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## **COTTAGES AT CHESSER**

### **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**DATED May 10, 2004**

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

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**TABLE OF CONTENTS**  
**OF**  
**COTTAGES AT CHESSER**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

---

	Page
ARTICLE I--DEFINITIONS .....	-1-
1.1 Additional Property .....	-1-
1.2 ARC .....	-2-
1.3 Architectural Standards .....	-2-
1.4 Articles of Incorporation .....	-2-
1.5 Assessment .....	-2-
1.6 Association .....	-2-
1.7 Board .....	-2-
1.8 Bylaws .....	-2-
1.9 Common Area .....	-2-
1.10 Common Expenses .....	-2-
1.11 Declaration .....	-3-
1.12 Developer .....	-3-
1.13 Development .....	-3-
1.14 Dwelling .....	-3-
1.15 Governmental Authority .....	-3-
1.16 Improvement .....	-3-
1.17 Living Space .....	-3-
1.18 Lot .....	-3-
1.19 Mortgage .....	-3-
1.20 Mortgagee .....	-3-
1.21 Natural Area(s) .....	-3-
1.22 Occupant .....	-4-
1.23 Owner .....	-4-
1.24 Property .....	-4-
ARTICLE II--PROPERTY SUBJECT TO THE DECLARATION .....	-4-
2.1 General Declaration by Developer .....	-4-
2.2 Additional Property .....	-4-
2.3 Right of Developer to Modify Restrictions with Respect to Lots and Other Property Owned by Developer .....	-5-
2.4 Mutuality of Benefit and Obligation .....	-5-
2.5 Development of Property .....	-5-
2.6 Subdivision Plat .....	-5-

ARTICLE III--EASEMENTS AND RESERVATION OF RIGHTS	-6-
3.1 Grant of Non-Exclusive Easements to Owners	-6-
3.2 Grant of Easement to Governmental Authorities	-6-
3.3 Reservation of Easement	-6-
3.4 Reservation of General Access Easement	-7-
3.5 Reservation of Easements With Respect to Common Areas	-7-
3.6 Reservation of Easement for Utilities	-8-
3.7 Reservation of Maintenance Easement	-8-
3.8 Reservation of Environmental Easement	-8-
3.9 Establishment of Natural Areas	-8-
ARTICLE IV--ASSOCIATION	-9-
4.1 Membership	-9-
4.2 Board	-9-
4.3 Voting Rights	-9-
4.4 Duties and Powers of Association	-10-
4.5 Agreements	-10-
4.6 Management by Developer or its Affiliates	-11-
4.7 Rules and Regulations	-11-
4.8 Indemnification	-11-
ARTICLE V--ARCHITECTURAL REVIEW COMMITTEE AND ARCHITECTURAL STANDARDS	-11-
5.1 Committee Composition	-12-
5.2 Appointment and Removal of ARC Members	-12-
5.3 Procedure and Meetings	-12-
5.4 Architectural Standards	-12-
5.5 Approval of Plans and Specifications	-13-
5.6 Landscaping Approval	-14-
5.7 Construction Without Approval	-15-
5.8 Inspection	-15-
5.9 Subsurface Conditions	-15-
5.10 Limitation of Liability	-15-
5.11 Commencement and Completion of Construction	-16-
5.12 Sales and Construction Activities	-16-
5.13 Enforcement and Remedies	-16-
5.14 Compliance Certification	-16-
5.15 Assignment Rights	-16-
ARTICLE VI--USE AND PROPERTY RESTRICTIONS	-17-
6.1 Use Restrictions	-17-
6.2 ARC Approval	-17-
6.3 Underground Utilities	-17-
6.4 Building Setbacks	-17-
6.5 Siting of Dwellings	-17-
6.6 Height Limitations	-17-
6.7 Minimum Living Space	-17-
6.8 Landscaping	-17-

6.9	Roofing .....	-18-
6.10	Exterior Lighting .....	-18-
6.11	Exterior Materials and Finishes .....	-18-
6.12	Off-Street Parking .....	-18-
6.13	Fences .....	-18-
6.14	Windows, Window Treatments and Doors .....	-18-
6.15	Mailboxes .....	-19-
6.16	Utility Meters and HVAC Equipment .....	-19-
6.17	Satellite Dishes and Antennae .....	-19-
6.18	Driveways and Sidewalks .....	-19-
6.19	Outdoor Furniture and Clotheslines .....	-19-
6.20	Pets and Animals .....	-19-
6.21	Trash, Rubbish and Nuisances .....	-19-
6.22	Signage .....	-20-
6.23	Above or Below Ground Tanks and Wells .....	-20-
6.24	Temporary Structures .....	-20-
6.25	Subdivision and Interval Ownership .....	-20-
6.26	Swimming Pools and Tennis Courts .....	-20-
6.27	Traffic Regulations .....	-20-
6.28	Common Areas .....	-21-
6.29	Additional Regulations .....	-21-
6.30	Compliance with Governmental Regulations .....	-21-
6.31	Variances .....	-21-
6.32	Enforcement and Remedies .....	-21-
ARTICLE VII--MAINTENANCE RESPONSIBILITIES .....		-21-
7.1	Responsibilities of Owners .....	-21-
7.2	Responsibilities of Association .....	-22-
ARTICLE VIII--COMMON AREA ASSESSMENTS .....		-23-
8.1	Assessments and Creation of Lien .....	-23-
8.2	Purpose of Assessments .....	-23-
8.3	Uniform Rate of Assessments .....	-23-
8.4	Computation of Annual Assessments .....	-24-
8.5	Special Assessments .....	-25-
8.6	Individual Assessments .....	-25-
8.7	Date of Commencement of Assessments .....	-25-
8.8	Effect of Non-Payment; Remedies of the Association .....	-26-
8.9	Subordination of Lien .....	-27-
8.10	Certificates .....	-28-
ARTICLE IX--CASUALTY, CONDEMNATION AND INSURANCE .....		-28-
9.1	Damage or Destruction to Common Areas .....	-28-
9.2	Damage or Destruction of Lots or Dwellings .....	-28-
9.3	Condemnation of Common Areas .....	-29-
9.4	Condemnation of Lots .....	-29-
9.5	Insurance .....	-30-
9.6	Indemnity .....	-30-

ARTICLE X--TERM AND AMENDMENTS .....	-31-
10.1 Term .....	-31-
10.2 Amendment by Developer .....	-31-
10.3 Amendments by Association .....	-31-
ARTICLE XI--ENFORCEMENT .....	-32-
11.1 Authority and Enforcement .....	-32-
11.2 Non-Exclusive Remedies .....	-32-
ARTICLE XII--MISCELLANEOUS PROVISIONS .....	-32-
12.1 Control by Developer .....	-32-
12.2 Legal Expenses .....	-33-
12.3 Severability .....	-33-
12.4 Captions and Headings .....	-33-
12.5 Pronouns and Plurals .....	-33-
12.6 Binding Effect .....	-33-
12.7 Conflict or Ambiguity .....	-33-
12.8 No Reverter .....	-33-
12.9 Interpretation .....	-34-
12.10 Rights of Third Parties .....	-34-
12.11 No Trespass .....	-34-
12.12 No Partition .....	-34-
12.13 Standards for Review .....	-34-
12.14 Oral Statements .....	-34-
12.15 Notices .....	-34-
12.16 Assignment .....	-34-
12.17 Further Assurances .....	-34-
12.18 No Waiver .....	-34-
12.19 Reservation of Rights .....	-35-



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## **COTTAGES AT CHESSER**

### **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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THIS THE COTTAGES AT CHESSER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 10th day of May, 2004 by CHESSER DEVELOPMENT, LLC, an Alabama limited liability company ("Developer").

#### **RECITALS:**

Developer is the owner of the Property, as described in Section 1.24 below, and desires to develop, improve and sell the Property for residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

The Property is part of the Chesser Plantation planned unit development approved by the City of Chelsea, Alabama and the development, improvement, sale and ownership of the Property, and the Lots and Dwellings situated within the Property, shall be in accordance therewith.

Developer has heretofore caused the Association, as defined in Section 1.6 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.9 below, establishing annual budgets for maintaining the Common Areas, paying all costs and expenses incurred by the Association in connection therewith along with other Common Expenses, making Annual, Special and Individual Assessments, as defined in Section 1.5 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that the Property, as described in Section 1.24 below, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the approved plan for the Chesser Plantation planned unit development and the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of said Property and any of the Additional Property, as described in Section 1.1 below, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

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

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

1.1 **Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

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

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

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

1.5 **Assessment.** The term “Assessment” shall mean, collectively, the Annual, Special and Individual Assessments and/or any other charges assessed against an Owner by the Association pursuant to the terms of this Declaration.

1.6 **Association.** The term “Association” shall mean the Cottages at Chesser Owners Association, Inc., an Alabama nonprofit corporation, its successors or assigns.

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

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

1.9 **Common Area.** The term “Common Area” shall mean and refer to all real and personal property now or hereafter owned, leased or maintained by the Association within or without the Development for the common use and enjoyment of the Owners. The Common Areas shall also include (a) all public or private roadways or easements within the boundaries of the Property upon which public or private roadways providing ingress to and egress from the Development for use by all Owners of the Property have been constructed, (b) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, improvements, and landscaped areas adjacent to any public or private roadways, including all medians within any public or private roadways, which provide ingress to and egress from any portion of the Development (other than any such areas located solely within the boundary lines of a Lot), (c) all lakes, water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, basins or other areas and facilities located within the Development (other than such areas located solely within the boundary lines of a Lot), (d) all maintenance areas and parking areas located on any portion of the Development (other than such areas located solely within the boundary lines of a Lot), (e) subject to the rights of others therein, all public and private utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and (f) all Natural Areas, parks, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Development, if any, which are designated by Developer as Common Area from time to time. The designation of any land and/or Improvements as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

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



1.11 **Declaration.** The term “Declaration” shall mean and refer to this the The Cottages at Chesser Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.12 **Developer.** The term “Developer” shall mean CHESSER DEVELOPMENT, LLC, an Alabama limited liability company, and its successors and assigns, including, without limitation, a lender holding a mortgage on lots unsold by Developer to the extent such lender has exercised its foreclosure rights under said mortgage.

1.13 **Development.** The term “Development” shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.2 hereof.

1.14 **Dwelling.** The term “Dwelling” shall mean and refer to any home or residence constructed for use as attached or detached single-family residential housing units upon any portion of any Lot.

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

1.16 **Improvement.** The term “Improvement” shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, landscaping, fences, screening, walls, signs, piers and any other artificial or man-made changes or alterations to the condition of any Lot, Dwelling, or Common Area. “Improvements” shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.17 **Living Space.** The term “Living Space” shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

1.18 **Lot.** The term “Lot” shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. In the event any Lot is resubdivided pursuant to the provisions of Section 2.6 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

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

1.20 **Mortgagee.** The term “Mortgagee” shall mean and refer to the holder of any Mortgage. The term “Mortgagee” shall not mean or refer to a lender holding a mortgage on lots unsold by Developer.

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



1.22 **Occupant**. The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All acts or omissions of any Occupant are and shall be deemed the act or omission of the Owner of such Lot.

1.23 **Owner**. The term "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot, whether a corporation, partnership, limited liability company, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

1.24 **Property**. The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

## **ARTICLE II**

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

2.1 **General Declaration by Developer**. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area thereof. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer) but this Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration.

2.2 **Additional Property**. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee, other than Developer's Mortgagee consenting hereto, and its successors and assigns) and shall (a) refer to this Declaration stating the book and page number where this Declaration has been recorded in the Probate Office of Shelby County, Alabama, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property, including use of such Additional Property for single-family or multi-family residential areas or for commercial or recreational purposes. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Shelby County, Alabama submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall

be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.2 of this Declaration.

**2.3 Right of Developer to Modify Restrictions with Respect to Lots and Other Property Owned by Developer.** With respect to any Lot or other real property within the Development owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot. Developer reserves the right, at any time and from time to time, to change the use of any any single-family residential area to a multi-family residential area.

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

**2.5 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make Improvements and changes to all Common Areas, whether owned by Developer or the Association, and to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changing the location of the boundaries of any Lots owned by Developer or of the Common Areas whether owned by Developer or the Association, (iii) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas and (iv) installation of security and trash and refuse facilities. The exercise by Developer of any of the rights set forth in this Section 2.5 may be exercised solely by Developer without any requirement that the consent or approval of any Owners, Occupants or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer or affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.2 above.

**2.6 Subdivision Plat.** Developer may record, modify, amend, revise and otherwise add to or delete from, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Common Areas, Additional Property, public or private roads, public or private utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots, Common Areas, Natural Areas and other portions of the Property owned by Developer. Notwithstanding anything provided to the contrary in this Declaration, the rights



reserved to Developer pursuant to this Section 2.6 may be exercised solely by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained.

### **ARTICLE III**

#### **EASEMENTS AND RESERVATION OF RIGHTS**

##### **3.1 Grant of Non-Exclusive Easements to Owners.**

(a) Common Areas. Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, the Association, and their successors and assigns, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot. The easement to use and enjoy the Common Areas granted hereby shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

(b) Recreational Facilities. Subject to the terms and provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer, the Association, and each Owner and Occupant shall have the nonexclusive right, privilege and easement of access to and the use and enjoyment of the recreational areas, facilities and amenities now or hereafter located in the Common Areas, if any. The easement and rights granted herein are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot. The easement to use and enjoy the recreational areas and facilities granted hereby shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

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

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

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



### **3.4      Reservation of General Access Easement.**

(a)      Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (i) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration, (ii) for equipment and activities reasonably required in emergency or perceived emergency situations in order to prevent or minimize damage to persons or property, and (iii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or directly affected thereby.

(b)      It is anticipated that a single family residential home shall be constructed on each Lot. In the event a minimum side setback line of zero (0) is established for a Lot pursuant to the provisions of Section 6.4(a) below, the Dwelling to be constructed on each such Lot may be situated so that one side wall of the home is located up to and on one side line of the Lot. Any such Lot shall hereafter be referred to as the "dominant lot" and the side line which the home is located up to or on shall thereafter be referred to as the "dominant side". The owner(s) of each dominant lot shall have, and there is hereby created in favor of each dominant lot, a five (5) foot wide easement across the Lot which joins the dominant lot on its dominant side, the easement to extend along their common property line from the front to the rear thereof, for the limited purpose of facilitating the construction and maintenance of the home. The easement herein created shall apply not only during the construction phase but shall also run with the Lots subject thereto and in favor of the dominant lot, and apply to the continued maintenance and repair of the Dwelling and the reconstruction of a Dwelling in the event of its partial or total destruction. Any party exercising its rights under the easement herein established shall not cause any damage to any Lot which is subject to this easement and, except in the event of emergencies or perceived emergencies, may exercise its rights only during reasonable hours and in a reasonable manner. The easement herein created shall not permit the alteration in any manner of any area subject to the easement by the Owner of the "dominant lot".

### **3.5      Reservation of Easements With Respect to Common Areas.**

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

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

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

3.7 **Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 7.2(b) below, Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.8 **Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards, to effect storm water run-off, or to effect any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any applicable Governmental Authority. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

3.9 **Establishment of Natural Areas.**

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



(b) Developer does hereby grant to the Association and its respective successors and assigns, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon the Natural Areas for the purpose of maintaining the Natural Areas as provided in Section 7.2(a) below; provided, however, that nothing contained in this Section 3.9 shall obligate Developer to undertake any maintenance responsibilities with respect to the Natural Areas or preclude Developer's conveyance of a Natural Area to an entity chosen by Developer in Developer's sole discretion for the maintenance and protection of a Natural Area as a natural, undisturbed buffer area.

#### **ARTICLE IV ASSOCIATION**

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

4.2 **Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot within the Development; provided, however, that Developer may, in its sole discretion, elect to transfer all such rights to the members of the Association prior to the occurrence of the foregoing. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

4.3 **Voting Rights.** Subject to the rights reserved to Developer herein and in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Article XI below, the Owner of each Lot shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot owned. Such voting rights shall continue to apply to each Lot upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.6 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted. For purposes of this Section 4.3, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots owned by Developer.



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

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

enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

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

4.7 **Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including, specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Development. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled or modified unless such action is also approved by Developer so long as Developer owns any Lot in the Development.

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

**ARTICLE V**  
**ARCHITECTURAL REVIEW COMMITTEE**  
**AND**  
**ARCHITECTURAL STANDARDS**



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

5.2 **Appointment and Removal of ARC Members.**

(a) For so long as Developer is the Owner of any Lot within the Development or any portion of the Development, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

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

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

5.3 **Procedure and Meetings.** The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairmen, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC.

5.4 **Architectural Standards.** The ARC is hereby authorized but not required to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, improvement, alteration, location, landscaping and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvement on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, improvement, alteration, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.



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

**(a)     IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE DEVELOPMENT, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE DEVELOPMENT AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING BY ANY OWNER OR THE ASSOCIATION, OTHER THAN DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.5(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION, INSTALLATION OR ALTERATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GUEST OR SERVANT'S QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.5(b) BELOW.**

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

**(i)     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.**

**(ii)    a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Dwelling or Improvement to be constructed on the Lot.**

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

**(iv)    the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot, Dwelling or other Improvement.**

**(v)     a landscaping plan prepared and submitted in accordance with the provisions of Section 5.6 below.**

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

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed Improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Development. The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking the ARC's approval of plans and specifications. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance and the Association may make interior improvements and alterations within any buildings or structures it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that the approval or consent of the ARC be obtained.

(d) In the event the ARC fails to approve in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

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

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

**5.6 Landscaping Approval.** In order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner or the Association, other than Developer, on any Lot, Dwelling or Common Area unless and until landscaping plans therefore have been submitted to and approved by the ARC. For purposes of this Section 5.6, landscaping approval shall not be required for the planting or installing of flowers or small shrubs unless such violate the Architectural Standards or other terms or provisions of this Declaration. The provisions of Section 5.5 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.



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

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

5.9 **Subsurface Conditions.**

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

(b) Neither the ARC and its individual members, nor the Association and its members, nor the Developer and its members, agents and employees and the shareholders, officers, directors, agents and employees of its members shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on account of injuries to any Lot or parcel of the Property, to any buildings, Improvements, Dwellings or other structures now or hereafter located upon any Lot or parcel of the Property, or on account of any past or future injuries to any Owner, Occupant, or any other person in or upon any Lot or parcel of the Property, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, sinkholes, radon gas, limestone formations, or other geological formations or conditions) under or on the Property.

5.10 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for 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 by Owner and reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any Improvements constructed or done by Owner 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, radon gas, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling ) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any



Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling, or any Improvements situated thereon.

5.11 **Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities.

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

5.13 **Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Board, the ARC and/or the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Board, ARC or the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Board, ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.6 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.8 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Board, ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Board, ARC or the Association may exercise at law or in equity or any of the enforcement rights set forth in this Declaration.

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

5.15 **Assignment Rights.** Developer shall have the right at any time to transfer and assign its rights and duties and the benefits granted to it pursuant to this Article V to the Association or to any other person or entity, and following such assignment, such assignee shall be entitled to all of the rights and benefits of Developer set forth in this Article V.

**ARTICLE VI**  
**USE AND PROPERTY RESTRICTIONS**

6.1 **Use Restrictions.** Except as otherwise provided to the contrary in this Section 6.1, each Lot and Dwelling shall be used for single-family residential purposes only. No trade or business may be carried on in or from any Lot or Dwelling; provided, however, the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine, including daily or weekly rentals. Notwithstanding anything provided in this Section 6.1 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas or single-family residential purposes, then such use must be approved in writing by the ARC.

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

6.3 **Underground Utilities.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.4 **Building Setbacks.** Subject to the provisions of Section 6.5 below, building setback lines for all Dwellings shall be zero (0) from the front, rear and side boundary lines of all Lots.

6.5 **Siting of Dwellings.** Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.5 above.

6.6 **Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed three and one-half (3½) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

6.7 **Minimum Living Space.** Minimum Living Space requirements may be established (i) on the subdivision plat for the subdivision of which such Lot is included or (ii) in the deed from Developer to the Owner of a Lot.

6.8 **Landscaping.**

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 5.6 above. For purposes of this Section 6.8, landscaping approval shall not be required for the planting or installing of flowers or small shrubs unless such violate the Architectural Standards or other terms or provisions of this Declaration. No Owner shall be allowed to divert or obstruct surface water from its drainage channels or otherwise divert or obstruct surface water so as to adversely impact adjoining or neighboring Lots or Dwellings. The determination of whether any such diversion or obstruction



of surface water exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

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

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

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

6.9 **Roofing.** The ARC shall have the right to establish specific requirements for the pitch of any roof, the type of roofing materials and the location and color of vents, stacks, equipment, or other devices which may be utilized on the roof of any Dwelling.

6.10 **Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by the ARC. The Owner or Occupant of each Dwelling shall be responsible for maintaining and replacing all exterior lighting on the Dwelling or Lot of such Owner or Occupant.

6.11 **Exterior Materials and Finishes.** All exterior building material finishes for any Dwelling shall be approved by the ARC.

6.12 **Off-Street Parking.** Each Dwelling shall provide for off-street parking for all automobiles, vehicles, machinery and equipment. No automobiles, vehicles, machinery and equipment shall be parked on the street; provided, however, that visiting automobiles and vehicles shall be parked, to the greatest extent possible, (i) in the off-street parking areas of the Lot being visited or (ii) on the street in front of the Dwelling being visited but for no more than 24 hours. The Board shall have the right but not the obligation at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks, commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

6.13 **Fences.** No fences of any kind or material shall be permitted within the Development except as approved by the ARC. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC, and if a fence is so approved by the ARC, then the Owner of such Lot shall be solely responsible for maintaining the same in good condition and repair at all times.

6.14 **Windows, Window Treatments and Doors.** All exterior windows and doors shall be approved by the ARC. Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

6.15 **Mailboxes.** Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or as approved by the ARC.

6.16 **Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall, to the extent practicable, be located on each Lot so as not to be visible from any street. No window mounted heating or air conditioning units or window fans shall be permitted.

6.17 **Satellite Dishes and Antennae.** Subject to the approval of the ARC as to size, appearance, location and function, miniature satellite dishes which are three (3) feet in diameter or less may be allowed on any Lot or Dwelling. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Development unless the size, appearance, location and function are approved by the ARC.

6.18 **Driveways and Sidewalks.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of materials approved by the ARC.

6.19 **Outdoor Furniture and Clotheslines.**

(a) Any outdoor furniture placed, kept, installed, maintained or located in or on any Lot shall, to the greatest extent practicable, be located so that the same will not be visible from any roadways within the Property. All outdoor furniture shall be maintained in good condition and repair at all times by the Owner of such Lot. No indoor furniture shall be placed, kept, installed, maintained or located outside of the Dwelling.

(b) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited in the front or side yard of any Lot or Dwelling.

6.20 **Pets and Animals.** No wild animals, reptiles, livestock or poultry shall be kept, raised or bred by any Owner upon or within any Lot or Dwelling or other portion of the Development. Ordinary household dogs and cats may be kept and maintained within the Development except for breeding or commercial purposes. No pet may make an unreasonable amount of noise, be a nuisance or annoyance to other Owners or Occupants, or be a threat of personal injury or property damage to other Owners and Occupants. The determination of whether a pet is unreasonably noisy, annoying, a nuisance or a threat of personal injury or property damage shall be made by the Board in its sole discretion and shall be final, conclusive and binding on all Owners and Occupants. Upon determining that a pet is unreasonably noisy, annoying, a nuisance or a threat, the Board is authorized to invoke any remedy available pursuant to Article XI below and/or may prohibit such pet from residing within the Development. No structure or area for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas. All structures or areas for the care, housing or confinement of any pet shall be located at the rear of a Dwelling and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or Occupant or within any street or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association or the Developer for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing the keeping of pets within the Development, including the right to assess fines for violations of such rules and regulations.

6.21 **Trash, Rubbish and Nuisances.**



(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development by Owners or Occupants nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Dwellings within the Development or any real property owned or being developed in close proximity to the Development. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Any Owner or Occupant, or any respective family members, guests, invitees, servants, agents, employees or contractors of such Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Dwelling or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in trash cans or containers or garbage compactor units.

6.22 **Signage.** No signs or advertising posters of any kind (other than one (1) "For Sale" sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. Notwithstanding the foregoing, (a) the restrictions set forth in this Section 6.22 shall not be applicable to Developer and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 3.3 above.

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

6.24 **Temporary Structures.** No trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, temporary house or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board, (b) any detached garages or other structures which are approved in writing by the ARC, (c) dog houses, as provided in Section 6.20, and (d) construction trailers and/or sales offices of Developer or builders.

6.25 **Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.25 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.26 **Swimming Pools and Tennis Courts.** No swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools or tennis courts may be constructed, installed and maintained on any Lot without the prior written approval of the plans for the same by the ARC.

6.27 **Traffic Regulations.** All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner, with due consideration for the rights of all residents of the Development.

6.28 **Common Areas.** No Owner or Occupant may cut, remove, damage, mutilate or destroy any of the Improvements, trees, plant life, or other vegetation situated on or within a Common Area. Furthermore, no Owner or Occupant may construct, install, place, erect or otherwise maintain any Improvements, vehicles or devices of any nature on or within a Common Area.

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

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

6.31 **Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot or Dwelling. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC. A variance granted to one Owner shall not be precedent for a variance request of another Owner and each variance request will be considered individually on its own merits without consideration of prior variances and variance requests.

6.32 **Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Developer, Association and/or the ARC shall each have the right, at their option, to exercise any of the rights and remedies set forth in Article XI below.

## **ARTICLE VII**

### **MAINTENANCE RESPONSIBILITIES**

#### **7.1 Responsibilities of Owners.**

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

(b) Each Lot shall be landscaped in accordance with plans and specifications submitted to and approved by Developer or the ARC pursuant to Section 5.6 above. All areas of any Lot which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner in a landscaped condition utilizing ground cover and/or shrubbery and trees. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and



attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Development.

(c) No Owner shall (i) change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such change or alteration is first approved, in writing, by the ARC as provided in Sections 5.5 and 5.6 above or (ii) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Development, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the ARC.

## **7.2 Responsibilities of Association.**

(a) The Association henceforth shall, to the extent it has received sufficient funds from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas, whether owned by Developer or the Association, which responsibility shall include the maintenance, repair and replacement of (i) walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, landscaped areas, recreational areas and other Improvements made by Developer or the Association within any of the Common Areas, or within any of the easements encumbering the Lots as provided in Article III above, (ii) such entrance gates and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Areas, and (iv) all Natural Areas not otherwise conveyed to another entity subject to such entity's assumption of the Association's obligation to maintain such Natural Area, and (v) lakes, streams, ponds and other water areas and facilities constructed by Developer or the Association, wherever located (either within or outside of the Development so long as the same are utilized for the benefit of the Development), including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. Neither the Association nor Developer shall be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Areas onto a Lot or Dwelling or (3) resulting from thief, burglary or other illegal entry into the Development, or any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act or omission of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the

same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.8 below.

## **ARTICLE VIII**

### **COMMON AREA ASSESSMENTS**

8.1 **Assessments and Creation of Lien.** Each Owner of a Lot, except for Developer, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.4 below, (b) Special Assessments, to be established and collected as provided in Section 8.5 below, and (c) Individual Assessments against any particular Lot which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided in Section 8.8(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.8(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.8(a) below, court costs and attorneys' fees incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Common Area, or any other portion of the Development or any other cause or reason of any nature.

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

8.3 **Uniform Rate of Assessments.**

(a) Both Annual and Special Assessments, as described in Sections 8.4 and 8.5 below, shall be assessed against each Lot in the Property at a uniform rate, with the Owner of each Lot (other than Developer) being required to pay the same amount of such Annual and Special Assessments.

(b) Notwithstanding anything provided in Section 8.3(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots and/or Dwellings within the Additional



Property shall be subject to the same Annual or Special Assessments then being paid by the Owners of all other Lots and Dwellings in the Development, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Property as provided in Section 8.7 below.

#### **8.4 Computation of Annual Assessments.**

(a) Notwithstanding anything provided to the contrary in this Declaration, the Annual Assessment for each Lot within the Development, except Lots owned by Developer, commencing on the date hereof and continuing until and including December 31, 2004 shall be TWO HUNDRED and NO/100 DOLLARS (\$200.00) per Lot in the Development. The foregoing shall not limit or restrict any Special Assessments levied pursuant to Section 8.5 below or any Individual Assessments levied in accordance with the provisions of Section 8.6 below.

(b) As of January 1, 2005, the Board and Developer, so long as Developer owns any Lot within the Development, shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year. Based upon such annual budget, the Board and Developer, so long as Developer owns any Lot within the Development, shall determine the Annual Assessments to be levied against the Lots for the following year. A copy of the budget approved by the Board and Developer, so long as Developer owns any Lot within the Development, setting forth the amount of Annual Assessments to be levied against the Lots for the year shall be delivered to each Owner. At such time as Developer no longer owns any Lot within the Development, the Board shall determine and approve the annual budget covering the estimated Common Expenses for the Development. A copy of the budget approved by the Board setting forth the amount of Annual Assessments to be levied against the Lots for the year shall be delivered to each Owner. Annual Assessments may increase each year in the amount reasonably necessary to cover the estimated Common Expenses for the Development for the upcoming year. If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.5 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

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

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

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

(iv) Support and financial assistance to the Chelsea Volunteer Fire Department until such time, if ever, that the Development is within a fire district or other fire protection jurisdiction and invoices Owners directly for fire protection charges, fees or dues, at which time Owners shall be obligated to pay the fire district or other fire protection jurisdiction directly for such charges, fees or dues;

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

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

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

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

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

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

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

8.6 **Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots. The Individual Assessments provided for in this Section 8.6 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.6 shall apply, without limitation, to any Individual Assessments levied pursuant to Section 5.13, Article VI and Section 7.2(b) above and Article XI below.

8.7 **Date of Commencement of Assessments.**



(a) The Annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board. Annual Assessments and any outstanding Special Assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is conveyed. Annual and Special Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of Annual or Special Assessments on any Lots which it, or its affiliates, own in the Development.

(b) In the event a deficit exists between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Development, Developer shall have the option to either pay Annual Assessments on Lots owned by Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Development. As of December 31, 2006, Developer shall have no further obligation of any nature to pay any Annual or Special Assessments or otherwise fund any deficits relating to the Common Expenses or Common Areas.

#### **8.8 Effect of Non-Payment; Remedies of the Association.**

(a) Each Owner of a Lot, except Developer, is and shall be deemed to covenant and agree to pay to the Association, all Annual and Special Assessments provided for herein and any Individual Assessments levied or assessed pursuant to the terms of this Declaration. In the event any Assessments or any portions thereof are not paid when due, the same shall be subject to a late charge in an amount determined from time to time and uniformly applied by the Board, and the Owner of such Lot shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessments shall accrue simple interest at the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot for Assessments shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner when the same come due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.8(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

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

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.8(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of the Assessments remains unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, as the case may be, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office of Shelby County, Alabama:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot in an amount equal to that stated therein.

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

8.9 **Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments or other charges authorized herein with respect to any Lot is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.8(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by



the Association pursuant to Section 8.8(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by a Mortgagee on such Owner's Lot.

8.10 **Certificates.** The Association (or any officer or authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

## **ARTICLE IX**

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

#### **9.1 Damage or Destruction to Common Areas.**

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty. In the event of damage or destruction to any of the Common Areas by the act or omission of an Owner, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such damage and the cost thereof shall be an Individual Assessment assessed against such Owner and such Owner's Lot.

(b) Notwithstanding anything provided in Section 9.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, pursuant to Section 8.5, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such Special Assessments shall be levied against each Owner equally as provided in Section 8.3 above. Further Special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.2 **Damage or Destruction to Lots or Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to

compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

### **9.3 Condemnation of Common Areas.**

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.5, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such Special Assessments shall be levied against each Owner as provided in Section 8.3 above.

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.3(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

**9.4 Condemnation of Lots.** In the event that all or any portion of a Lot is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances



of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

#### **9.5     Insurance.**

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

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

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

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

(e)     Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot, Dwelling and all other Improvements situated thereon. The Board may require all Owners and the Association to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot, does hereby waive and release the Developer, the Association and the ARC, and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors from any and all liabilities, damages or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage is caused by the fault or negligence of the Association, Developer, the ARC or any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors.

**9.6     Indemnity.** Each Owner hereby waives and releases any and all claims against Developer, the Association and the ARC, and any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, for damages to persons or personal property occurring in, on, about or

upon the Common Areas and does hereby indemnify, agree to defend and hold harmless the Developer, the Association and the ARC, and any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, from and against all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) of any nature arising out of or in connection with any injury or damage to person or personal property occurring in, on or about such Owner's Lot or any of the Common Areas caused by or resulting from any negligent act or omission or any willful act or omission of any Owner, Occupant or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant.

## **ARTICLE X**

### **TERM AND AMENDMENTS**

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

10.2 **Amendment by Developer.** For so long as Developer owns any Lot within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Shelby County, Alabama, without obtaining the approval of any Owner or Mortgagee. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots within the Development.

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

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

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



holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Notwithstanding anything provided in this Section 10.3(b) to the contrary, Developer shall have the right, at its option, to add Additional Property to the Declaration as provided in Section 2.2 above.

## **ARTICLE XI** **ENFORCEMENT**

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

11.2 **Non-Exclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which Developer, the Board, the Association or the ARC would have the right to exercise at law or in equity.

## **ARTICLE XII** **MISCELLANEOUS PROVISIONS**

12.1 **Control by Developer.** **NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS, OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF**

**THE BOARD AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE.** Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Section 4.2 above. At such time as Developer no longer owns any interest in any Lot within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.

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

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

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

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

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

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

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



12.9 **Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

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

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

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

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

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

12.15 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's Lot within the Development.

12.16 **Assignment.** Subject to the provisions of Section 12.19 below, Developer, the Association and the ARC shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer, the Association and the ARC, respectively.

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

12.18 **No Waiver.** All rights, remedies and privileges granted to Developer, the ARC and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any

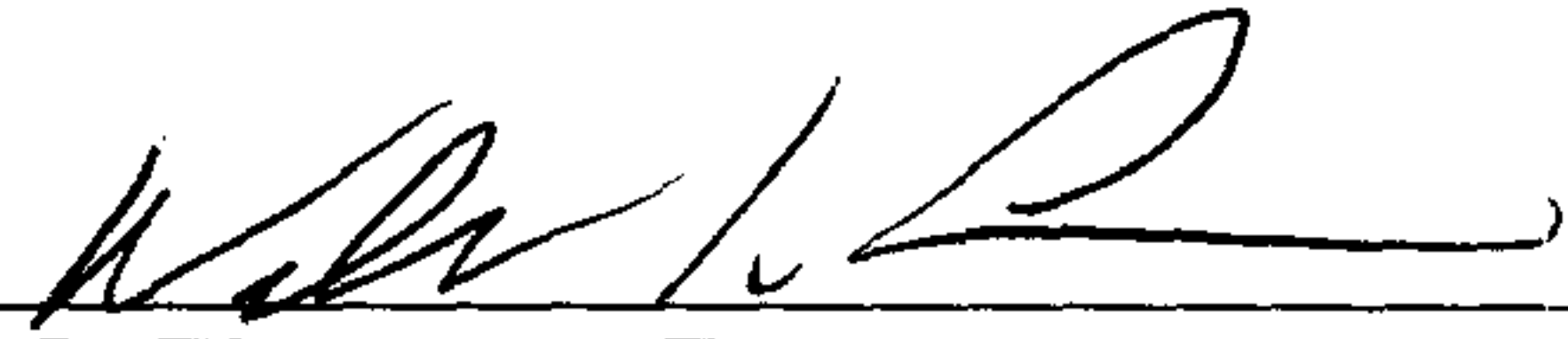
one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

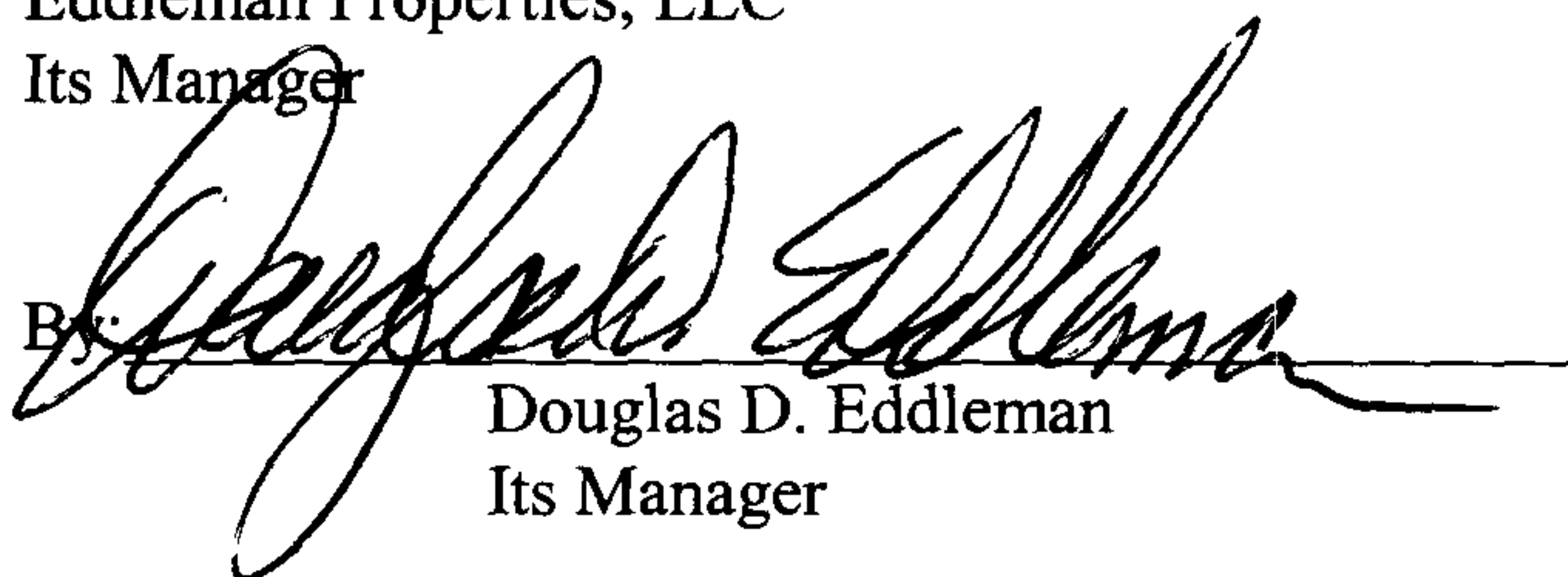
12.19 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer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



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

**CHESSER DEVELOPMENT, LLC.**, an Alabama limited liability company  
By Its Managers:

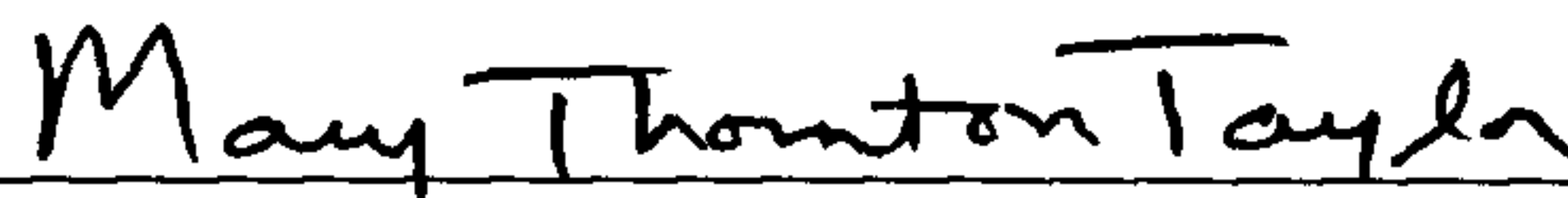
  
\_\_\_\_\_  
William L. Thornton, III  
Its Manager

Eddleman Properties, LLC  
Its Manager  
By:   
\_\_\_\_\_  
Douglas D. Eddleman  
Its Manager

STATE OF ALABAMA                    )  
  )  
COUNTY OF JEFFERSON            )

I, the undersigned, a notary public in and for said County in said State, hereby certify that William L. Thornton, III, whose name as Manager of Chesser Development, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 10<sup>th</sup> day of May, 2004.

  
\_\_\_\_\_  
Notary Public

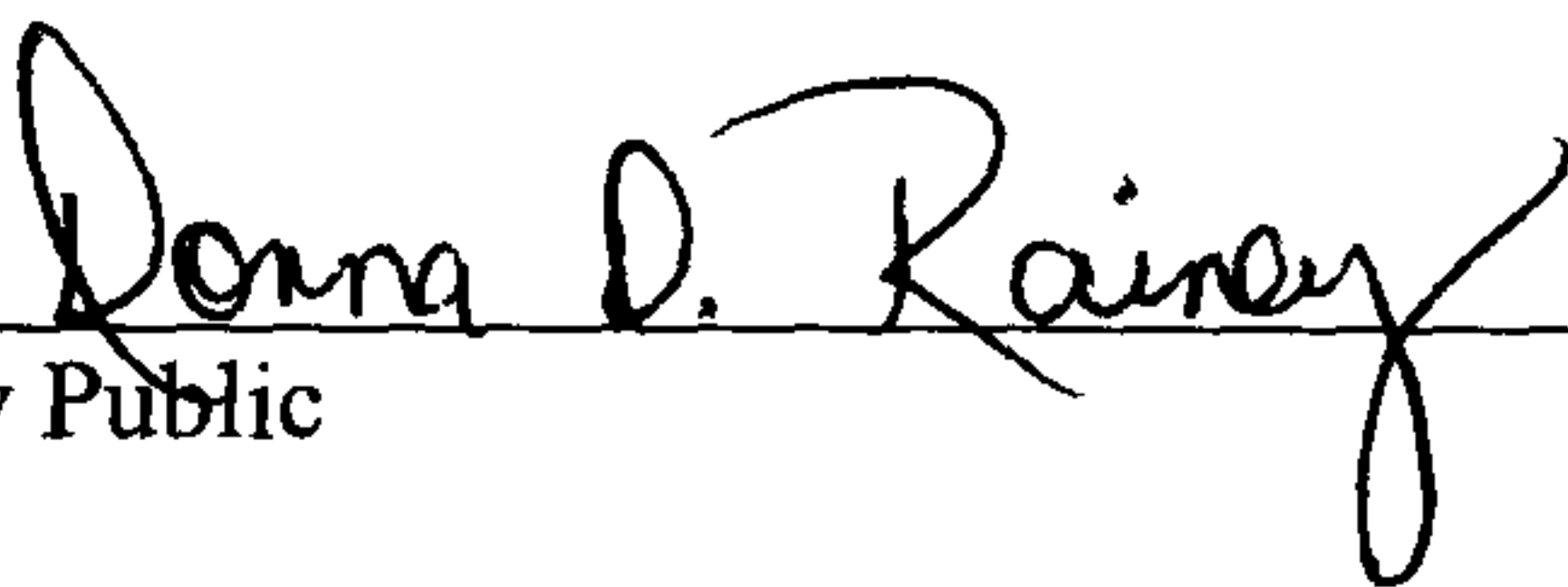
[SEAL]

My Commission Expires:  
5/27/07

STATE OF ALABAMA                    )  
  )  
COUNTY OF JEFFERSON                )

I, the undersigned, a notary public in and for said County in said State, hereby certify that Douglas D. Eddleman, whose name as Manager of Eddleman Properties, LLC, an Alabama limited liability company, as Manager of Chesser Development, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority executed the same voluntarily for and as the act of said limited liability company as Manager as aforesaid.

Given under my hand and official seal, this the 11<sup>th</sup> day of May, 2004.

  
\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec 1, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY  
MADE THE SUBJECT OF  
COTTAGES AT CHESSER DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

Lots 1 through 94, inclusive, according to the record map of the Cottages at Chesser Phase 1 as recorded Map Book 33, page 45 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.