checks, drafts or other orders for the payment of money issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

3.     **Notice.** Whenever any notice or demand is required to be given by these By-Laws or the Declaration, any notice or demands so required shall be deemed sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his last known post office address according to the records of the Association, and such notice shall be deemed given on the day of such mailing.

4.     **Waiver of Notice.** Whenever any notice is required to be given under the provisions of any law, or under the provisions of the Articles of Incorporation, these By-Laws or the Declaration, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

5.     **Maintenance of Storm Water Drainage Ditch.** In addition to any other purposes, powers or duties, the Association shall have the duty and obligation to maintain the Common Areas and Common Easements (as defined in the Declaration) used for storm water drainage as follows:

(a)     The surface water drainage ditch, which extends through the Property, shall be maintained in good condition by and at the expense of the Association. Said maintenance by Association shall include keeping the surface water drainage ditch clear of fallen trees, growth of vegetation, debris, or other materials which might impede the flow of surface waters or cause the surface water drainage ditch to fail to function appropriately.

(b)     The surface water drainage shall be deemed a part of the Common Area and the expense for the maintenance of the surface water drainage ditch, as described in the preceding paragraph, shall be assessed by the Association against the owners of Lots within the Property, as Common Area Assessments.

(c) Every purchaser of a Lot within the Property shall, by acceptance of the deed of conveyance, be deemed to have acknowledged the obligation of the Association with respect to the maintenance of the surface water drainage ditch and the assessment and collection from the Owners of Lots within the Property of the expenses incurred in connection therewith. These provisions with respect to the maintenance of the surface water drainage ditch shall be binding upon the owners of all Lots within the Property and their respective heirs, successors and assigns, and shall bind and run with the Property forever.

## **ARTICLE VI** **AMENDMENTS**

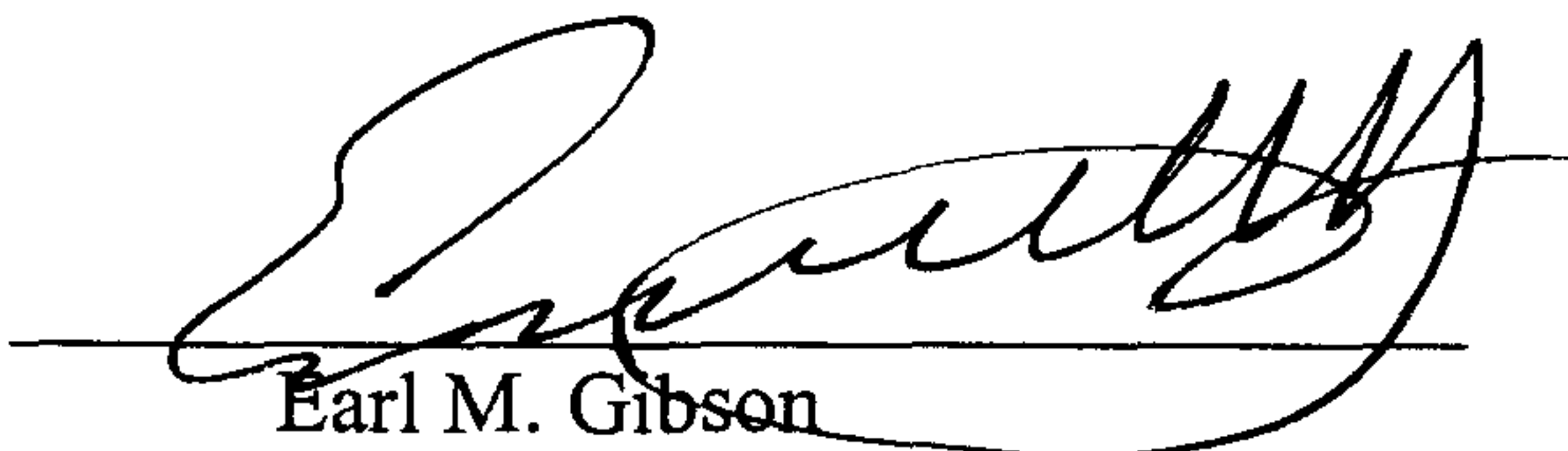
These By-laws may be amended or modified from time to time by the vote a Super-Majority (as defined in the Declaration) of the Members at a meeting called for such purpose, or by unanimous written consent of all of the members, and shall be recorded in the Probate Court of Shelby County, Alabama. Notwithstanding the foregoing, these By-laws may be amended or modified by the Developer at any time prior to the Developer selling all Lots.



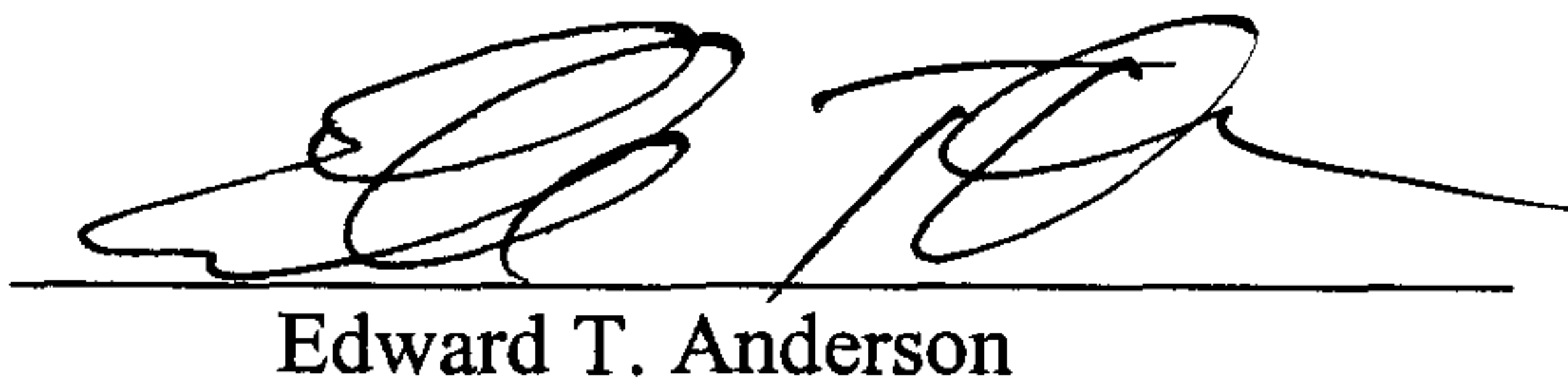
The undersigned constituting all of the members of the Board of Directors of the Association do hereby consent to the adoption of the foregoing By-Laws of said Association.

Dated as of the 15 day of December, 2003.

BOARD OF DIRECTORS:



Earl M. Gibson



Edward T. Anderson

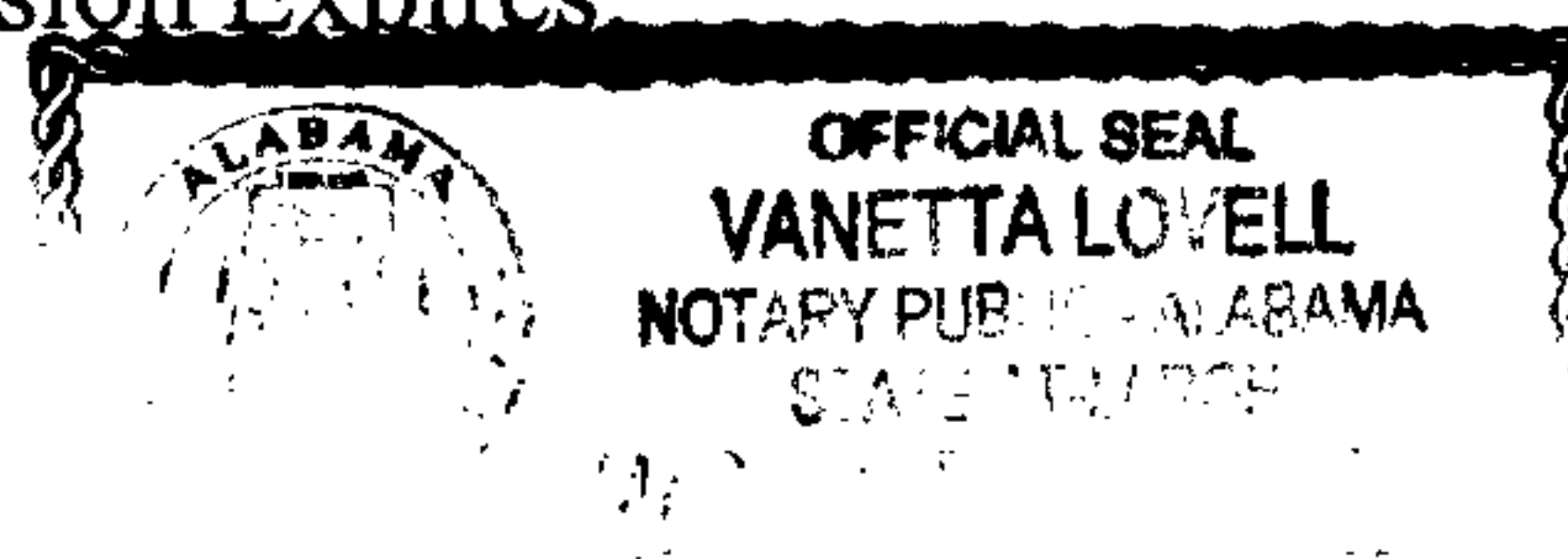
STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Earl M. Gibson, an individual whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 15 day of December 2003.

Vanetta K Lovell  
Notary Public  
My Commission Expires:

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )



I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Edward T. Anderson, an individual whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 15 day of December 2003.

Vanetta K Lovell  
Notary Public  
My Commission Expires:

