

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
OLD IVY, A RESIDENTIAL SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by **EDWARDS SPECIALTIES, INC., an Alabama corporation, ("Declarant") and ADAMS HOMES, L.L.C.;**

WITNESSETH

WHEREAS, Edwards Specialties, Inc., and Adams Homes, L.L.C., are the owners of the real property described in Exhibit "B" attached to this Declaration; and

WHEREAS, Edwards Specialties, Inc., and Adams Homes, L.L.C., desire to subject the real property described in said Exhibit "B" to the provisions of this Declaration to create a residential community of single-family homes and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Edwards Specialties, Inc., and Adams Homes, L.L.C., hereby declare that the real property described in Exhibit "B" attached hereto, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered, subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE ALABAMA CONDOMINIUM OWNERSHIP ACT OF 1973, ALA. CODE SECTION 35-8-1 Et. Seq.

Article I
Definitions

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A", attached hereto and by reference made a part hereof.

Article II
Property Subject To This Declaration

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

Section 2. Other Property Only the real property described in Section I of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

Article III
Association Membership and Voting Rights

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

Section 3. Authority of the Association. The Association shall have no authority to enforce the covenants and restrictions, nor shall the Association have any power or authority to perform any acts required or allowed under the Declaration of Covenants and Restrictions until the rights of the Declarant are terminated under the provisions of this Declaration of Covenants and Restrictions. The first annual meeting of the Homeowners Association shall be called by the Declarant pursuant to the By-Laws attached hereto as Exhibit "D".

Article IV
Assessments

Section 1. Purpose of Assessment The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as maybe due and payable at the time of conveyance to the extent expressly assumed; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge,, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration, upon ten (10) days written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Notwithstanding the

foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by two-thirds (2/3) of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided for permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 7. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot subject to this Declaration on the first day of the month following the first annual meeting of the Homeowner's Association, or when the Common Areas have been conveyed to the Homeowner's Association, which shall first occur. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

Section 8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Sections 1 and 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.
- (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots; may be assessed equitably among all Lots according to the benefit received.

Section 9. Budget Deficits During Declarant Control.

For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (I) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from

the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan,, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Article V

Maintenance; Conveyance of Common Property to Association

Section 1. Association's Responsibility The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall maintain the entry features at the main entrance of the Community and shall maintain and pay the expenses for water or electricity, if any, provided to all such entry features. The Association shall also maintain all medians located in the Community. All property outside of Lots located within the Community which was originally maintained by Declarant, any park, playground, and fencing constructed by the Declarant or the Association shall be maintained by the Association. Declarant shall maintain all Common Property until it has been conveyed to the Association, or the first Annual Meeting of the Homeowner's Association for this development.

The Association may, with a majority vote, construct such other amenities as deemed appropriate. All such construction shall require the approval) of the Architectural Control Committee. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

Section 2. Owner's Responsibility Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his Obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within

which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, which shall be one hundred twenty-five (125%) percent of the actual cost of such work and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Section 4. Conveyance of Common Property by Declarant To Association The Declarant may, at any time, call a first meeting of the Homeowners Association, pursuant to the By Laws of Old Ivy Homeowners Associations attached hereto as Exhibit D, and transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall

be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted. pursuant to this Section.

Article VI Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Construction of residences must begin within twelve (12) months of the date of acquisition and be fully completed within twelve (12) months from that date; reasonable extensions may be given by the Declarant.

Section 2. Residential Use All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit: a Lot to be used for business purposes so long as such business, in the sole discretion of they Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities. No structure of a temporary character including, without limitation, a trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 3. Signs. No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, "For Sale" and "For Rent" signs consistent with the Community-Wide Standard may be erected upon any Lot, and any builder may erect one (1) sign not larger than ten (10) square feet to advertise the property during the construction and sale period. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 4. Vehicles. The term "vehicles," as used herein, shall include, without limitation, motor homes,; boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans,

recreational vehicles, tractors, mowers and automobiles. All vehicles shall be parked within garages, driveways or other parking areas located on a Lot. Parking in yards is prohibited.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. No towed vehicle, boat, recreational vehicle, motor home, tractor, mower or mobile home shall be temporarily kept or stored in the community for any period in excess of two (2) weeks unless kept in a garage or other area approved by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

All single-family, detached residences shall contain a garage or carport. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Detached garages are allowed if approved by the Architectural Control Committee.

Section 5. Leasing. Lots may be leased for residential purposes only. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

Section 6. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or

Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye (except one lot is used for storage of materials and equipment for use in development or construction by Declarant); nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Grass should not exceed eight (8) inches in height. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 9. Unsightly or Unkempt Conditions The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 10. Architectural Standards No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by (1) the Declarant or (2) an Architectural Control Committee established by the Board upon the termination of the rights of the Declarant herein. Until its rights and obligations are terminated, the Declarant shall have the sole authority to act as the Architectural Control Committee and its approval is required for any exterior construction, addition, erection or alteration within the subdivision under the terms of this section. Declarant's approval as required by any of the terms and condition of these Covenants and Restrictions shall be in writing. Declarant reserves to itself the broad discretion and approval of any plans and specifications submitted and such approval or disapproval shall be final and binding upon the applicant and upon all owners of lots benefitted by these Covenants. The Board may divide the Architectural Control Committee into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ for the Architectural Control Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee

for all matters delegated. Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may provide for a review fee.

In the event that the Architectural Control Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Control Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Control Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any, structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Control Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 11. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Lot including, without limitation, satellite dishes. However, the Board reserves the right to (but shall not be obligated to) erect a master antenna, satellite dish or other similar master system for the benefit of the entire Community. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the residence located on the Lot at its highest point and are not visible

from the street in front of the Lot. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

Section 12. Tree removal. No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees; or, (c) for safety reasons.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing; the damage at its sole expense.

Section 14. Sight Distance at Intersections. No fences, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 15. Clotheslines Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow the developer to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community.

Section 16. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to alter any Lot or Lots owned by Declarant. Any such division or boundary line change shall not be in violation of the applicable subdivision and zoning regulations.

Section 17. Guns. The use of firearms in the Community is not permitted. The term "firearms" shall include "BB" guns, pellet guns and small firearms of all types.

Section 18. Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Control Committee. The Architectural Control Committee may issue guidelines detailing acceptable fence styles or specifications.

It is the responsibility of each Owner to maintain fences located along their Lot lines, except where the fence is located between lots, then, it is the responsibility of each Owner to pay one-half (1/2) the cost of maintenance of said fence. In the event any Owner shall fail to maintain their fence after notice by the Association, then, the Association may make such repairs and charge the Owner the cost of such repair plus a twenty-five (25%) service fee. Any damage done to the fencing shall be repaired solely at the expense of the Owner, who, or whose agents or invitees, caused such damage.

Section 19. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 20. Air Conditioning Units. Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed. No air conditioning apparatus or unsightly projection shall be attached to the front of any residence.

Section 21. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee, except a reasonable pole for the display of the flag of our country does not require such approval.

Section. 22. Energy Conservation Equipment. No solar energy collector panels or attendant hardware, windmills or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee.

Section 23. Above Ground Swimming Pools. Except as may be permitted by the Architectural Control Committee, above ground swimming pools shall not be erected.

Section 24. Lighting. Exterior lighting shall be reasonable and may be limited by the Board of Directors.

Section 25. Lakes or Ponds. The Community shall maintain ponds constructed by Developer in Common Property. Any other ponds must be approved by the Architectural Control Committee and maintained by the individual lot owners.

Section 26. Exteriors. Except as may be permitted by the Architectural Control Committee, the exterior of all improvements including, without limitation, residences must be repainted in a color used in the original construction of residences within the Community. All such wood portions of the exteriors must be painted or stained. No Owner shall change the roof type, color of shingles, brick type or color of brick without the prior written consent of the Architectural Control Committee.

Section 27. Window Coverings. The portion of all window coverings visible from the exterior of any residence shall be white or off-white unless otherwise prior approved by the Architectural Control Committee.

Section 28. Minimum Building Size. All Residences shall contain a minimum of heated living space which space shall specifically exclude, without limitation, open porches, garages and unfinished storage areas as follows: 1,000 square feet, whether a one-story or two-story residence.

Section 29. Setback Lines. No building shall be located on any Lot nearer to the front Lot line or nearer to the side and rear Lot lines than the minimum building setback lines required by all applicable Zoning Ordinances. In no event shall any building upon any Lot be located nearer than as allowed by any applicable Zoning Ordinances.

Section 30. Mailboxes. All mailboxes, erected on any Lot, must conform to one standard design. A design will be provided and approved by the Architectural Control Committee and such design will be made available to the Owner upon approval of building plans for the Lot by the Architectural Control Committee.

Section 31. Storage Tanks. No above ground storage tank shall be permitted on any Lot without the prior written consent of the Architectural Control Committee.

Section 32. Gardens. No vegetable gardens, compost gardens, greenhouses or other food source planting shall be allowed in the front of a line drawn parallel with the front of any residence on any Lot.

Article VII Insurance and Casualty Losses

Section 1. Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and the entry features, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the

benefit of the Association and the Owners upon Declarant and Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company authorized to do business in Alabama.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.
- (e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (i) a waiver of subrogation by the insurers as to any claims against the Association's Board of Directors its manager, the Owners and their respective tenants, servants, agents, and guests;
 - (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
 - (iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;
 - (iv) that no policy may be canceled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or

employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and. the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that no policy may be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the directors' best business judgment, and, if available, shall at least equal three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt on or before the expiration of any policy. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Unit as a specific assessment.

Section 3. Damage and Destruction -- Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof) otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 4. Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration.

Section 5. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

Article VIII
Condemnation

In the event of al taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five (75%) percent of the total Association vote other than Declarant and the Declarant (so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX hereof) shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common property to the extent lands are available therefor. The provisions of Article VII, Section 3, above, applicable to Common property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX
Annexation of Additional Property

1. Unilateral Annexation By Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until five (5) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner thereof and the consent of the Declarant (so long as the Declarant has an option to subject additional property to this Declaration as provided above) upon the affirmative votel of a majority of the Association vote present or represented by proxy at a meeting duly called for such purpose, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the president and secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

Article X
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation), the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection) other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. VA/HUD Approval. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX, the following actions shall require the prior approval of the Veterans Administration ("VA") so long as the VA is guaranteeing any Mortgage in the Community, and the Department of Housing and Urban Development ("HUD") so long as HUD is insuring any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and HUD; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

Section 7. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XI Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

- (i) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;
- (ii) The right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if

any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid and for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

- (iii) The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); and
- (iv) The right of the Association to dedicate or transfer all or any portion of the Common property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association vote present, or represented by proxy, at a meeting duly called for such purpose and by the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof).

(b) Any Lot Owner may delegate his right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of such owner's Lot, if leased.

Section 3. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service.

Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request by the Board.

Section 5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Article XII General provisions

Section 1. Termination of Declarant's Rights and Responsibilities. All rights, obligations, and responsibilities reserved or imposed upon Declarant or its representative under the terms of the Declaration and Covenants and Restrictions for Old Ivy Subdivision or those which exists by virtue of Declarant's ownership of any property subject to the Declaration of Covenants and Restrictions shall terminate upon the filing by Declarant of a written notice to that effect in the Office of the Judge of Probate of Shelby County, Alabama. Said notice shall be filed not later than ninety (90) days after the date of which the last lot subject to the Declaration of Covenants and Restriction has been conveyed by Declarant. The Declarant may assign all of its rights and obligations under this Declaration to any party or successor in interest at any time before termination of Declarant's rights.

Section 2. Enforcement. Each Owner and Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments.

Failure to comply with this Declaration, the By-Laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate

land records a notice of violation of the Declaration, By-Laws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 3. Self Help. In addition to any other remedies provided herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter limit the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total Association vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Notwithstanding anything herein to the contrary, these covenants and restrictions must remain in force and effect so long as Common Property is owned by the Association.

Section 5. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely

affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total Association vote and the consent of the Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

Notwithstanding anything to the contrary contained in this Section 5, any amendments to Article V, Section 1, which affects the maintenance responsibilities for the Common Property must be approved by the proper governing authorities.

Section 6. Partition. The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 7. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 9. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities,

then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Indemnification. The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 12. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described in Exhibit "B" and Exhibit "C" to this Declaration,, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices.

Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant

owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

Section 13. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the By-Laws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days written notice.

Section 14. Books and Records.

(a) Inspection Members and Mortgagees. This Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records.
- (ii) hours and days of the week when such an inspection may be made; and,
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of Association.

Section 15. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 16. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

Section 17. Agreements. Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives,, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 18. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 19. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers herein, have executed this instrument on this the day of 2005.

EDWARDS SPECIALTIES, INC.

By: 

Alden R. Edwards

Its: President

ADAMS HOMES, L.L.C.

By: 

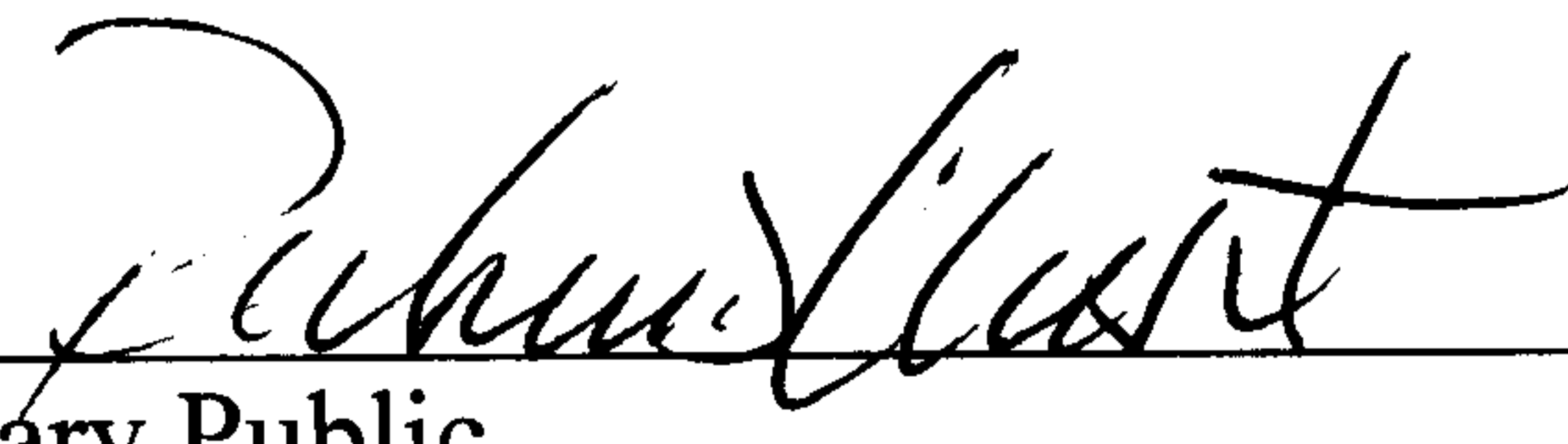
BTW Benjamin Wallace

Its: General Manager

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that ALDEN R. EDWARDS, whose name as President of EDWARDS SPECIALTIES, INC., 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation.

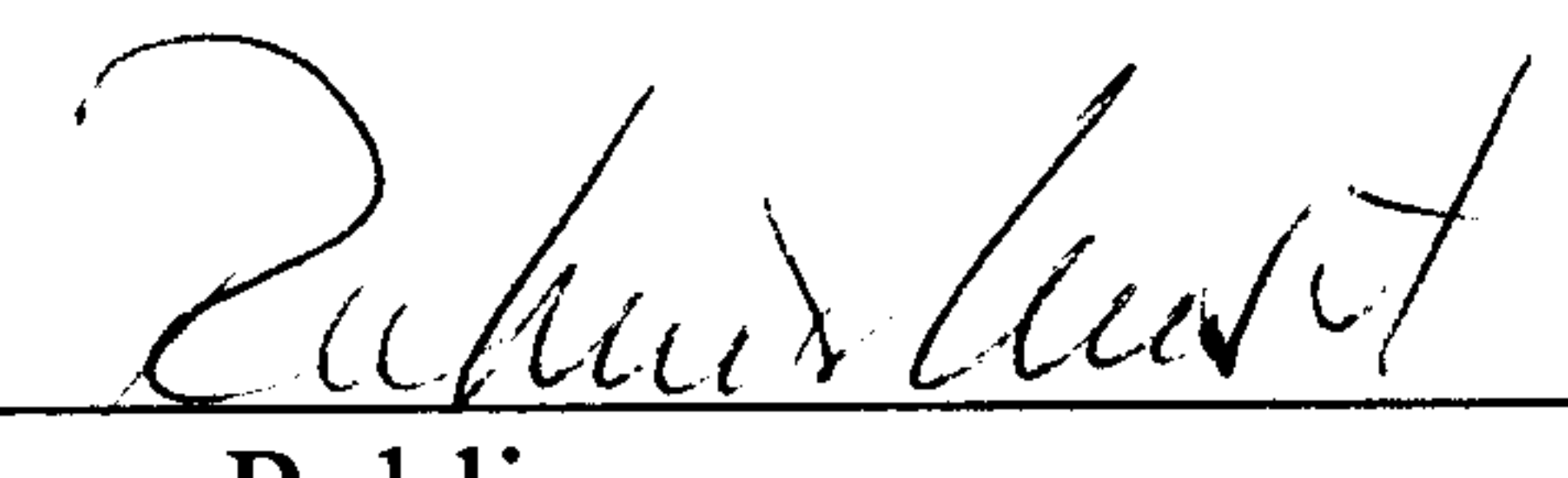
Given under my hand and seal this 2nd day of November, 2005.


Notary Public
My Commission Expires:

STATE OF ALABAMA)
COUNTY OF Shelby)

^{BFW} I, the undersigned, a Notary Public in and for said county in said state, hereby certify that ~~BENJAMIN~~ WALLACE, whose name as General Manager of ADAMS HOMES, L.L.C., 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 2 day of November, 2005.


Notary Public
My Commission Expires: 5/20/06

THIS INSTRUMENT PREPARED BY:
Richard Chesnut
BRINKLEY & CHESNUT
307 Randolph Avenue
P.O. Box 2026
Huntsville, Alabama 35804
(256) 533-4534

EXHIBIT "A"
Definitions

20051104000574530 30/47 \$95.00
Shelby Cnty Judge of Probate, AL
11/04/2005 10:22:19AM FILED/CERT

The following words, when used in this declaration or in any supplementary Declaration (unless the context shall prohibit) shall have the following meanings:

(A) "Association" shall mean OLD IVY HOMEOWNER'S ASSOCIATION, INC., a nonprofit Alabama corporation, its successors and assigns. The "Board of Directors" or "board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Alabama Corporate law.

(B) "By-Laws" shall refer to the By-Laws of OLD IVY HOMEOWNER'S ASSOCIATION, INC. attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(C) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(D) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration of all or any portion of the real property described in Exhibit "C", attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(E) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(F) "Declarant" shall mean and refer to EDWARD SPECIALTIES, INC., an Alabama corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.

(G) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as generally described as Exhibit "A" and conveyed by Developer as a separate parcel or tract. The ownership of each Lot shall include, and there shall pass with each Lot

as an appurtenance thereto, whether for not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, memberships in the Association.

(H) "Majority" means those eligible votes, Owners or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(I) "Mortgage" means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(J) "Mortgagee" shall mean the holder of a Mortgage.

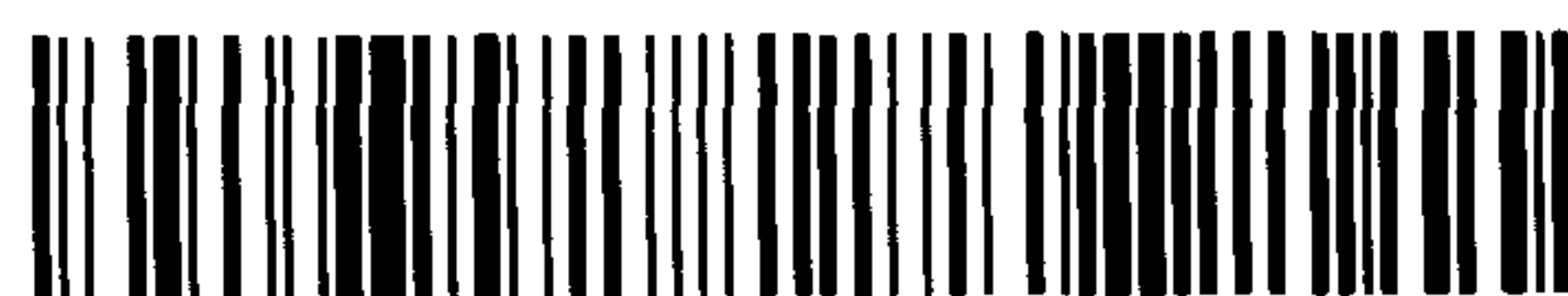
(K) "Occupant" shall mean any Person occupying all or any portion of a residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(L) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(M) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.


(N) "Supplemental Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

EXHIBIT "B"
Legal Description


20051104000574530 32/47 \$95.00
Shelby Cnty Judge of Probate, AL
11/04/2005 10:22:19AM FILED/CERT

All lots and blocks contained in the Map of Old Ivy Subdivision Phase 1, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 35 Page 43a and 43b as amended in the Amended Map of Old Ivy Subdivision Phase 1, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 36 Page 5a and 5b.

EXHIBIT "C"
Additional Property


20051104000574530 33/47 \$95.00
Shelby Cnty Judge of Probate, AL
11/04/2005 10:22:19AM FILED/CERT

All properties contiguous to the property described in Exhibit "B" attached hereto and all future phases of Old Ivy Subdivision.

EXHIBIT "D"
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF

OLD IVY

BY-LAWS

These By-Laws of OLD IVY HOMEOWNER'S ASSOCIATION, INC. are promulgated for the purpose of governing OLD IVY HOMEOWNER'S ASSOCIATION, INC., a not-for-profit corporation, organized under the provisions of the Alabama Nonprofit Corporation Act, Section 10-3A-1 et seq., as amended, as an association of members of OLD IVY, A SUBDIVISION ("Subdivision"). The provision of these By-Laws are applicable to the Property of the Subdivision.

As used herein, the term "Association" shall be the equivalent of "Association" as defined in the Declaration of Covenants, Conditions and Restrictions of OLD IVY (herein "Declaration"), and all words as used herein shall have the same definitions as attributed to them in said Declaration. The provisions of these By-Laws shall automatically become applicable to Property which may be added to the subdivision pursuant to the Declaration upon the recording of an amendment to the Declaration submitting such additional Property to its provisions.

All present and future owners, mortgagees, lessees and occupants of the Lots in the Subdivision and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration and all covenants, agreements, restrictions and easements of record ("title conditions"). The acceptance of a deed or the occupancy of a home constructed on a Lot shall constitute an agreement that these By-Laws and the title conditions, as they may be hereafter amended, are accepted and ratified, and will be complied with.

The address of the Office of the Association shall be 1560 Montgomery Highway, Suite 215, Hoover, Alabama 35216.

ARTICLE I - MEMBERSHIP AND MEMBERSHIP MEETINGS

SECTION 1.01. QUALIFICATIONS. The members of the Association shall consist of all of the record owners of Lots in the Subdivision.

SECTION 1.02. CHANGE OF MEMBERSHIP. Change of membership in the Association shall be established by the recording in the public records of Shelby County, Alabama, of a deed or other instrument establishing a record title to a Lot in the Subdivision, and the delivery to the Secretary of the Association of a certified copy of such instrument, thereby becoming a Member of the Association. The membership of the prior owner shall be thereby terminated.

SECTION 1.03. VOTING RIGHTS. The vote for a Lot shall be cast by the owner thereof, or by his proxy designated in the manner hereinafter provided. The number of votes to which an owner is entitled is provided in the Declaration.

SECTION 1.04. DESIGNATION OF VOTING REPRESENTATIVE AND ELIGIBILITY TO VOTE. In the event a Lot is owned by one (1) person, his right to vote shall be established by the record title to his Lot. If a Lot is owned by more than one (1) person, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record owners of the Lot and filed with the Secretary of the Association. If a Lot is owned by a corporation, partnership, trust or other legal entity, the officer or agent thereof entitled to cast the vote for the Lot shall be designated by a certificate of appointment signed by the duly authorized representative of the Board of Directors or other governing body of such entity and filed with the Secretary of the Association. If such a certificate is not filed with the Secretary of the Association for a Lot owned by more than one (1) person, or by a corporation, partnership, trust or other legal entity, the membership, or vote of the Lot Owner concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the Lot. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned is effected. A certificate designating the person entitled to cast the vote of a Lot may be revoked by any owner thereof. In the event any Lot Owner shall be in default of any Assessments against his Lot and shall fail to cure such default at least two (2) days prior to the date fixed for the meeting, the membership or vote of the Lot Owner concerned shall not be considered in determining the requirement for a quorum nor for any proposal requiring the approval of the person entitled to cast the vote for the Lot.

SECTION 1.05 ANNUAL MEETINGS. The Declarant shall call the first annual Homeowner's meeting not later than ninety (90) days after the date by which the last lot in the last phase of real property subject to the Declaration of Covenants, Conditions and Restrictions for OLD IVY has been conveyed by Declarant. Until such first annual meeting, it shall be Declarant's obligation and expense to maintain any common areas to be conveyed to the Association, or to be granted to such Association which will be created no later than immediately prior to the first annual meeting. Thereafter, annual meetings shall be held within thirty (30) days of the anniversary of such date each succeeding year at a day and time determined by the Board of Directors. The annual meeting shall be held for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members.

SECTION 1.06. SPECIAL MEETINGS. Special meetings of the Members may be called by a majority of the Board of Directors or the President for any purpose or purposes, and shall be called by the Secretary at the request, in writing, of one-third (1/3) of the Members. Business transacted at all special meetings shall be confined to the object(s) stated in the notice thereof.

SECTION 1.07. NOTICE OF MEETINGS. Notice of all Members' meetings stating the date, time, place and purpose for which the meeting is called shall be mailed to each Member not less than ten (10) nor more than sixty (60) days prior to the date of such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served. Notice of meetings may be waived either before or after meetings.

SECTION 1.08 VOTING IN PERSON OR BY PROXY. A Member may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid except for the particular meeting designated therein, and no proxy shall be honored unless filed with the Secretary of the Association before the appointed time of the meeting. No person other than the Declarant shall act as proxy for more than one (1) Lot in addition to his own Lot.

SECTION 1.09. QUORUM. Lot Owners holding more than fifty (50%) percent of the votes entitled to be cast represented in person or by proxy shall constitute a quorum at all meetings of the Lot Owners.

SECTION 1.10. VOTE REQUIRED TO TRANSACT BUSINESS. When a quorum is present at any meeting, the vote of a majority of the votes cast shall be necessary for the adoption of any matter voted upon by Lot Owners, unless the question is one upon which, by express provision of the Act, the Declaration, the Articles of Incorporation, or these By-Laws, a different number is required, in which case the express provision shall govern and control the decision in question.

SECTION 1.11. ADJOURNED MEETINGS. If any meeting of the Lot Owners cannot be organized because a quorum has not attended, the Lot Owners who are present, either in person or by proxy, may adjourn the meeting for at least ten (10) days, and adequate notice of the new date shall be given as described in Section 1.07 of these By-Laws. The Lot Owners present and entitled to vote at such reconvened meeting shall constitute a quorum, regardless of number.

SECTION 1.12. THE ORDER OF BUSINESS. The order of business at annual Members' meetings and, as far as practical, at all other Members' meetings shall be:

- (a) Call to order;
- (b) Calling of the roll and certifying of proxies;
- (c) Proof of notice of meeting or waiver of notice;
- (d) Reading and disposal of any unapproved minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Election of Directors;
- (h) Unfinished business;
- (i) New business;

(j) Adjournment.

SECTION 1.13. PLACE OF MEETING. Meetings of the Lot Owners shall be held at such place convenient to the Lot Owners as may be designated by the Board of Directors.

ARTICLE II - BOARD OF DIRECTORS

SECTION 2.01. NUMBER AND TERM.

(a) The first Board of Directors shall consist of three (3) members who shall be designated by the Declarant, or its Assignee.

(b) At the first annual meeting of the Lot Owners of the Association, five (5) persons shall be elected to serve as the Board of Directors, and the term of office of those elected shall be as follows: the term of the office of the two (2) persons receiving the highest number of votes shall be fixed at three (3) years; the term of office of the two (2) persons receiving the next highest number of votes shall be fixed at two (2) years; the term of office of the one (1) person receiving the least number of votes shall be fixed at (1) year. The election shall be by ballot and by a plurality of votes cast. Each Lot Owner voting must cast his vote (or votes) for as many nominees as there are vacancies to be filled, but there shall be no cumulative voting. Notwithstanding the foregoing, the right of the Lot Owners to elect Directors shall be subject to the right reserved to the Declarant under subparagraph (c) of this Section 2.01 to designate one Director. However, notwithstanding any provisions of these By-Laws, the Articles, or the Declaration, at the first annual meeting of the Lot Owners of the Association, at least one Member and not less than twenty-five (25%) percent of the Members of the Board of Directors must be elected by Lot Owners other than Declarant. Not later than ninety (90) days after conveyance of fifty (50%) percent of the Lots which may be created to Lot Owners other than Declarant, not less than thirty-three and one-third (33 1/3%) percent of the Members of the Board of Directors must be elected by Lot Owners other than Declarant. Not later than the termination of any period of Declarant control, the Lot Owners shall elect a Board of Directors of at least three (3) Members, a majority of whom must be Lot Owners other than Declarant.

(c) So long as the Declarant owns one or more Lots, the Declarant shall be entitled to designate one member of the Board of Directors. The Declarant may remove the Director so designated by it from time to time and replace him with another Director of its own choosing; provided, however, that it shall file with the secretary a designation of the member of the Board designated to serve pursuant to the provisions of this Section 2.01. In the event the Declarant exercises the right herein provided to designate one Director, then the total number of Directors shall consist of five (5) elected Directors and the Director appointed by the Declarant. Any period of Declarant control of the Association or the Board of Directors shall terminate no later than the earliest of (a) sixty [60] days after conveyance of seventy-five [75%] of the Lots which may be created to Lot Owners other than Declarant, or its assignee (b) two [2] years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (c) two [2] years after any development right to add new Lots was last exercised.

SECTION 2.02. REMOVAL. Any Director other than the one designated by Declarant may be removed, either with or without cause, by an affirmative vote of sixty-six and two-thirds (66 2/3%) percent of the votes eligible to be cast by Lot Owners in person or by proxy at a meeting of Lot Owners duly held for such purpose.

SECTION 2.03. VACANCY AND REPLACEMENT. If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a Special Meeting of Directors duly called for this purpose, shall choose a successor, who shall hold office for the un-expired term in respect to which such vacancy occurred.

SECTION 2.04. REGULAR MEETINGS. The Annual Meeting of the Board of Directors shall be held immediately after the adjournment of the Annual Members' meeting, provided a quorum shall be present, or as soon thereafter as may be practicable. The Directors may, by resolution duly adopted, establish regular monthly, quarter-annual or semi-annual meetings. If such resolution is adopted, no notice of such regular meetings of the Board of Directors shall be required.

SECTION 2.05. SPECIAL MEETINGS. Special meetings of the Board of Directors for any purpose may be called by the President or upon the written request of any two (2) Directors upon at least five (5) days notice to each Director.

SECTION 2.06. WAIVER OF NOTICE. Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION 2.07. QUORUM AND TRANSACTION OF BUSINESS. At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the Act, the Declaration or by these By-Laws. If a quorum shall not be present in any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

SECTION 2.08 POWERS AND DUTIES. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Subdivision and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Directors by the Lot Owners. The Board of Directors shall have the power to enforce obligations of the Lot Owners and to do anything and everything necessary and proper for the sound management of the Subdivision. The Board shall have the power to levy fines against the Lot Owners for violations of reasonable rules and regulations established by it to govern the conduct of the Lot Owners. No fine may be levied for more than Ten (\$10.00) Dollars for any one violation but for each day a violation continues after written notice it shall be considered a separate violation.

Collection of fines may be enforced against the Lot Owner or Lot Owners involved as if the fines were Common Expenses owed by the particular Lot Owner or Lot Owners. In addition to and not in limitation of the power of the Board of Directors to levy fines against the Lot Owners for violations of its rules and regulations by a Lot Owner, the Board of Directors shall have the power to seek injunctive relief to require such Lot Owner to adhere to the rules and regulations. All expenses in connection with any proceedings for injunctive relief, including the attorney's fees of the Board of Directors, shall be charged to the particular Lot Owner or Lot Owners involved and collection of same may be enforced against the Lot Owner or Lot Owners involved as if same were Common Expenses owed by the particular Lot Owner or Lot Owners.

SECTION 2.09. COMPENSATION. No Director shall be compensated for his services as such. This provision shall not prohibit a Director from receiving compensation as an employee of the Association, nor preclude the contracting with a Director or any firm or corporation in which a Director may own an interest, for the management of the Subdivision for which such Director or Directors may receive compensation.

SECTION 2.10. MANAGING AGENT. The Board of Directors shall be authorized to employ the services of a manager or managing agent, who may either be a Director, officer, or employee of the Association, or a firm or corporation in which a Director owns an interest, or any other firm, to manage the Property and the affairs of the Subdivision under the supervision of the Board of Directors. The compensation paid to any such managing agent shall be in the amount established from time to time by the Board of Directors.

While in control of the project, the Declarant cannot directly or indirectly bind the Association unless the management contract includes a Right of Termination Without Cause that the Association can exercise at any time after the transfer of control. This Right of Termination shall not require the payment of any penalty or an advance notice of more than 90 days.

SECTION 2.11. INSURANCE. The Board of Directors shall obtain to the extent reasonably available insurance for the Property which shall include the following:

(1) property insurance insuring against all risks of direct physical loss commonly insured against insuring the Common Elements and Buildings containing the Lots and covering the interests of the Subdivision, the Board of Directors and all Lot Owners and their mortgagees, as their interests may appear, in the amount determined by the Board of Directors, but in no event less than 100% of the current replacement cost with a maximum deductible amount of Ten Thousand (\$10,000.00) Dollars or 1% of the policy face amount, whichever is less, and payable to the Association as Trustee for each of the Lot Owners and their mortgagees, in accordance with the requirements set forth in the declaration;

(2) public liability insurance in such amounts and with such coverage as the Board of Directors may determine, but in no event should such coverage be less than One Million (\$1,000,000.00) Dollars for injury and property damage for any single occurrence; and

(3) fidelity bond coverage in an amount (based upon the estimated annual budget) not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond; provided, however, in no event may the aggregate amount of such funds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds; and

(4) such other insurance as the Board of Directors determine.

The premiums shall be Common Expenses. All such policies shall provide that adjustment of loss shall be made by the Board of Directors and that the net proceeds thereof shall be payable to the Board of Directors. The shares and disposition of the proceeds of insurance shall be as set forth in the Declaration. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of pro rata liability of the insurer as a result of any insurance carried by Lot Owners or of invalidity arising from any acts of the insured or any Lot Owners, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees of Lots.

SECTION 2.12. LIABILITY OF THE BOARD OF DIRECTORS. The members of the Board of Directors shall not be liable to the Lot Owner for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Subdivision. The Lot Owners shall indemnify and hold harmless each of the members of the Board of Directors on behalf of the Subdivision unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is understood and permissible for the Board of Directors, whether stockholders of or employed by the Declarant, to contract with the Declarant or affiliated firms or corporations, without fear of being charged with self-dealing. It is also intended that the liability of any Lot Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Lot Owners in the Common Elements.

ARTICLE III - OFFICERS

SECTION 3.01. ELECTION. At each annual Meeting of the Board of Directors, the following officers of the Association shall be elected:

(a) A President, who shall be a Director and who shall preside over the meetings of the Board of Directors and of the Members, and who shall be the chief executive officer of the Association.

(b) A Vice-President, who shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. If the Board so determines, there may be more than one vice-president.

(c) A Secretary, who shall be responsible for the minutes of all meetings of the Board of Directors and of the Members, and the minute book wherein resolutions enacted at such meetings shall be recorded, and who shall, in general, perform all the duties incident to the office of secretary.

(d) A Treasurer, who shall supervise the financial records and books of account.

(e) Such additional officers as the Board of Directors shall deem necessary.

SECTION 3.02. POWERS. The respective officers shall have the general powers usually vested in such officer of a not-for-profit corporation; provided that the Board of Directors may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board of Directors may see fit.

SECTION 3.03. TERM. Each officer shall hold office for the term of one (1) year and until his successor shall have been elected and qualified.

SECTION 3.04. REMOVAL. Any officer elected or appointed by the Board may be removed, with or without cause, by the majority vote of the whole Board of Directors at any regular meeting of the Board or at a special meeting of the Board called for such purpose.

SECTION 3.05. RESIGNATIONS. Any officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Association, unless some time is fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

SECTION 3.06. VACANCIES. If the office of the President, Vice-President, Secretary, Treasurer, or one or more becomes vacant by reason of death, resignation, disqualification or otherwise, the Directors by a majority vote of the whole Board of Directors may choose a successor or successors who shall hold office for the un-expired term.

SECTION 3.07. COMPENSATION. The officers shall receive no compensation for their services.

ARTICLE IV - RESPONSIBILITY FOR MAINTENANCE AND REPAIRS

The responsibility for maintenance and repair of the Property shall be as set forth in the Declaration.

ARTICLE V - ASSESSMENTS

SECTION 5.01. ACCOUNTING RECORDS. The Board of Directors shall provide for the maintenance of accounting records for the Association, such records to be maintained in accordance with generally accepted accounting principles, and such records shall include all records provided for under Alabama law.

SECTION 5.02. BUDGET. The Board of Directors shall cause to be prepared an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated Common Expenses, and cash requirements for the year, including salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and other expenses. The Common Expenses shall be those expenses designated by the Board of Directors pursuant to these By-Laws and the Declaration. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Board of Directors, on behalf of the Association, of any Lot which is sold at a foreclosure or other judicial sale. The annual budget shall provide for an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis. To the extent that the assessments and other cash income collected from the Lot Owner during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. Within 30 days after adoption of any proposed budget for the Subdivision, the Board shall provide a copy of the budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the budget to the Lot Owners. Unless at that meeting a majority of all the Lot Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board.

SECTION 5.03. ASSESSMENTS. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Lot Owner shall pay, as his respective monthly Assessment for the Common Expenses, one-twelfth (1/12) of his share of the Common Expenses for such year as shown by the annual budget. The Board of Directors, at their option, may require the payment of Assessments on an annual basis. The Assessment of the Common Expenses shall be as set forth in the Declaration. The failure to send or to receive monthly statements shall not relieve any Lot Owner of his obligation to pay his monthly Assessments on or before the first day of each month. Each Lot Owner shall pay his monthly Assessment on or before the first day of each month to the manager or managing agent or as may be otherwise directed by the Board. No Lot Owner shall be relieved of his obligation to pay his Assessment by abandoning or not using his Lot or the Common Elements. For the purpose of this Assessment, the Declarant is the Lot Owner of all unsold Lots. All unsold Lots shall be allocated full Assessments no later than three hundred sixty (360) days after the first Lot is sold.

SECTION 5.04. PRORATION OF ASSESSMENTS. For the first fiscal year, the annual budget shall be as approved by the first Board of Directors. If such first year, or any succeeding year, shall be less than a full year, then the monthly Assessment for such Lot Owner for the Common Expenses shall be proportional to the number of months and days in such period covered by such budget. Commencing with the date of closing of his Lot by each Lot Owner, he shall pay his Assessment for the current month or fraction of a month.

SECTION 5.05. ANNUAL STATEMENTS. Within ninety (90) days after the end of each year covered by annual budget, or as soon thereafter as shall be practicable, the Board of Directors shall cause to be furnished to each Lot Owner a statement for such year so ended, showing a summary of the receipts and expenditures and such other information as the Board may deem desirable. Any holder of a first mortgage on a Lot shall be entitled, upon written request, to obtain a copy of the financial statement for the immediately preceding fiscal year.

SECTION 5.06. ACCOUNTS. The Board of Directors shall cause to be kept a separate account record for each Lot Owner showing the Assessment charged to and paid by such Lot Owner, and the status of his account from time to time. Upon fifteen (15) days notice to the Board of Directors, any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from such Lot Owner.

SECTION 5.07. SUPPLEMENTAL BUDGET AND ASSESSMENTS. If during the course of any year, it shall appear to the Board of Directors that the monthly Assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Lot Owner for ratification in the same manner as set forth in Section 5.02, and thereupon a supplemental Assessment shall be made to each Lot Owner for his proportionate share of such supplemental budget.

SECTION 5.08. PAYMENT OF ASSESSMENTS. It shall be the duty of every Lot Owner to pay his proportionate share of Common Expenses assessed in the manner herein provided. If any Lot Owner shall fail or refuse to make any such payments when due, the Board of Directors shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Act, the Declaration or these By-Laws, or otherwise available at law or in equity, for the collection of all unpaid assessments.

SECTION 5.09. RECORDS. The Board of Directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the expenses incurred. Such records and financial statements together with current copies of the Declaration and By-Laws concerning the Subdivision, and vouchers authorizing the payments of such expenses, shall be available upon reasonable prior notice for examination by the Lot Owners during normal business hours at the office of the Association.

SECTION 5.10. RESERVE FUND. To insure that the Association will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, the Declarant will establish a working capital fund in an amount equal to one (1) month assessment for common expenses for each Lot. Amounts paid into this fund shall not be considered an advance payment of the regular monthly assessment. Each Lot's share of the working capital fund shall be collected from the purchaser at the time the sale of the Lot is closed or when control of the project is transferred to the Association, whichever is earlier. When control of the project is transferred to the Association, the working capital fund will be transferred to the Association for deposit to a segregated reserve fund.

While in control of the Association, the Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits. After transfer of control to the Association, the Declarant shall make the required payment to the reserve fund for each unsold Lot. However, when unsold Lots are sold, the Declarant may use funds collected from the purchaser at closing to reimburse itself for funds it paid the Association for each unsold Lot's share of the working capital fund.

ARTICLE VI - DEFAULT

SECTION 6.01. DEFAULT IN PAYMENTS. In the event a Lot Owner does not pay any sums, charges or Assessments required to be paid to the Association within thirty (30) days from the due date, the Association, acting through its Board of Directors, may foreclose the lien encumbering the Lot created by non-payment of the required monies in the same fashion as mortgage liens with a power of sale are foreclosed. The Association shall be entitled to the appointment of a Receiver if it so requests. The Association shall have the right to bid on the Lot at a foreclosure sale and to acquire, hold, mortgage and convey the same. In lieu of foreclosing its lien, the Association may, through its Board of Directors, bring suit to recover a money judgment for sums, charges or Assessments required to be paid to the Association without waiving its lien securing same.

If an action of foreclosure is brought against a Lot Owner for the non-payment of monies due the Association, and as a result thereof the interest of the said Lot Owner in and to the Lot is sold, then, at the time of such sale, the Lot Owner's membership shall be cancelled and membership shall be issued to the purchaser at the foreclosure sale.

If the Association becomes the owner of a Lot by reason of foreclosure, it shall offer said Lot for sale and at such time as a sale is consummated, it shall deduct from such proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the Lot, which shall include, but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for repairing the Lot or any improvements thereon in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former Lot Owner of the Lot in question.

SECTION 6.02. VIOLATION OF DECLARATION OF PLANNED UNIT DEVELOPMENT. In the event of violation of the provisions of the enabling Declaration, Articles and/or By-Laws, as the same are now or may hereafter be constituted, the Association, on its own behalf, may bring appropriate action to enjoin such violation or to enforce the provisions of the documents just hereinabove enumerated, or sue for damages, or take all such courses of action at the same time, or pursue such other legal remedy it may deem appropriate.

SECTION 6.03. COSTS AND ATTORNEY'S FEES. In any action either to foreclose its lien, to recover a money judgment or for injunctive relief brought by or on behalf of the Association against a Lot Owner, the Association, in the event it is the prevailing party, shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees, including those incurred on appeal, as may be awarded by the Court.

ARTICLE VII - MORTGAGES

SECTION 7.01. NOTICE TO BOARD OF DIRECTORS. A Lot Owner who mortgages his Lot shall notify the Secretary of the Association who shall maintain a record of such information.

SECTION 7.02. LENDER'S NOTICES. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer or guarantor of a Lot will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;
- (b) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

SECTION 7.03. EXAMINATION OF BOOKS. The holder, guarantor, or insurer of a mortgage on any Lot shall have the same right to examine the books and records of the Association afforded a Lot Owner pursuant to Section 5.09 of these By-Laws.

ARTICLE VIII - USE AND OCCUPANCY RESTRICTIONS

SECTION 8.01. USE AND OCCUPANCY RESTRICTIONS. No part of the property shall be used for other than residential use and the related common purposes for which the Property was designed. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit a Lot Owner from:

- (a) Maintaining his personal or professional library therein.
- (b) Keeping his personal business or professional records or accounts therein.
- (c) Handling his personal business or professional telephone calls or correspondence therefrom.

Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

SECTION 8.02. USE OF COMMON ELEMENTS. The Common Elements shall be used only for access, ingress and egress to and from the respective Lots by the persons residing therein and their respective guests, household help, and other authorized visitors, and for such other purposes which are incidental to the residential use of the respective Lots. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged, or interfered with by any Lot Owner.

SECTION 8.03. NUISANCES. No unlawful, immoral, noxious, or offensive activities shall be carried on in any Lot or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board of Directors cause unreasonable noise or disturbance to others.

SECTION 8.04. MAINTENANCE AND REPAIRS. Each Lot Owner shall perform promptly, and at his own risk, cost and expense, all maintenance and repair work with respect to his Lot. Each Lot Owner shall be obligated to reimburse the Association for the expenses incurred in maintaining or repairing any part of the Subdivision Property damaged by the negligence or misuse by the Lot Owner, his tenants, agents, guests, or licensees.

SECTION 8.05. TRASH. Trash, garbage, and other waste shall be kept only in sanitary containers, as prescribed from time to time in the administrative Rules and Regulations of the Board of Directors, and shall be disposed of in a clean and sanitary manner.

SECTION 8.06. RIGHTS OF DECLARANT. Until all of the Lots have been sold by the Declarant, the Declarant may from time to time use and show one or more of such unsold Lot(s), and may use and maintain customary signs in connection therewith notwithstanding anything herein to the contrary.

ARTICLE IX - MISCELLANEOUS -

SECTION 9.01. SEAL. The seal of the Association shall be circular in form and shall contain the name of the Association and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

SECTION 9.02. FISCAL YEAR. The fiscal year of the Association shall be set by the Board of Directors.

SECTION 9.03. BANK ACCOUNTS. The Board of Directors may, from time to time, by resolution authorize the maintenance of one or more deposit accounts by the Association. All checks, drafts, or other orders for the payment of money issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 9.04. NOTICE. Whenever any notice or demand is required to be given by these By-Laws or the Declaration, any notice or demand so required shall be deemed sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his last known post office address according to the records of the Association, and such notice shall be deemed given on the day of such mailing.

SECTION 9.05. WAIVER OF NOTICE. Whenever any notice whatsoever is required to be given under the provisions of any law, or under the provisions of the Articles of Incorporation, these By-Laws or the Declaration, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE X - AMENDMENTS

These By-Laws may be modified or amended by the vote of Sixty Six and Two Thirds (66 2/3%) percent of the votes eligible to be cast by Lot Owners in person or by proxy at any regular or special meeting of Lot Owners provided that notice of said meeting has been given in accordance with these By-Laws, and that the notice as aforesaid contained a full statement of the proposed amendment. No modification or amendment to the By-Laws shall be valid unless set forth or annexed to a duly recorded amendment to the Declaration of Covenants, Conditions and Restrictions.

ARTICLE XI - CONSTRUCTION

Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine, or neuter, singular or plural, whenever the context so requires. Should any of the covenants herein imposed be void or become unenforceable at law, or in equity, the remaining provisions of this instrument shall, nevertheless, be and remain in full force and effect.

The foregoing were adopted as the By-Laws of OLD IVY HOMEOWNER'S ASSOCIATION, INC., at the first meeting of the Board of Directors on the _____ day of _____, 2005.

President