



20050617000298140 1/26 \$86.00
Shelby Cnty Judge of Probate, AL
06/17/2005 08:09:01AM FILED/CERT

STATE OF ALABAMA)

COUNTY OF SHELBY)

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
BELVEDERE COVE, PHASE I, A RESIDENTIAL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made as of this _____ day of April, 2005, by **D.R. HORTON, INC., - BIRMINGHAM**, an Alabama corporation ("Developer"), which declares that the real property hereinafter described, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants"); and

WHEREAS, the Developer is presently the owner of all of the real property described in the Plat of Belvedere Cove, prepared by Paragon Engineering, Inc. and recorded in Office of the Judge of Probate of Shelby County, Alabama in Map Book 35, Page 45 (such property, together with any other property which may become subject to the Protective Covenants as hereinafter property, being collectively referred to herein as the "Property"); and

WHEREAS, the Developer intends to develop the Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community (collectively, the "Subdivision"); and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefit all Owners of the Property and, to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the Property and each Owner thereof; and

WHEREAS, the Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Development and of levying assessments against the Owners of Lots within the Subdivision to enable the Association to perform such obligations.

NOW, THEREFORE, the Developer declares that the Property and such additions thereto as may hereafter be made pursuant to Section 2.2 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said Property, as well as their heirs, successors and assigns.

I. DEFINITIONS.

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

1.1 **Additional Property** shall mean any additional property, which may hereafter be subjected to the Protective Covenants as set forth in Section 2.2. hereof.

1.2 **Architectural Committee** shall mean the architectural review committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.3 **Architectural Committee Rules** shall mean the rules, if any, adopted by the Architectural Committee.

1.4 **Articles** shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

1.5 **Assessment** shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include annual assessments, special assessments, individual assessments, and Common Area Assessments, all as described in Article VI hereof.

1.6 **Association** shall mean and refer to Belvedere Cove Homeowners Association, Inc., an Alabama non-profit corporation, formed or to be formed at or about the same time as the filing of this Declaration, under the Alabama Nonprofit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association make reference.

1.7 **Board or Board of Directors** shall mean the Board of Directors of the Association.

1.8 **By-laws** shall mean the By-laws of the Association, as such by-laws may be amended from time to time.

1.9 **Common Area or Commons Areas**, as the case may be, shall mean and refer to all real and/or personal property, including property which the Association owns, leases, or otherwise maintains for the use or enjoyment of the members of the Association, including, without limitation, the Entrance Easement, detention pond, and street lighting.

1.10 **Declaration** shall mean this entire document, as same may from time to time be amended.

1.11 **Developer** shall mean D.R. Horton, Inc. - Birmingham, an Alabama corporation, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

1.12 Dwelling shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof.

1.13 Living Area shall mean enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditions equipment, exclusive porches, garages, basements, carports, or attics.

1.14 Lots shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

1.15 Member shall mean any person who is a member of the Association. Every Owner shall be a Member.

1.16 Mortgage shall mean any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

1.17 Mortgagee shall mean the holder of any Mortgage.

1.18 Occupant shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

1.19 Owner shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, 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 or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

1.20 Property shall mean and refer to all the Lots within the Subdivision and all easements as reflected on the Subdivision Record Map.

1.21 Protective Covenants shall mean all of those covenants, conditions and restrictions contained in this Declaration.

1.22 Purchaser shall mean any person who acquires any Lot.

1.23 Single Family Unit shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.



20050617000298140 4/26 \$86.00
Shelby Cnty Judge of Probate, AL
06/17/2005 08:09:01AM FILED/CERT

1.24 Subdivision shall mean all sectors or phases of Belvedere Cove, collectively, and any amendments or supplements thereof.

1.25 Subdivision Record Map shall mean the recorded map or plat for Belvedere, and any amendments or supplements thereof.

II. PROPERTY SUBJECT TO RESTRICTIONS.

2.1 General Declaration. The Property which presently is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration is located in Shelby County, Alabama, and is described in the Plat for Belvedere Cove, prepared by Paragon Engineering in Office of the Judge of Probate of Shelby County, Alabama in Map Book _____, Page _____. Any part of such Property and each Lot or Dwelling 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 such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof. 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 in accordance with Section 2.2 hereof.

2.2 Additional Property. Developer reserves the right, in its sole and absolute discretion and without the consent of the Association or its Members or by an Owner, Occupant, or Mortgagee of any Lot or Dwelling, 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 of any Lot or Dwelling) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office of Shelby County, Alabama where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the 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 Section 2.2 of this Declaration.

2.3 Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer. With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Dwelling.

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

2.5 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Property, to make improvements and changes to all Lots or Dwellings owned by Developer, including, without limitation, (i) changes in the location of the boundaries of any Lots or Dwellings owned by Developer, (ii) installation and maintenance of any water, sewer and any other utility systems and facilities, and (iii) installation of security and trash and refuse facilities.

2.6 Subdivision Plat. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the subdivision plat of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats 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 owned by Developer.

III. EASEMENTS.

3.1 Grant of Nonexclusive Easements to Owners.

(a) **Common Area.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with 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 title to each Lot.

(b) **Entrance Easement.** Developer hereby declares an easement across the Common Area shown on the Subdivision Record Map for a landscaped entrance area into the Subdivision (the "Entrance Easement"). The Entrance Easement shall constitute a Common Area and shall be subject to all terms and conditions set forth in this Declaration with respect to Common Areas.

3.2 Utility Easements. Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other 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 drainage, 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 Protective Covenants. Without limitation upon the foregoing, Developer specifically reserves a ten (10) foot easement on the rear property line and a five (5) foot easement on the side of each Lot for surface water drainage, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary.

3.3 Additional Easements and Uses. For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office of Shelby County, Alabama. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

3.4 Reservation of General Access Easement. Developer does hereby establish and reserve for the Association and its respective agents, employees, representatives, invitees,

successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any improvements thereon in order to determine compliance with the provisions of this Declaration and/or other applicable regulations or covenants, and (b) the performance of the duties of the Association hereunder, including, without limitation, taking any action required or permitted to be taken by the Association pursuant to any of the terms or provisions of this Declaration and/or other applicable regulations or covenants; 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 of such Lot directly affected thereby.

3.5 Additional Documents. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

3.6 Limitations. Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

(a) All provisions of this Declaration and the Articles and By-Laws of the Association;

(b) All the rules and regulations governing the use and enjoyment of the Common Areas which may or may have been or may hereafter be adopted by the Association; and

(c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

IV. ARCHITECTURAL CONTROL.

4.1 Design Criteria for the Property. The general architectural objective of the Developer for the Property is to create a neighborhood of Dwellings constructed in high quality styles, design, materials, and colors. The Developer has adopted certain Design Criteria in furtherance of this objective which Design Criteria are in Article V hereof. All Dwellings shall be constructed in conformity with the Design Criteria and in accordance with the provisions of this Declaration. The Developer, by the terms of this Declaration, has charged the Architectural Committee with the approval of all Dwellings, prior to construction, so as to determine that all Dwellings meet the Design Criteria. In appropriate cases, the Architectural Committee shall be entitled to grant variances from the Design Criteria, as described in Section 4.6 hereof.

4.2 Method of Architectural Control. So as to establish and maintain the Design Criteria set forth in this Declaration, no improvement or structure of any kind, including, without limitation, any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed, or maintained upon a Lot, nor shall any addition, change, or alteration therein, thereof, or thereto be made, unless and until the plans and

specifications, showing the color, nature, kind, shape, elevation, materials and location of the same, together with such information as the Architectural Committee may require, shall have been submitted to and approved in writing by the Architectural Committee.

4.3 Architectural Committee Membership. The Architectural Committee shall consist of three (3) members and the initial members shall be appointed by the Developer. In the event of the death, resignation or other termination of any members, the Developer during the Control Stage (as hereafter defined) shall have full authority to appoint successor members. The Developer's appointed members shall serve until all Lots are sold by the Developer whereupon, the Developer's control and authority and Developer's appointed members to the Architectural Committee shall cease. Upon the sale and closing of the last Lot in the subject subdivision, the Association shall assume full control and authority over the Architectural Committee. Developer (as long as it owns any Lots in the subdivision) and the Association (from and after the time that it has assumed control of the Architectural Committee) reserve the right to remove any member from the Architectural Committee at any time with or without cause, in such parties' sole discretion.

4.4 Release. Neither the Architectural Committee nor any member thereof shall be liable to any Owner, Occupant or to any other party for any damage, loss, or prejudice suffered on account of the approval or disapproval of any plans, drawings, or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition, or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. Neither the Architectural Committee nor any member thereof shall have any liability for structural defects, building code compliance, or similar issues, the sole responsibilities of the Architectural Committee being limited to aesthetic approvals and compliance with this Declaration.

4.5 Powers and Duties. The Architectural Committee shall have the following powers and duties:

(a) To require submission to the Architectural Committee of plans and specifications for any improvement or structure of any kind, and any change, modification, or alteration thereof, including, without limitation, any such improvement or change to any Dwelling, fence, wall, sign, lighting system, site paving, grading, screened enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or is proposed upon any Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Committee and shall include but not necessarily be limited to:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks.

(ii) A foundation plan, floor plan, and exterior elevations of the Dwellings as they will actually appear after all back filling and landscaping is done from finished ground up.

(iii) All plans must include a specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the Architectural Committee is unfamiliar.

(iv) The name and address of the Lot Owner's General Contractor who will construct the residence and all other improvements to the Lot.

The Architectural Committee may also require such additional information as reasonably may be necessary for the Architectural Committee to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the Architectural Committee shall be delivered to the office of D.R. Horton, Inc. - Birmingham, an Alabama corporation, 2090 Columbiana Road, Suite 4000, Birmingham, Alabama 35216, or such other address as may be reflected by the Architectural Committee in a duly recorded instrument filed in the Probate Court of Shelby County.

(b) To approve or disapprove the submitted plans and specification for any Dwelling, improvement, structure as herein above described prior to commencement of construction or such Dwelling, improvement, or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted. In the event that the Architectural Committee shall fail, for a period of thirty (30) days from the date of receipt of such submission, to approve or disapprove any plans or specifications submitted to it for approval, the same shall be deemed to have been approved. The approval by the Architectural Committee of any plans and specifications for any Dwelling, improvement, or structure shall not be deemed a waiver of the right to object to any of the features or elements embodied in any subsequent plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any Dwelling, improvement, or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the Architectural Committee, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the Architectural Committee, then the Owner shall, upon and in accordance with a demand by the Architectural Committee, cause the Dwelling, improvement, or structure either to be restored to its original condition or to comply with the plans and specification as approved by the Architectural Committee, and shall bear all costs and reasonable attorneys' fees of the Architectural Committee. Notwithstanding the aforesaid, after the expiration of one (1) year from the date of final completion of any such Dwelling, improvement or structure, such Dwelling, improvement, or structure shall be deemed to comply with all of the provisions hereof unless prior to the expiration of said one (1) year period either notice to the contrary shall have been recorded in the Probate Court of Shelby County, Alabama, or written notification shall have been forwarded to the Owner by the Architectural Committee. Any agent or member of the Architectural Committee may at any reasonable time enter any building or property subject to the jurisdiction of the Architectural Committee which is under construction or on or in which the agent or member may believe that a violation of these Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any Dwelling, improvement, or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the Architectural Committee that the construction thereof has been completed in accordance with the plans and specifications approved by the Architectural Committee. In the event that the Architectural Committee shall fail, for a period of thirty (30) days from the date of receipt of such application,

to give or deny such certification, the same shall be deemed to have been given. The Architectural Committee, may from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

(c) To adopt fees which may be designed to reimburse the Architectural Committee for the necessary and reasonable costs incurred by it in processing requests for Architectural Committee approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the Architectural Committee, in cash, at the time that any application for approval is sought from the Architectural Committee.

(d) Neither the Architectural Committee nor any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications 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 and specifications.

(e) The initial three members of the Architectural Committee appointed by the Developer are as follows: Michael R. Inman, Greg Arcara and Brenda Gibson.

4.6 Variances. The Architectural Committee, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the Committee grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the Committee, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

4.7 Additional Remedies. In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the Architectural Committee or the Association hereunder 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 Association shall have the right, at its option, (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the Architectural Committee and the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling until any work in place which does not comply with the plans and specifications approved by the Architectural Committee and the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, 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 Association in causing any Owner or such Owner's contractors, agents or invitees to comply with

the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Architectural Committee or the Association may exercise at law or in equity or any other enforcement rights specified in this Declaration.

V. RESTRICTIONS.

5.1 Use Restrictions. The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the Architectural Committee and subject to any restrictions and limitations as the Architectural Committee may reasonably request), including all types of home industry, will be permitted. No building or structure other than a Dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners; and

(b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs (2) and/or cats as domestic pets on a single Lot and provided further that the Architectural Committee may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the Architectural Committee; and

(c) exploring, mining, boring, quarrying, drilling or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas; and

(d) use of a Dwelling by more than a Single Family Unit.

Any Owner may request from the Architectural Committee at any time a determination of whether a prospective use of a Lot is permitted. A certificate to that effect signed by a member of the Architectural Committee shall be deemed to be dispositive of this issue.

5.2 Storm Drains. Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets and other structures necessary for proper control of storm drainage and runoff. Owners shall not alter, modify, or in any way interfere with the functionality of these structures. Additionally, Owners shall not allow debris, grass clippings, or any other items to impede the function of the drainage structure and shall maintain the same.

5.3 Limitation on Size and Location of Structures.

(a) No structure shall be erected, altered, placed or permitted to remain on any Lot other than a Dwelling not to exceed two and one half (2 ½) stories and a private garage for not more than three (3) cars. No detached building other than the Dwelling shall be constructed or permitted on any Lot unless previously approved by the Architectural Committee. The Dwelling shall be located on each Lot in conformity classification for the Property with the

Shelby County, Alabama. No Dwelling, or any other improvement on a Lot, may be constructed within any easement area shown on the Subdivision Record Map.

(b) The minimum heated and/or cooled floor area for each Dwelling on shall be follows:

- (i) 2,000 square feet for a one (1) story Dwelling;
- (ii) 2,300 square feet for a one and one-half (1-1/2) story Dwelling;
- (iii) 2,500 square feet for a two (2) story Dwelling.

(c) The minimum heated and/or cooled square footage requirements set forth in above may be modified by the Architectural Committee, subject to zoning requirements, and at the sole discretion of the Architectural Committee, following review of the final construction plans of a proposed residence to be built on a specific lot.

(d) The maximum building height for Dwellings shall be thirty-five (35) feet.

5.4 Design Criteria All Dwellings and Lots shall be subject to the following Design Criteria:

(a) Roof Pitch. The front roof pitch on any Dwelling shall not be less than 8 x 12 unless first approved in writing by the Architectural Committee.

(b) Porches. All porches on the front and sides of any Dwelling shall either be supported by the foundation of the structure or shall have brick column supports which match the brick used in the foundation of the structure.

(c) Foundations. No exposed block shall be visible on any portion of the foundation of any Dwelling.

(d) Style. All homes are to be of French Provencal styling unless approved in writing by the Architectural Committee.

(e) Chimneys. No cantilevered chimney chases shall be allowed on the front of any structure. All chimney chases on the front of the structure shall be supported by the foundation of the structure.

(f) Windows. Either wood frame, vinyl, or aluminum windows may be used on any portion of the Dwellings constructed. Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials or bright colors shall be installed on any windows or used for sun screens, blinds, shades, or other purposes.

(g) Concrete Blocks. No concrete block walls, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted, stuccoed or otherwise, shall show from the exterior of any building.

(h) Building Material:

(i) All Dwellings to be located on must be brick on all four (4) sides, provided that siding accents will be allowed as long as the same are first approved by the Architectural Committee.

(ii) All Dwelling on all Lots other than as specified in subsection (i) must be brick on at least the front and sides of each such Dwelling, provided that siding accents will be allowed as long as the same are first approved by the Architectural Committee. Approved exterior building material finishes for the rear of any Dwelling located on the Lots described in this subsection (ii) shall include brick, stone, stucco, solid wood siding (e.g., cypress or other solid wood), composite wood siding, and any other materials as may be approved by the Architectural Committee.

(iii) No black mortar will be permitted. All wood surface or siding accent which are permitted on the exterior of any Dwelling shall be painted; stained wood shall not be authorized; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors.

(i) Exterior Colors. Exterior painting will be in soft tones not to include high gloss finishes or pure red. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors and shutters shall be subject to the approval of the Architectural Committee.

(j) Sodded Areas. All front and side yards of each Lot shall be sodded with grass, unless otherwise approved by the Architectural Committee as a natural area or unless the same is landscaped in accordance with plans approved by the Architectural Committee. All other disturbed areas must be seeded and strawed or have an approved ground cover or landscape treatment.

(k) Hedges and Shrubbery. 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 any of the public or private roadways within the Property. The determination of whether any such obstruction exists shall be made by the Architectural Committee, whose determination shall be final, conclusive and binding on all Owners.

5.5 Maintenance. All Dwellings, landscaping and other improvements upon individual Lots shall be continuously maintained by the Owner thereof so as to preserve a well-kept appearance, especially along the perimeters of any Lot.

(a) **Trash.** No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Architectural Committee so as not to be visible from any road or within sight distance of any other Lot at any time except during refuse

collection. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted, except during the construction period, or except as specifically approved by the Architectural Committee.

(b) **Landscaping.** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of a Lot, including vacant parcels. No Owner shall allow the grass on his Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. This provision shall not apply to the Developer until the last Lot is sold to an Owner other than the Developer.

5.6 Temporary Structures. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as residence either temporarily or permanently with the exception of a sales trailer during sale of homes under construction. No storage building of any type shall be permitted unless such building is designed as part of the main residential structure and approved by the Architectural Committee.

5.7 Lighting. All exterior lighting of Dwellings shall be in character and keeping with the general Subdivision. Yard lighting shall be such that it does not shine toward and/or disturb adjoining land Owners. Each Lot shall have an outside lightpost affixed to the mailbox, which shall be of a design as shall be proscribed by the Architectural Committee (all such lightposts shall match throughout the Subdivision). Each Owner will be required to keep such outside lightpost in working order (including working light bulbs). Each lightpost must be illuminated at all times after dark and at such other times as shall be mandated by the Association.

5.8 Mailboxes. Each Lot shall have a mailbox which shall be of a design as shall be proscribed by the Architectural Committee (all such mailboxes shall match throughout the Subdivision). Each Owner will be required to keep such mailbox in working order and repair.

5.9 Common Area. The Developer shall deed to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The conveyance to the Association is made upon the condition that the Association takes control of the Common Areas, assesses the Common Areas in the name of the Association for tax purposes, improves and maintains the Common Areas and obtains and maintains liability insurance coverage on the Common Areas in the name of the Association.

5.10 Swimming Pools. No swimming pool shall be constructed, placed, altered or maintained upon any Lot without the prior written approval of the Architectural Committee of the type, design and location thereof. Any such swimming pool must be also constructed, equipped and maintained in accordance with the county and state authorities. All swimming pools must be properly screened for safety and privacy from adjoining Dwellings.

5.11 Satellite Receiving Dish. No satellite receiving dish or antenna system of any kind shall be located on any Lot, home or building within the Subdivision except that a satellite receiving dish not greater than 18" in diameter (or the size commonly available at the time) may

be installed in a location not visible from any street with the prior express, written permission of the Architectural Committee.

5.12 Signs. No sign of any kind shall be displayed to the public view on any Lot or Dwelling except the temporary professional sign of not more than six (6) square feet, advertising the Lot or Dwelling for sale or rent, or signs used by a General Contractor to advertise during the construction and sales period. All signs shall comply with any design specifications adopted by the Architectural Committee. No signs shall be nailed to trees. This provision shall not apply to the Developer so long as it owns any Lots within the Property.

5.13 HVAC Equipment.

(a) Outside air conditioning units may not be located in the front yard or any required side yard or corner lots. No window air conditioning units shall be permitted.

(b) No plumbing or heating vent shall be placed on the front side of the roof.

5.14 Storage of Boats, Trailers and Other Vehicles. No motor homes, boats or other water vehicles of any kind, trailers, or service trucks or service vans can be parked or stored in any location that can be seen from the street for a period in excess of 48 hours. No wrecked automobiles, disabled automobiles or vehicles other than operating vehicles shall be stored or located on any Lot.

5.15 Tenants. It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by him receives a copy of these Protective Covenants and that every lease utilized by such Owner contains a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs of enforcing the same.

5.16 Enforcement. If a determination is made by the Architectural Committee that any of the restrictions in this Article V are being or have been violated upon any Lot, then the Architectural Committee shall so notify the Owner in writing, specifying the violation. If within thirty (30) days from such notification, the Architectural Committee shall make a second determination that sufficient progress has not been made to remedy the violation, the Architectural Committee may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the Architectural Committee may treat all such costs and expenses therefor as a charge which shall become an appropriate proceeding at law or in equity.

5.17 Model Homes. The Developer reserves the right to construct or allow others to construct and maintain one or more model homes on the Property during the Control Period (as herein defined), and to furnish and decorate same to show it and hold open houses as it in its discretion may determine.

5.18 Fences. The only fencing permitted shall be wooded, decorative wrought iron, or vinyl not greater than six feet (6) in height on interior lots, except with regard to maintenance

areas within the Common Area and fences (if any) erected by Developer. No fences shall be allowed in front yards. Electric fences shall not be permitted (other than invisible pet fencing). The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the Architectural Committee. No fence shall be closer to the street than the rear wall of the home without Architectural Committee approval. All fencing on corner lots must be specifically approved by the Architectural Committee prior to installation.

5.19 Outdoor Furniture, Recreational Facilities and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained or located in or on the front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots and Dwellings.

(c) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street.

(d) Free-standing playhouses and treehouses shall be permitted but only after Architectural Committee approval of the same.

(e) The location of basketball backboards must be approved by the Architectural Committee. Basketball goal backboards should be of clear plexiglass or acrylic.

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

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from the street.

(h) Except as otherwise approved by the Architectural Committee, bird feeders, wood carvings, plaques and other types of homecraft shall not or be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. Except as otherwise approved by the Architectural Committee, all bird feeders, wood carvings, plaques and other types of homecrafts shall be located only at the rear of a Dwelling and shall not be visible from any street.

(i) No bird baths, fountains, reflectors, statutes, lawn sculptures, lawn furnishings, artificial plants, bird houses or other fixtures and accessories shall be placed or

installed within the front or side yards of any Lot or Dwelling without the prior approval of the Architectural Committee.

5.20 Buffer Areas. Any Owner who accepts title to its Lot subject to a landscape or planted "buffer area" as shown on the recorded plat for such Lot, will maintain such area solely as a planted buffer area as intended by the Plat and as prescribed by the Architectural Committee. No buffered area may be altered without the approval of the Architecture Committee (routine maintenance of such buffer area excluded). The Owner of such Lot shall be responsible for the maintenance of such buffer area, at such Owner's sole cost and expense.

VI. COVENANT FOR ASSESSMENTS.

6.1 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of these Protective Covenants. Lots owned by the Developer shall not be subject to any Assessment by the Association, be it Annual, Special or Individual Assessments. The Annual, Special and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due, but shall not constitute a charge or lien upon the Lot against which the Assessment is made.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

6.3 Individual Assessment. Any expenses incurred by the Association in enforcing any of the provisions of these Protective Covenants against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

6.4 Annual Assessments. The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board of Directors of the Association may deem appropriate. The Annual Assessment for the Development shall commence on January 1 of each year, and shall be paid in advance.

6.5 Special Assessments. In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at anytime, one or more Special Assessments for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such Assessment must have the assent and approval of (a) at least fifty-one percent (51%) of the Owners who are voting in person or by proxy at a meeting duly called for this purpose, and (b) to the extent Developer is the Owner of any Lot in the Development, the approval of Developer.

6.6 Special Meeting. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 above shall be sent to all Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners, either in person or by proxy, entitled to cast fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting.

6.7 Amount of Assessments. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots, shall commence when such Lot is improved with a completed Dwelling, and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice).

6.8 Certificate. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessment on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

6.9 Effect of Non-Payment of Assessments; Liens; Remedies. Any Assessments (whether Annual, Special or Individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any Assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

(a) The Association may commence and maintain a suit at law against the Owner for a personal money judgment to enforce all such charges and obligations for Assessments and other amounts include the late charge and interest specified above as well as all attorneys' fees, court costs and all other costs and expenses paid or incurred by the Association in connection therewith; and/or

(b) The Association may enforce the lien created pursuant to Section 6.1 above as hereinafter provided. The lien created pursuant to Section 6.1 above shall secure the payment of any and all Assessments (Annual, Special and Individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the Assessments and in maintaining any legal action in connection therewith. If any Assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on the defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Association may file a claim of lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Directors of the Association or any officer of the Association and shall be filed for record in the Probate Office of Shelby County, Alabama. 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 purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amount due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner (other than Developer) may waive or otherwise be exempt from the liability to pay the Assessments provided herein.

6.10 Lien Subordinate to Mortgages. The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot. No Mortgagee shall be required to collect Assessments on behalf of any Owner. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due more than six (6) months prior to such sale or transfer.

6.11 Damages. In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the Architectural Committee, or any Member thereof, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such

Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association or the Architectural Committee, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 6.9(b) above. The failure of Developer, the Association or the Architectural Committee to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

6.12 Exempt Property. The Board shall have the right to exempt any portion of the Property from the Assessment and liens created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

- (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) As a Common Area;
- (c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

VII. COMMON AREA EXPENSES.

The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article VI hereof. The enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by assessment.

7.1 Maintenance and Repair of Common Areas. The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean and attractive condition, if any, including the charges in Section 5.5 of this Declaration.

7.2 Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

7.3 Property Taxes. All ad valorem taxes and other Assessments relating and connected to the Common Areas, if any.

7.4 Reserves. The Association may establish reserves for the payment of Common Expenses in the future.

7.5 Insurance.

(a) Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

(b) Adequate property and casualty insurance 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 Association may determine.

(c) Public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and all members, directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine.

(d) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine.

(e) All insurance coverage authorized hereunder shall be written in the name of the Association. 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 Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

7.6 Interested Transactions. The Association may obtain materials and/or services from the Developer and/or any of its Affiliates in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party providing similar materials and/or services which can be reasonably made available to the Association.

7.7 Enforcement of Declaration and Rules and Regulations. All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, by the By-Laws or this Declaration.

VIII. NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES.

8.1 Protective Covenants Running with the Land. The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with the Property and inure to the benefit of and be enforceable by the Developer, its designated successors and assigns, or by any Owner and its respective heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive period of ten (10) years, unless an agreement

which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Probate Court of Shelby County, Alabama.

8.2 Remedies for Default. The existence of any default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give the Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them; provided, this Declaration shall be recorded for the benefit of the Developer, the Architectural Committee, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

8.3 Nature of Remedies: Waiver. All rights, remedies and privileges granted to the Developer, the Architectural Committee, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them 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 point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

8.4 No Reverter. No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter.

IX. FUNCTION OF ASSOCIATION.

9.1 Name. The name of the Association for the Property is Belvedere Cove Homeowners Association, Incorporated, which shall be incorporated as a not for profit corporation.

9.2 Maintenance Responsibilities. The Association may, at any time, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct and repair all of the improvements within the Common Areas, to include plantings and shrubbery, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain and manage the Common Areas shown on the Subdivision Record Map so as to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity to be conducted thereon;

(c) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(d) Do all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

9.3 Other Rights of Association. The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII hereof, and adopt rules, regulations, procedures and policies with respect to:

- (a) garbage and trash collection and removal;
- (b) motor vehicle operation;
- (c) parking of motor vehicles on streets or roads in the Property; and
- (d) such other matters including the general welfare of the Property as a whole.

X. AMENDMENT OF DECLARATION.

10.1 Amendment by Association. An amendment to this Declaration may be proposed by written instruction signed by the Owners of not less than one-fourth (1/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten (10) days nor more than thirty (30) days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the Architectural Committee as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Court of Shelby County, Alabama, within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered at or prior to such meeting.

10.2 Scrivener's Error. Notwithstanding the foregoing amendment provisions, any scrivener's error omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any Owners or Mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by the Developer without the consent of any other party.

XI. PERIOD OF DEVELOPER CONTROL.

11.1 In view of the Developer's financial commitment to the Subdivision, Developer's obligations as an initial owner of the Lots to pay the expenses of the Subdivision and Developer's obligations and Developer's need to insure the success of the Subdivision, Developer hereby reserves unto itself, its successors and assigns, the right to manage all of the affairs of the Subdivision and all decisions of the Association, the exclusive right to elect the directors of the Association and members of the Architectural Committee (who need not be Owners) and the right to amend the By-Laws of the Association until the sale of all Lots within the Subdivision, or until the Developer elects to terminate its control of the Subdivision, whichever shall first occur. This period of time shall be known as the "Control Period." Developer may terminate its management rights and responsibilities, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time prior to the expiration of said Control Period. The Developer shall have the sole and exclusive right to take all actions and do all things in behalf of the Association. During said Control Period, Developer shall pay all expenses otherwise payable by the Association and as reimbursement therefor and as compensation for its management services, Developer shall be entitled to receive and retain all of the Assessments payable by the Owners during said Control Period, and Developer shall have all of the rights of the Association to levy and enforce payment of Assessments. During the Control Period, Developer shall not be required to assess or create any reserves and at the termination of the Control Period and the assumption of the operation of the Association by the Members, Developer shall not be required to render an accounting of income and expenses incurred during said Control Period. In the event that there is any conflict in the provisions of this Article and the other provisions contained in this Declaration, the Articles or the Bylaws, the provisions of this Article shall govern and prevail.

XII. GENERAL PROVISIONS.

12.1 Obligation of Owner to Build.

(a) Each Owner of an unimproved Lot shall commence construction of a Dwelling in accordance with the requirements herein set forth on or before the expiration of two (2) years from the date of conveyance of such Lot to the Owner, and shall complete the construction of such Dwelling on or before the expiration date of one (1) year from the commencement of construction, but in no event later than three (3) years from the date of conveyance of said Lot, except by written approval of the Architectural Committee Control Committee.

(b) In the event a Dwelling on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace said structure within one (1) year from the date of such damage or destruction and such repair or replacement of such structure shall be in accordance with the covenants and restriction set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a sightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

12.2 Indemnity for Damages. Each and every Owner and future Owner, in accepting a deed or contract for any lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such Owner, or the contractor, agent or employee or 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 the Developer, or for which Developer has responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by any said land owner, said owner accepts his/her knowledge of this Declaration, and ratifies the covenants contained herein and thus releases his/her right to prosecute Developer for the conveniences said lot owner deems inadequate or unbecoming of said lot owner's needs.

12.3 No Trespass. Whenever the Association, Developer, the Architectural Committee 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.

12.4 Notices. Any notice required to be sent to any Owner under the provisions of this declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, return receipt requested, to the street address of the Lot owned by such Owner.

12.5 Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

12.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

12.7 Captions. The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

12.8 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

12.9 Conflict. If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.

12.10 Effective Date. This Declaration shall become effective upon its recordation in the Probate Court of Shelby County, Alabama.

IN WITNESS WHEREOF, the Developer has executed this Declaration on the _____ day of April, 2005.

DEVELOPER:

D.R. HORTON, INC.- BIRMINGHAM
an Alabama corporation

By: Michael R. Inman
Michael R. Inman
Its Division President and Vice President

STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned authority, Notary Public, in and for said County, in said State, hereby certify that Michael R. Inman, whose name as Division President and Vice President of D.R. Horton, Inc.- Birmingham, an Alabama corporation, is signed to the foregoing instrument, and who is known to me acknowledged before me on this day, that, being informed of the contents of the instrument, he, as such manager, 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 25th day of April; 2005.

Grenada L. Wilson
Notary Public
My commission expires: February 11, 2008

THIS INSTRUMENT PREPARED BY:

Gail Livingston Mills, Esq.
Burr & Forman LLP
420 North 20th Street
Suite 3100
Birmingham, Alabama 35283-0719
(205) 251-3000