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**DECLARATION
OF
PROTECTIVE COVENANTS
FOR
LONG BRANCH**

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Exhibit A - Description of Long Branch Property

**DECLARATION OF PROTECTIVE COVENANTS
FOR LONG BRANCH**

KNOW ALL MEN BY THESE PRESENTS, That:

R E C I T A L S:

1. Long Branch, LLC, an Alabama limited liability company ("Developer") owns the property described in Exhibit A attached hereto, situated in Shelby County, Alabama (referred to as the "Long Branch Property"). Developer intends to form a planned development (to be known as "Long Branch") on the Long Branch Property consisting of residential, recreational and other areas.
2. Developer has caused the Long Branch Homeowners' Association, Inc. ("HOA"), a non-profit organization, to be formed for the purpose of providing for the assessment, collection and application of all charges imposed hereunder, the enforcement of all covenants contained herein and all liens created hereby, and the creation, operation, management and maintenance of the facilities and services referred to hereafter and such other purposes described in its Articles of Incorporation (the "Charter").
3. Developer may desire to subject, from time to time, portions of the Long Branch Property intended for residential and related development to this Declaration.

W I T N E S S E T H:

NOW, THEREFORE, Developer hereby declares that any part of the Long Branch Property which becomes subject to the protective covenants, easements, agreements, options, and restrictions set forth in this Declaration (herein collectively referred to as "Restrictions" or "Covenants") shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to this Declaration, which shall run with the land and shall be binding upon Developer and upon all parties having or acquiring any right, title or interest in any part of the Long Branch Property which is made subject to this Declaration.

I. Mutuality of Benefit and Obligation

These Restrictions are made for the mutual benefit of each part of the Long Branch Property specifically subjected to these Restrictions (referred to as "Property" or as "Member's Property"), and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective owners and future owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. **The Restrictions do not apply to or affect any part of the Long Branch Property which is not subjected specifically by written instrument to this Declaration in the manner set forth herein.** All Member's Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Member's Property, including, but not limited to, the lien provisions set forth in Article X.

II. Architectural Committee; Architectural Control

2.1 Architectural Committee. The Residential Architectural Committee (the "Architectural Committee") shall be composed of at least one (but not more than five) individuals designated and redesignated from time to time (i) by Developer until control of the Architectural Committee is specifically delegated by the Developer to the HOA, and (ii) by the HOA after delegation of such control. Delegation of control of the Architectural Committee from the Developer to the HOA shall be evidenced by an instrument signed by the Developer and filed for record in the Probate Records of Shelby County, Alabama. The delegation of such control of the Architectural Committee shall not occur until the Developer has sold all the Long Branch Property, or such sooner time as the Developer shall determine.

Except as hereinafter provided, the affirmative vote of a majority of the membership of the Architectural Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. With regard to review of plans and specifications as set forth in this Article II, however, or the granting of any approval, permit or authorization, the decision of Developer (or a member of Developer serving on the Architectural Committee) shall be final and binding. Any disapproval, or approval based upon modification or specified conditions by Developer (or a member of Developer serving on the Architectural Committee) shall also be final and binding.

Notwithstanding any provision to the contrary herein, the Architectural Committee shall not have the authority to decrease, lessen, or relax the restrictions governing the Property under applicable zoning and building codes.

2.2 Approval Required. No Structure as defined in Section 17.19 shall be commenced, erected, placed, moved on to or permitted to remain on any Parcel, nor shall any existing Structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless two sets of plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but in any event shall include (the following are referred to as "Plans"): (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all Structures proposed for the Parcel; (ii) a site plan of the Parcel showing the location with respect to the particular Parcel (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Parcel; (iii) a grading plan for the particular Parcel; (iv) a drainage plan and (v) a plan for landscaping. All of said plans shall address the matters set forth in Article IV, as applicable.

2.3 Basis for Disapproval of Plans. The Architectural Committee shall have the right to disapprove any Plans submitted hereunder because of any of the following:

- (a) failure of such Plans to comply with any of the Restrictions or the guidelines prepared by Developer for the Plans;
- (b) failure to include information in such Plans as may have been reasonably requested;
- (c) objection to the exterior design, appearance or materials of any proposed Structure;
- (d) objections to the location of any proposed Structure upon any Parcel or with reference to other Parcels in the vicinity;

- (e) objection to the site plan, grading plans, drainage plan or landscaping plan for any Parcel;
- (f) objection to the color scheme, finish, proportions, size, style of architecture, materials, height, location, bulk, or appropriateness of any proposed Structure;
- (g) objection to parking areas proposed for any Parcel on the grounds of (i) incompatibility to proposed uses and Structures on such Parcel or (ii) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel;
- (h) failure of Plans to take into consideration the particular topography, vegetative characteristics, natural environment and storm water runoff of the Parcel; or
- (i) any other matter which, in the judgment of the Architectural Committee, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon other Parcels in the vicinity.

Approval of any such Plans shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless such six (6) month period is extended by agreement with the Architectural Committee in which event the extended time period shall be applicable.

In any case where the Architectural Committee shall disapprove any Plans submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

The scope of review by the Architectural Committee is limited to appearance only and does not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other similar or dissimilar factors.

2.3A Minimum Standards. Except as otherwise provided, every dwelling building erected on any lot in the Property, exclusive of one-story open porches, garages, carports and other unairconditioned, unfinished spaces, shall each have not less than 1,600 square feet (single story homes) and 1,800 square feet (multi-story homes) of enclosed, heated, habitable area.

2.4 Retention of Copy of Plans. Upon approval by the Architectural Committee of any Plans submitted hereunder, a copy of such Plans, as approved, shall be deposited for permanent record with the Architectural Committee, and a copy of such Plans bearing such approval, in writing, shall be returned to the applicant submitting the same.

2.5 Rules of Architectural Committee; Effect of Approval and Disapproval; Time for Approval. The Architectural Committee may promulgate rules and guidelines governing the form and content of plans to be submitted for approval or requiring specific improvements on Parcels, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Guidelines have been prepared for Phase One of the Development. Such rules, guidelines and statements of policy may be amended or revoked by the Architectural Committee at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Architectural Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any plans or specifications shall not be deemed a waiver of the

Architectural Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Parcel or Parcels. Approval of any such Plans relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such Plans do not violate any specific prohibition contained in the Restrictions, and (ii) that the Plans, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Parcel in question.

If the Architectural Committee fails to approve or disapprove any Plans as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required, provided that a letter is sent to Developer, no later than five (5) days prior to the end of such 30-day period, and no earlier than ten (10) days before the end of such 30-day period, reminding Developer of the expiration date of such 30-day period.

2.6 Failure to Obtain Approval. If any Structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced on any Parcel, otherwise than in accordance with Plans approved by the Architectural Committee pursuant to the provisions of this Article II, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article II, and without the approval required herein, and, upon written notice from the Architectural Committee, any such Structure so altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

If fifteen (15) days after the notice of such a violation the Owner of the Parcel upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, Developer or the HOA shall have the right, through its agents and employees, to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Section 2.6 shall not be valid as against a *bona fide* purchaser (or *bona fide* mortgagee) of the Parcel in question unless said lien shall have been filed in the Probate Office of Shelby County, Alabama, prior to the recordation in such probate office of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

2.7 Certificate of Compliance. Upon completion of the construction or alteration of any Structure upon any Parcel in accordance with Plans approved by the Architectural Committee, the Architectural Committee shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such Structure and the Parcel on which such Structure is placed, and stating that the Plans, the location of such Structure and the use or uses to be conducted thereon have been approved and that the Architectural Committee does not contest the compliance of such Structure with the requirements of the Committee. The Architectural Committee may (but shall not be required to) condition its certificate of compliance upon a certificate to the Committee from the Owner and/or the architect named on the Plans of the matters requested by the Owner certified by the Committee as aforesaid. Preparation and recording of such certificate shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Section 2.7 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that, as of the date of the certificate, all Structures on the Parcel, and the use or uses described therein comply with all the requirements of this Article II, and with all other requirements of this Declaration as to which the Architectural Committee exercises any discretionary or interpretive powers.

2.8 Inspection and Testing Rights. Any agent of Developer, HOA or the Architectural Committee may at any reasonable time or times enter upon and inspect any Parcel and any improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and neither Developer, HOA nor

the Architectural Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Without limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines, each Owner agrees to notify the Architectural Committee prior to installation by such Owner of the sanitary sewer service lines and to permit such inspection and testing thereof by the Architectural Committee both before and after backfill as is required by the Architectural Committee. Any such inspection shall be for the sole purpose of determining compliance with these Restrictions, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the Owner of a Parcel or any third persons or entities for any purpose whatsoever; nor shall any such inspection obligate the Developer, the HOA or the Architectural Committee to take any particular action based on the inspection.

2.9 Waiver of Liability. Neither the Architectural Committee nor any architect nor agent thereof, nor the HOA, nor the Developer, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of Structures to comply with requirements of this Declaration, although a certificate of compliance has been issued, nor for any defects in any Plans submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such Plans, nor for any bodily injuries or deaths resulting from any Plans or Structures, and all persons using or occupying any Structures or benefitting therefrom agree not to sue or claim against the entities and persons referred to in this Section 2.9 for any cause arising out of the matters referred to in this Section 2.9 and further agree to and do hereby release said entities and persons for any and every such cause.

III. Zoning and Specific Restrictions

These Restrictions shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or by applicable laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Restrictions shall be taken to govern and control.

IV. Site Development

4.1 Site to be Staked Prior to Tree Cutting. After the Plans for the Structure are approved, the site of the Structure must be staked out by the Owner and such site approved by the Architectural Committee before tree cutting is done. Existing vegetation on each Parcel shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the Architectural Committee. Removal of "underbrush" from the corded areas is expressly prohibited except on Architectural Committee approval. No tree may be cut or removed from any Parcel without consent of the Architectural Committee until the Plans, and site staking are approved by the Architectural Committee.

4.2 Erosion Control. Erosion control measures shall be taken by the Owner of a Parcel, or his contractors, to protect adjacent properties during construction on such Parcel and thereafter until the soil is stabilized on the Parcel. This may be accomplished by the use of temporary retention ponds, silt fencing, or other protective measures intended to intercept and filter the excess storm water runoff from the Parcel. All such erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the Architectural Committee prior to commencement of grading activities.

Any storm water retention ponds created during construction on a Parcel shall not remain as permanent ponds after completion of construction unless so provided in the Plans submitted to and approved by the Architectural Committee.

4.3 Utility Lines and Appurtenances. All gas, water, sewer, telephone and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the Architectural Committee. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the Architectural Committee; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Architectural Committee. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables. Where underground electric service is to be installed, in order to permit installation of underground electric service to each Parcel for the mutual benefit of all owners therein, no Owner of any such Parcel will commence construction of any house on any such Parcel until such Owner (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral on each Parcel, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission.

If required by the electric utility, such electric utility, its successors and assigns, may retain title to the underground service lateral and outdoor metering trough or house power box (exclusive of circuit breakers) serving each said house, and said service entrance facilities provided by such utility will not in any way be considered a fixture or fixtures and thereby a part of said real estate, but will remain personal property belonging to such utility, its successors and assigns, in accordance with applicable Rules and Regulations filed with and approved by the Alabama Public Service Commission.

4.4 Connection Points for Utility Service Lines. To the extent of the interests of the Owner of each Parcel, such Owners agree to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by Developer.

4.5 Sanitary Sewer Service Lines. The material for sanitary sewer lines must conform to acceptable codes and cast iron or ductile lines may be required in some or all sections of the Property.

4.6 Landscaping. The landscape plan must be approved by the Architectural Committee prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the Parcel. The Owner must faithfully execute the landscape plan as submitted to and approved by the Architectural Committee. If the Owner should fail to faithfully execute the landscape plan, the Developer or the HOA shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost thereof shall be a binding, personal obligation of the Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Section 4.6 shall not be valid as against a *bona fide* purchaser (or *bona fide* mortgagee) of the Parcel in question unless such lien shall have been filed in the Probate Office of Shelby County, Alabama, prior to the recordation in such probate office of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

4.7 Colors; Architectural Style. All exterior building materials must be of colors approved by the Architectural Committee. All architecture on each Parcel must be compatible with the "park-like" atmosphere of the Long Branch development and must be compatible with surrounding buildings (existing or proposed).

4.8 Exterior Lighting. Exterior lighting plans must be set forth on the Plans for a Parcel, and must be approved by the Architectural Committee. Exterior lighting shall be "environmental type" which directs all

light beams downward with no spillover light or glare emitted off-site and shall be compatible with lighting used on other residential structures in Long Branch.

4.9 Commencement and Completion of Construction; Option to Repurchase. With respect to each Parcel, construction of a residence shall be substantially commenced (defined as plans approved by the Architectural Committee, site work, foundation and exterior structural walls completed) and shall be under construction without cessation or abandonment within one (1) year from the date of purchase of such Parcel from Developer. Upon commencement of construction of such 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. In addition to all other rights and remedies for breach of these Covenants, if the Owner of any Parcel shall fail to comply with the provisions of this paragraph, then Developer shall have the option, but not the obligation, to repurchase such Parcel (free and clear of any liens or matters of title other than those in Developer's deed to Owner) for an amount equal to the purchase price paid to Developer for such Parcel.

V. Covenants for Maintenance

5.1 Keep Parcel in Repair; Liens. Each Owner shall keep all Parcels owned by such Owner, and all improvements therein or thereon, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. Such provisions shall not apply to any lot held by the Developer prior to sale. If, in the opinion of the Developer or HOA any Owner fails to perform the duties imposed by the preceding sentence after fifteen (15) days' written notice from the HOA to the Owner to remedy the condition in question, the Developer or HOA shall have the right, through its agents and employees, to enter upon the Parcel in question and to repair, maintain, repaint and restore the Parcel or such improvements and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question; provided, however, that after control of the HOA has been given to the Class A members of the HOA, the approval of 51% of the votes of Class A members of the HOA in attendance at a meeting scheduled to address a specific violation (provided a quorum exists) will be required to continue to remedy a violation on a specific Parcel as provided above. Any landscaping approved by the Architectural Committee cannot be changed pursuant to this Section 5.1.

5.2 Priority of Lien. The lien provided in Section 5.1 hereof shall not be valid as against a *bona fide* mortgagee of the Parcel in question unless said lien shall have been filed in the appropriate Probate Office in the county in which the Parcel is located prior to the recordation in the land records of such county of a mortgage subjecting the Parcel in question to such mortgage.

VI. General Covenants and Restrictions

6.1 General Prohibitions. Without the prior written approval of the Architectural Committee:

6.1.1 No previously approved Structure on any Parcel shall be used for any purpose other than that for which it was originally designed;

6.1.2 No Parcel shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise;

6.1.3 To the extent of the interest of the Owner of a Parcel, no facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained

above the surface of the ground of any Parcel and no external or outside antennas of any kind shall be maintained except on the rear portion of the Parcel as approved by the Architectural Committee; and

6.1.4 No boat, boat trailer, house trailer, trailer, motor home or any similar items shall be stored in the open on any Parcel for a period of time in excess of twenty-four (24) hours unless such item is not visible from any public street. The HOA shall have the right, however, to impose regulations respecting storage of canoes and paddle boats in the open on any Parcel.

6.2 Preservation of Trees. No tree having a diameter of six (6) inches or more (measured from a point two feet above ground level) shall be removed from any Parcel without the express written authorization of the Architectural Committee. This Section 6.2 shall be read in conjunction with Section 4.1, and the provisions of both Sections, where applicable, shall be observed prior to any tree cutting. The Architectural Committee, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the Architectural Committee may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 6.2, the Developer, the HOA and the Architectural Committee and the respective agents of each may come upon any Parcel during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither HOA, nor the Architectural Committee, nor Developer, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

6.3 Animals. No birds, livestock, animals or insects shall be kept or maintained on any Parcel without the express written consent of the Architectural Committee, except that ordinary domestic pets (dogs, cats, birds, and such other pets as the HOA may approve) may be kept on a Parcel for purposes other than breeding or commercial, and provided (a) no howling or other offensive noises or odors result from such pets, and (b) the HOA may limit the number of pets by resolution (e.g., to no more than two dogs and two cats).

6.4 Signs. No sign or other advertising device of any nature shall be placed upon any Parcel except as provided herein. The Architectural Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the Property if approved by the Architectural Committee, as to the number of signs, and their color, location, nature, size and other characteristics of such signs or devices.

6.5 Temporary Structures. No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a residence or temporary housing or the like on any Parcel. If approved by the Architectural Committee, such a structure may be used as a construction office, storage facility, or security station during construction or other special purpose.

6.6 Accumulation of Refuse. No lumber, metals or bulk materials shall be kept, stored, or allowed to accumulate on any Parcel, except building materials during the course of construction of any approved Structure. No harmful or noxious materials shall be stored, either inside any Structure, or outside any Structure on any Parcel, if said materials pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such Structures. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day a pick-up is to be made. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the Architectural Committee. All trash and garbage containers shall be kept in a clean and sanitary condition. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage and screening of the same on the Property.

6.7 Pipes. To the extent of the interest of the Owners of a Parcel, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Parcel above the surface of the ground, except hoses and movable pipes used for irrigation purposes. Meters and valves for utilities shall be located underground, if feasible. If such meters and valves must be placed above ground, they shall be located at points approved in writing by the Architectural Committee, and proper screening shall be required.

6.8 Mining. To the extent of the interest of the Owner of a Parcel, and except for construction approved under Article II, no Parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing gas, coal, oil or other hydrocarbons, sulphur or other minerals, gravel or earth.

6.9 Maintenance of Hedges and Plants. The HOA shall have the right, but not the obligation, to enter upon any Parcel and trim or prune, at the expense of the Owner (subject to any applicable limitations set forth in Section 5.1), any hedge or other planting which in the opinion of the HOA, by reason of its location upon the Parcel or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days' prior written notice of such action. This Section 6.9 shall not be construed as imposing any obligation or responsibility upon the HOA to take any action whatsoever with regard to hedges or other plantings.

6.10 Business Activity. No profession or home industry shall be conducted in or on any part of a Parcel or in any improvement thereon on the Property (a) except for those described below, and (b) without the specific written approval of the Architectural Committee in its discretion. The Architectural Committee, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Parcel or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Architectural Committee, to be compatible with a high quality residential neighborhood.

6.11 Model House, Real Estate Office. All else herein notwithstanding, with the written approval of the Architectural Committee, any Parcel(s) may be used by the Developer or its agent for model home(s) or for real estate office(s) until 2025, or such earlier time as the Developer so designates.

6.12 Clothes Lines. No clothing or any other household fabrics shall be hung in the open on any Parcel unless the same are hung from an umbrella or retractable clothes hanging device which is removed from view when not in use or unless the same are enclosed by a fence or other enclosure at least six inches higher than such hanging articles, provided such fence or other enclosure is approved by the Architectural Committee.

6.13 Machinery. No machinery shall be placed or operated upon any Parcel except such machinery as is stored indoors and which is usual in maintenance of a private residence.

6.14 Use Authorized by Architectural Committee. Notwithstanding other provisions herein, the Architectural Committee may authorize any Owner with respect to his Parcel to:

- (a) temporarily use a single family dwelling house for more than one family;
- (b) maintain a sign (temporarily) other than as expressly permitted herein;
- (c) locate Structures other than the principal dwelling house within set-back areas; or
- (d) use Structures other than the principal dwelling house for residence purposes on a temporary basis.

6.15 Mail Boxes. The design of all mailboxes must be approved by the Architectural Committee and shall be of uniform design.

6.16 Outside Burning. Outside or open burning of trash, refuse or other material upon any Parcel is prohibited, except for burning of trees and brush during the clearing of a Parcel and the initial construction of improvements on such Parcel (to the extent allowed by law).

6.17 Nuisance. No obnoxious, offensive or illegal activities shall be carried on upon any Parcel nor shall anything be done on any Parcel which may be or may become an annoyance or nuisance to the neighborhood.

6.18 Builders. No structure may be constructed on a Parcel by any builder who has not been approved in writing by the Architectural Committee prior to construction. Selection of builders shall be subject to the discretion of the Developer based on such criteria as the Developer may wish to consider, including (*inter alia*) financial capacity (including ability to secure obligations to purchase lots with letters of credit or other security acceptable to Developer), record of complaints (against the builder by home buyers), relationship to approved real estate brokers (to the end that a coordinated sales effort acceptable to the Developer be achieved), rate of sale of completed units (to achieve a rate of absorption acceptable to the Developer), appearance of completed units in the Property or in other developments (including landscaping, clean-up of materials and other factors), and such other factors as the Developer may select (whether subjective or objective and including, *inter alia*, clean-up of streets adjacent to construction sites, procurement of effective sales effort, including on-site sales personnel on weekends, and acceptable mix of speculative houses and custom-built houses). The approval of a builder shall create no vested right of any nature, and the approval may be revoked at any time with or without cause, provided that no revocation shall prevent an approved builder from building on lots purchased by the builder (meaning held by the builder under deed and paid for). This paragraph shall not apply to repair of casualty losses or other construction after completion of the Structure approved by the Architectural Committee.

6.19 Damage or Destruction. In the event of any fire or other casualty which damages or destroys any portion of any Parcel or Structure, then the Owner of such damaged Parcel or Structure shall promptly repair and otherwise restore such Parcel or Structure 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 this Declaration and all then applicable rules, regulations, statutes and ordinances of the governmental authorities. Any such restoration or repair shall be commenced within ninety (90) days following the occurrence of such fire or other casualty. The Owner of any such damaged Parcel or Structure shall proceed diligently and complete all such restoration and repair no later than six months (180 days) following the occurrence of such fire or other casualty. If the restoration or repair of such Parcel or Structure is impracticable or would otherwise violate any of the terms and provisions of the Covenants, then such Owner shall promptly clear away any remaining improvements damaged or destroyed by such fire or other casualty and shall leave such Parcel or Structure and any remaining improvements thereon in a clean, orderly, safe and sightly manner.

VII. Easements

7.1 Drainage Easements. Except with prior written permission from Developer, or (when so designated by Developer) from the Architectural Committee, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these Restrictions. Developer may cut drainways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that Developer's right to cut drainways on an Owner's Property shall terminate when the principal structure and approved landscaping on such property have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery,

make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon Developer to cut such drainways.

7.2 Grading. Developer may at any time make such cuts and fills upon any Parcel or other part of the Long Branch Property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to the Long Branch Property and to drain surface waters therefrom; and may assign such rights to Shelby County, or to the City of Calera, Alabama; provided however, that after plans for the principal Structure upon a Parcel shall have been approved by the Architectural Committee as provided herein, the rights of Developer under this Section 8.2 shall terminate with respect to all parts of such Parcel other than the easement area thereof, except that Developer or any such municipal or public authority shall thereafter have the right to maintain existing streets and drainage structures.

7.3 Walking/Nature Trails. Developer reserves for itself, the HOA, and their successors and assigns a permanent easement for maintaining, repairing, and improving (if determined by HOA or Developer) of walking trails or nature trails as may be shown on the subdivision plat. Such trails shall be for purposes of walking only. Without limiting the foregoing, no walking or nature trail shall be used for bicycles, motorized vehicles of any nature, loitering, picking of any berries, flowers, or other purposes. Such trails shall be left in their natural state unless the HOA or Developer elects to improve the same.

7.4 Easement for HOA Signs. Developer does hereby establish and reserve for itself, the HOA, their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width on any side of any Parcel lying parallel and directly adjacent to and abutting any public or private roadway, for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs, street lights and related improvements; provided, however, that neither Developer nor the HOA, by virtue of this paragraph, shall have any obligation to construct any of the foregoing improvements.

7.5 Landscape Islands. Developer reserves for itself, the HOA, their respective successors and assigns, a permanent easement appurtenant over, across, through and upon the "Landscape Islands" as may be shown on the subdivision plat for each Property, for the purpose of constructing, installing, maintaining, repairing, and replacing landscaping on such easements; provided, however, that neither Developer nor the HOA, by virtue of this paragraph, shall have any obligation to construct any such landscaping. If the Developer or HOA does not construct such landscaping, then the Parcel Owner which owns the Parcel on which Landscape Island is shown, shall have the right (but not the obligation) to construct and replace landscaping in such Landscape Island, and such Parcel Owner shall in all cases, in the event the Developer or HOA do not construct and maintain landscaping in such Landscape Islands, keep such Landscape Islands free and clear of any weeds, debris, and other unsightly conditions, and shall keep the same mowed and maintained in an aesthetically pleasing condition.

7.6 Utility\Drainage Easements. Developer reserves for itself and the HOA the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or the appropriate utility company or companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water discharge, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the subdivision record map or as may hereafter appear on any plat of record of property subject to these covenants. Without limitation upon the foregoing, Developer specifically reserves a ten (10) foot easement on the side and rear property lines of each Parcel and a further easement on each Parcel to the extent the Parcel is subject to a surface drainage problem, for surface water drainage, together with the right to construct within such reserved easements such swales and other surface water drainage systems as Developer deems necessary.

VIII. Assessment of Annual Charge

8.1 Assessment. For the purpose of providing funds for use as specified in Article X hereof, the HOA shall in each year, commencing with the year 2004, assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property) equal to a specified number of dollars per Parcel. Each such Parcel shall be charged with and subject to a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Parcel. Provided, however, that so long as there are Class B Members of the HOA, and unless otherwise approved by 51% of the Class A Members of the HOA, the maximum annual charge per Parcel shall not exceed \$100 as may be adjusted upward annually in an amount not to exceed ten percent (10%) of the maximum amount (of such \$100, as escalated) which could have been charged the preceding year. Utility charges to each Parcel, including sewer, water, electricity, telephone, gas (if any) and other costs are the separate and personal responsibility of the Parcel Owner and are not part of any assessments provided for herein.

8.2 Date of Commencement of Annual Charge. The Annual Charge shall commence as to each Parcel on the day on which such Parcel is conveyed to a person other than Developer. As soon as may be practical in each year, HOA shall send a written bill to each Member stating (i) the amount of the Annual Charge assessed against each such Parcel (as limited in Section 9.1 during the time when there are Class B Members of the HOA), stated in terms of the total sum due and owing as the Annual Charge, (ii) that unless the Member shall pay the Annual Charge within thirty (30) days following the date of receipt of the bill the same shall be deemed delinquent and will bear interest until paid at the greater of (a) the prime rate announced or posted by THE WALL STREET JOURNAL as its prime rate, plus two percent (2%), as the same may fluctuate from time to time, or (b) the rate of twelve percent (12%) per annum. Annual Charges shall be adjusted for each Parcel according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such Parcel is conveyed. Annual Charges for Parcels within any portion of the Additional Property hereafter submitted to the terms of these Covenants, shall commence with respect to each such Parcel on the date on which such lot or dwelling 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 HOA 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 Charges on any Parcels or lands which it owns in the Long Branch Property.

8.3 Effect of Nonpayment of Assessments; Remedies of HOA. If the Member shall fail to pay the Annual Charge within sixty (60) days following receipt of the bill referred to in Section 9.2 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the HOA shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge, as well as the cost of such proceedings, including a reasonable attorneys' fee, and the aforesaid interest. In addition, the HOA shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in the Shelby County at least once a week for three successive weeks) prior to such sale.

8.4 Certificate of Payment. Upon written demand by a Member, the HOA shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specified Parcel as of the date of such certificate, or if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest

* To be determined.

and costs, if any) due and payable as of such date. The HOA may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the HOA and any purchaser of, or lender on, the Parcel in question.

IX. Imposition of Charge and Lien Upon Property

9.1 Creation of Lien for Assessments. All Member's Property shall be subject to a continuing lien for assessments levied by the HOA in accordance with the provisions of this Declaration. The Annual Charge together with interest thereon and the costs of collection thereof including reasonable attorney's fees as herein provided, shall be a charge on and shall be a continuing lien upon the Member's Property against which each such assessment or charge is made.

9.2 Submission of Portions of Long Branch Property. Developer may desire to subject from time to time portions of the Long Branch Property intended for residential and related development to this Declaration in accordance with Article XV, and the same will thereby be subjected to this Declaration as Member's Property for the purpose, among others, of submitting such property to the lien described in Section 10.1. Except as provided herein, Member's Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Member's Property, including, but not limited to, the lien provisions set forth in Section 10.1.

9.3 Personal Obligation of Members. Each Member, by acceptance of a deed or other conveyance to Member's Property, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the HOA, or to cause to be paid to the HOA, the Annual Charges. Each such assessment, together with interest and costs of collection, including reasonable attorney's fees, in addition to being a lien on the property as set forth in Section 10.1 above, also shall be the personal obligation of the person or entity who was the owner of such Member's Property at the time when the assessment fell due.

9.4 Subordination of Lien to Mortgages. The lien of any assessment or charge authorized herein with respect to Member's Property is hereby made subordinate to the lien of any mortgage on such Member's Property if, but only if, all assessments and charges levied against such Member's Property falling due on or prior to the date such mortgage is recorded has been paid and provided the mortgagee is a *bona fide* encumbrancer (e.g., a mortgagee who has funded or recorded a mortgage without actual or constructive notice of the lien). The foregoing subordination shall not relieve a Member whose Member's Property has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the owner of such property. The Board may at any time, either before or after the mortgaging of any Member's Property, waive, relinquish or quitclaim in whole or in part the right of the HOA to assessments and other charges collectible by the HOA with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

X. Use of Funds

10.1 Use of Funds. The HOA shall apply all funds received by it pursuant to these Restrictions, and from any other source, reasonably for the benefit of property owned by HOA Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Class A Members of the HOA (after control has vested in the Class A members), and with the understanding that, at the HOA's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements: repayment of principal and interest of any loans of the HOA, the costs and expenses of the HOA for the benefit of the Property, Owners and Residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide: any of all projects, services, facilities, studies, programs, systems and properties relating to: the Community Facilities, parks,

recreational facilities for the collection, treatment and disposal of garbage, trash and refuse; traffic signals and parking facilities; irrigation of Common Areas; beautification projects within the Long Branch Property; holiday decorations; HOA business or social functions; professional fees; casualty, errors and omissions and liability insurance, and such other insurance as may be required by law or otherwise deemed appropriate by the Board; facilities and provisions for the security of Members, Members' Property, Residents and HOA Land; general maintenance and clean-up; and other ordinary and necessary costs related to the operation, maintenance, improvement, and/or enhancement of the Community Facilities for the recreation, family, and community purposes intended.

10.2 Obligations of HOA with Respect to Funds. The HOA shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining; nor shall the HOA be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of HOA and the effectuation of its purposes. Without limiting the foregoing, the HOA may elect to establish reserves to defray anticipated expenditures, the amount and purpose of such reserves being in the discretion of the HOA; and the HOA shall have the right to use reserves for any purpose. The HOA does not assure that the services described in Section 10.1 will be provided and nothing herein shall obligation the HOA or its Directors to undertake to provide such services. The HOA shall provide to all Members of the HOA an annual accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the HOA's expense.

10.3 Authority of HOA to Contract. The HOA shall be entitled to contract, subject to the last sentence of Section 10.4, with any corporation, firm or other entity for the performance of the various undertakings of the HOA specified in Section 10.1, and such other undertakings as may be approved by 51% of the votes of Class A Members of the HOA (after control has passed to the Class A Members), and the performance by any such entity shall be deemed the performance of the HOA hereunder.

10.4 Authority of HOA to Borrow Money. The HOA shall be entitled to borrow money for the uses specified in Section 10.1, or other uses if approved by 51% of the Class A members of the HOA (after control has passed to the Class A Members), up to an outstanding principal balance of \$15,000. Any borrowing over such amount shall require the approval of 51% of the votes of Class A Members of the HOA (after control has passed to the Class A Members). Further, the HOA shall not incur outstanding contractual and debt obligations exceeding an aggregate of \$25,000 at any given point in time (not including any prospective or actual liability arising out of a lawsuit not based on unpaid accounts).

10.5 Authority of HOA to Make Capital Expenditures. The HOA shall be entitled to make capital expenditures for the uses specified in Section 11.1 or other uses as may be approved as provided therein, as limited by the last sentence in Section 10.4.

10.6 CPI Adjustments. The dollar limitations in Sections 10.4 and 10.5 shall be increased effective January of each year (the "Adjustment Year"), beginning January, 2005, to reflect the percentage increase in the Revised Consumer Price Index -- All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (2004 = 100) (herein the "CPI") from the CPI for January, 2004, to the CPI for January of the respective Adjustment Year.

XI. Rights of Enjoyment in Community Facilities

11.1 Community Facilities. Developer may convey or cause to be conveyed to the HOA, subsequent to the recordation of this Declaration, certain tracts of land within the Long Branch Property for park and other

*To be determined.

recreational and related purposes. The conveyances may restrict (or further restrict) the uses of the property being conveyed. (c) Such community area, common areas, park and other recreational lands (including walking paths and nature areas), and Open Spaces, together with all easements reserved herein to the HOA and such other parts of the HOA land as the Board may by resolution from time to time hereafter designate for use by Members and Residents are sometimes hereinafter collectively referred to as "Community Facilities" or "Common Areas".

11.2 Easement of Enjoyment of Community Facilities. Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Community Facilities, and such easement shall be appurtenant to and shall pass with every Parcel upon transfer. All Residents who are not Members shall have a non-transferable privilege to use and enjoy all Community Facilities for so long as they are Residents within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the HOA to adopt and promulgate reasonable rules and regulations pertaining to the use of Community Facilities which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Board, shall serve to promote the best interests of the Owners and Residents, including the making available of certain Community Facilities to school children, with or without charge. The HOA shall have the right to charge Owners and Residents reasonable usage and other fees in connection with the use of any Community Facility. In establishing such usage and other fees, the Board may, in its absolute discretion, establish reasonable classifications of Owners and of Residents; such usage and other fees must be uniform within each such class but need not be uniform from class to class. The HOA shall have the right to borrow money, subject to the limitations in Section 10.4, for the purpose of improving any Community Facility and, in aid thereof, to mortgage the same and the rights of any such mortgagee shall be superior to the easements herein granted and assured.

11.3 Suspension of Rights. The HOA shall have the right to suspend the rights of any Member (and the privilege of each Resident claiming through such Member) to use any common facilities or vote in the HOA for any period during which the Annual Charge assessed under Article IX hereof remains overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such facilities in accordance with the provisions of this Article XII.

11.4 Right of HOA to Convey. Notwithstanding the rights, easements and privileges granted under this Article XII, the HOA shall nevertheless have the right and power to convey any property referred to in Section 12.1 hereof free and clear of all such rights, easements and privileges if such conveyance is to a public body for public use.

11.5 Restrictions and Easements Over Open Spaces. Developer will either create prior to or as a part of any conveyances to the HOA easements and rights of way over and/or affecting the property conveyed to the HOA including but not limited to easements relating to utilities, sewers, construction and roads. Any such conveyance to the HOA by Developer shall be subject to all restrictions, reservations, easements, rights of way and agreements of record.

XII. Membership and Voting Rights

12.1 General. The structure of the HOA is contained in its Charter and by-laws. The matters discussed in Sections 12.2 to 12.5 are summaries of some of the provisions of the Charter of the HOA. The Charter and by-laws of the HOA cover each of these matters, in addition to others, in greater detail, and should be consulted for a full explanation of the rights and obligations appurtenant to membership in the HOA.

12.2 All Parcel Owners are Members of HOA. Every owner of a Parcel constituting Member's Property shall, by virtue of such ownership, be a Member of the HOA. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.

12.3 Classes of Membership. The classes of membership are contained in the Charter and by-laws of the HOA.

(a) Class A Members shall be all persons owning one or more Residential Parcels constituting Member's Property excepting those persons who are Class B Members. A Class B Member cannot be a Class A Member so long as it retains its Class B membership.

(b) Class B Members shall be the Developer and any successor in ownership to all or part of the Developer's interest in Long Branch.

The Class B membership shall terminate at such time as (a) all the then Class B Members so designate in a writing delivered to the Association or (b) on December 31, 2025, whichever shall first occur; provided, that notwithstanding the foregoing, the Class B membership shall not terminate so long as the Developer shall own any undeveloped Parcel.

12.4 Voting Rights: Class B Members. Each Class B member shall have one vote for each Residential Parcel owned by such Member. Except on such matters as to which this Declaration, the Charter, or the By-Laws of the HOA specifically require the votes of the Class A Members, and until December 31, 2025, or such earlier time as the Class B membership shall terminate, as provided herein, the Class B Members shall be vested with the sole voting rights in HOA, and the Class A Membership shall have no voting rights.

12.5 Voting Rights: Class A Members. Subject to the provisions of Section 12.4, each Class A Member shall have one vote for each Parcel owned by such Member.

12.6 Conflict. In the event of a conflict between the terms of this Declaration and the Charter of the HOA, the terms of the Charter shall control.

XIII. The Addition of Open Spaces

13.1 Additions to Open Space. Developer, or such of its successors and assigns as shall have been specifically granted the right to submit additional property to this Declaration as set forth in this Article, may from time to time during the development of Long Branch, but on or before December 31, 2025, convey or cause to be conveyed additional property to the HOA and such property shall become Open Spaces.

13.2 Permissible Conditions or Restrictions on Additional Open Space. Property conveyed to the HOA as additional Open Spaces may be improved or unimproved land and may be subject to permanent or periodic flooding or may be land under water. The grantor may convey such additional Open Spaces subject to easements for the construction, installation, maintenance, repair, use and access of roadways, service roads, or utility sewer, or other public service facilities, and subject to the reserved right in favor of a person owning Long Branch Property for reasonable use and access to facilitate the development of such property and subject to other rights of way, easements, restrictions, and agreements of record.

XIV. The Submission of Additional Member's Property

14.1 Submission of Additional Member's Property. Developer reserves the right in its sole and absolute discretion, at any time during the pendency of this Declaration to add any one or more tracts of Additional Property to the Property which is covered by this Declaration. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer, its successors or assigns in the manner required for the execution of deeds, and need not be consented to or approved by any other Owner or person. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration to impose any of these Restrictions on any Additional Property. Such instrument shall:

14.1.1 refer to this Declaration stating the book or books of the records of Shelby County, Alabama, and the page numbers where this Declaration is recorded;

14.1.2 contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, or some specified part thereof (as limited by Section 15.4);

14.1.3 contain an exact description of such Additional Property; and

14.1.4 such other or different covenants, conditions and restrictions as Developer shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such Additional Property.

Upon the recording of such instrument in the appropriate Probate Office of Shelby County, Alabama, such Additional Property shall become Member's Property and the owner or owners of such Member's Property shall thereupon be members of the HOA.

14.2 All Member's Property Bears the Burdens and Enjoys the Benefits of this Declaration. Every person who is an owner of a fee interest in any portion of the Member's Property does by reason of taking such title agree to all of the terms and provisions of this Declaration (except as they may be modified in the deed to such Property, subject to the limitations in Section 15.4 hereof). All present and later added Member's Property is subject to the burdens and shall enjoy the benefits made applicable hereunder to Member's Property.

14.3 Subdivision Plat. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, and set-back line restrictions. 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 these Covenants. Notwithstanding anything provided to the contrary in these Covenants, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Parcel owned by Developer and change any easement description or relocate any roads affected thereby, subject to approval of any governmental authority having jurisdiction thereof.

XV. General

15.1 Grantee's Acceptance. The grantee of any Parcel subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of these Restrictions.

15.2 Indemnity For Damages. Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to these Restrictions, agrees to indemnify Developer for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Developer, or for which Developer has responsibility, at the time of such damage.

15.2A Further Indemnity. Each and every lot owner and future lot owner, in accepting a deed or contract for any lot or lots in the Long Branch Property, whether from Developer or a subsequent owner of such lot, agrees and covenants to release, indemnify, protect and hold harmless the Developer, its successors and assigns, and its members, agents, directors and employees (all of whom are included in the term "Developer" for the purposes of this section) from and against any and all claims, and demands by such owner, any member of his or her family, their employees, agents, guests, invitees, licensees, contractors, and employees of for any liability, damages to property and injury or death which may arise out of or be caused directly or indirectly by such

owner's lot or lots, any HOA Land, Common Areas, or other improvements upon the Long Branch (including without limitation the roads, walking trails, and other Common Areas), and/or the use of or construction on said lot or lots by said owner, any member of his or her family, their guests, agents, invitees, licensees, contractors, or employees or subcontractors of such contractors, or by any other person whomsoever. The indemnification by such owner as set forth above shall also cover any and all expenses of Developer, including attorneys' fees, resulting from any claims or demands.

15.3 Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions in this Declaration and, if any provision or restriction is declared to be invalid, such invalidity shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

15.4 Right of Developer to Modify Restrictions With Respect to Unsold Parcels. With respect to any unsold Parcel, Developer may include in any contract or deed hereinafter made or entered into such modifications and/or additions to these Restrictions as Developer in its discretion desires; provided, however, that these Restrictions may not be modified in any contract or deed to except such Parcel from the assessment provisions of Article IX or to lessen or extend the voting rights as provided in these Restrictions or in the Charter and by-laws of the HOA.

15.5 Captions. The captions preceding the various sections, paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

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

15.7 No Reverter. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

15.8 Duration and Amendment. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Developer, the HOA, the Architectural Committee, and the Owner of any Residential Parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2095, after which time said Restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect (except with regard to the annexation of Additional Member's Property) except for the execution of an instrument signed by not less than 65% of the Parcel Owners, which instrument shall be filed for recording in the Probate Office of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. Provided, however, that these Restrictions may not be modified to except any Parcel from the assessment provisions of Article IX or to lessen or extend the voting rights as provided in these Restrictions or in the Charter and by-laws of the HOA, or to provide for unequal assessments upon any Parcel. After December 31, 2040, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Parcel Owners which instrument shall be filed for recording in the Probate Office of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

15.9 Enforcement. In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Owner, or employee, agent, or lessee of such Owner, then the Owner(s) of Residential Parcel(s),

the HOA, Developer (so long as it is a member of the HOA), their successors and assigns, or any party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against a Parcel Owner may be awarded a reasonable attorney's fee against such Parcel Owner.

15.10 Certificate of Violation. In addition to any other rights or remedies available to the HOA hereunder or at law or equity, the HOA shall have the right to file in the Records of Shelby County, Alabama a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of the Annual Charges and/or failure to comply with architectural guidelines) upon failure of a Parcel Owner to correct a violation of these Restrictions within thirty (30) days after written notice of the violation has been given by the HOA to the Parcel Owner.

15.11 Interpretation by HOA. The HOA shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof.

15.12 Assignment by HOA. The HOA shall be empowered to assign its rights hereunder to any successor nonprofit membership corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the HOA hereunder.

15.13 No Waiver. The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of Plans pursuant to Article II, shall be binding on any and all parties as a conclusive determination that such Plans are in conformity with these Restrictions.

15.14 Soil Conditions and Other Project Conditions. Approval of Plans by the Architectural Committee shall not be construed in any respect as a representation or warranty of the Architectural Committee and/or the Developer and/or the HOA to the Owner submitting such plans and specifications respecting subsurface conditions. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Parcel for the construction of any and all Structures thereon.

The engineering, percolation and other data set forth on the subdivision plat for each Property is made by the engineer or surveyor shown on such plats and not by Developer. Any error or omission in any such data shall be the responsibility of such engineer or surveyor and not Developer.

Neither the Architectural Committee and its individual members, nor the HOA and its members, nor the Developer and its members, agents and employees and the officers, directors, agents and employees of any of the foregoing shall be liable to any Parcel Owner or occupant of any Parcel, or the successors, assigns,

licensees, lessee, employees and agents of any such Owner or occupant, for loss or damage on account of injuries to any Parcel, to any Structures now or hereafter located upon any Parcel, or on account of any past or future injuries to any Owner, occupant, or any other person in or upon any parcel of the Property, which are caused by, or arise as a result of (a) soil and/or subsurface conditions, known or unknown under or on the Property, or (b) defects or failures of any HOA Land or roadway or Community Facilities or Common Areas, or (c) any use by any such Owner or occupant of any HOA Land or roadway or Community Facilities or Common Areas.

15.15 Repurchase Option. If any Parcel Owner desires to convey such Parcel prior to the expiration of one (1) year after the purchase of such Parcel from Developer, and if the Owner has not then commenced construction of a residence thereon, Developer shall have and retains the option, but not the obligation, to purchase such Parcel for an amount equal to the purchase price paid to Developer for the Parcel, with interest at eight percent (8%) simple. Any such Owner shall give Developer written notice of such Owner's desire to sell such Parcel, and Developer shall have thirty (30) days after receipt thereof to exercise Developer's option to purchase such Parcel.

XVI. Definitions

16. Additional Property or Additional Member's Property. Any portion of the Long Branch Property and any other property now or hereafter acquired by Developer lying adjacent to or in close proximity with the Long Branch Property which Developer may from time to time submit and add to the provisions of these Covenants pursuant to the provisions of Article XV. The Additional Property may also include additional Common Areas.

16.1 Assessable Property. That part of Long Branch Property which is subjected to these Restrictions except such part or parts thereof as may from time to time constitute "Exempt Property" as defined in Section 16.10.

16.2 Association or "HOA". Long Branch Homeowners' Association, Inc., its successors and assigns.

16.3 Association Land or HOA Land. That part of Long Branch Property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be the owner thereof, including without limitation all Community Facilities and all easements.

16.4 Board. The Board of Directors of the Association.

16.5 Charter. The Articles of Incorporation of Long Branch, Inc.

16.5A Community Facilities or Common Areas. As defined in paragraph 11.1

16.6 Declaration. This Declaration of Protective Covenants of Long Branch (Residential) applicable to Member's Property which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

16.7 Deed. Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of Long Branch Property subjected to these Restrictions.

16.8 Developer. Long Branch, LLC, an Alabama limited liability company, its successors and assigns.

16.9 Exempt Property. Shall mean and refer to the following portions or parts of the Property:

(a) all land owned by the United States, the State of Alabama, Shelby County, or any instrumentality or agency of any such entity, for so long as (a) any such entity or any such instrumentality or agency shall be the owner thereof, and (b) such land is being used or held for public purposes (land which is owned by any such entities and leased to non-public persons or entities shall not be exempt during the period of lease to such non-public persons or entities);

(b) all land owned by Long Branch, Inc. ("HOA") (or a "Successor Corporation" as defined in Section 15.12 hereof) for so long as HOA (or such Successor Corporation) shall be the owner thereof;

16.9A Long Branch or Long Branch Property. The property described as Long Branch in the Declaration and other property which may be acquired by Developer and developed as a part of Long Branch. That part of Long Branch subjected to the Declaration is referred to as "Property", "Subject Property", or Member's Property".

16.10 Member. A person or other entity who is a record owner of Member's Property.

16.11 Member's Property. That portion of Long Branch Property which shall have been submitted to this Declaration for the purpose of creating a lien for assessments in favor of HOA.

16.12 Open Spaces or Common Areas. Long Branch Property which is conveyed to the Association by the Developer of Long Branch or a part thereof and which is designated as an open space or area or Community Facility or Common Area. The term "Open Spaces" and "Common Areas" are interchangeable.

16.13 Owner. The Owner of one or more lots or Parcels comprising Member's Property.

16.14 Parcel. A Residential Parcel as defined in Section 16.17.

16.14A Parcel Owner. The Owner of a Parcel. (The Developer will be the initial Parcel Owner, and on conveyance of any Parcel, the grantee will thereupon be the Parcel Owner.) Upon submission of Additional Property to this Declaration, "Parcel Owner" shall include the owner of each Parcel included in such Additional Property.

16.14B Plans. As defined in Section 2.2.

16.15 Property or Subject Property or Member's Property. That part of Long Branch Property subjected to this Declaration. The term "Property" shall also include each such new parcel of land at the time that the same is subjected to the Declaration. The portion of Long Branch Property subjected to this Declaration as of the date hereof is "Phase One", as described in the "Initial Submission" in Article XIX.

16.16 Resident. Any persons or persons occupying or leasing Member's Property.

16.17 Residential Parcel. Any unit, lot, part or parcel of the Property designed, designated or used for a residential purpose or use, including each lot shown on the subdivision plat for each Property subjected to this Declaration, and residential condominium or townhouse lots located on a parcel or parcels which are subjected to this Declaration.

16.18 Restrictions. The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

16.19 Structure. Any thing or device [other than trees, shrubbery (less than two (2) feet high if in the form of a hedge), and landscaping], the placement of which upon any Parcel may affect the appearance of such

Parcel, including by way of illustrations and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, cop or cage, covered or uncovered patio, mailbox, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall or hedge more than two (2) feet in height, signboard or any temporary or permanent living quarters (including any house trailer or motor home) or any other temporary or permanent improvement to such Parcel. "Structure" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Parcel, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Parcel and (ii) any change in the grade of any Parcel of more than six inches from that existing at the time of purchase by each Owner.

16.20 Tract. A contiguous piece of Property under one Ownership.

XVII. Adjacent Property

17. Every Parcel Owner, in accepting a deed or contract for any Parcel in the Long Branch Property, whether from Developer or a subsequent owner of such lot, acknowledges and accepts that all property comprising the Long Branch may be used as Developer elects unless subjected to this declaration as provided in Article XV. Without limiting the foregoing, the property shown on the master plan as "Proposed Commercial Development, is zoned institutional under the zoning laws. Such property may be developed by Developer, or its successors and assigns, with any uses allowed under such zoning classification; along with site development and appurtenances which are customary in such developments, including, but not limited to, lighted parking areas.

XVIII. Initial Submission

18. The "Property" subjected to this Declaration as of this date is Phase 1 of Long Branch, as recorded in Map Book 34, Page 66 Probate Office of Shelby County, Alabama, consisting of 42 lots.

IN WITNESS WHEREOF, this Declaration of Protective Covenants of Long Branch has been executed by Long Branch, LLC, an Alabama limited liability company, effective the 22 day of December, 2004.

Long Branch, LLC, an Alabama
limited liability company

By: [Signature] [SEAL]
Scott Johnson, Managing Member

STATE OF ALABAMA)

COUNTY OF Shelby)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Scott Johnson, whose name as Managing Member of Long Branch, 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 on the day the same bears date. Given under my hand and official seal this 22nd day of Dec, 2004.

[Signature]
Notary Public

My Commission Expires: MY COMMISSION EXPIRES APRIL 8, 2007