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CHESSER RESERVE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DATED JUNE 29, 2007

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

Mary Thornton Taylor, Esq.
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CHESSEY RESERVE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS CHESSEY RESERVE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the 29th day of June, 2007 by **CHESSEY PLANTATION, LLC**, an Alabama limited liability company ("Developer").

RECITALS:

WHEREAS, Developer is the owner of the Property as defined in Section 1.23 below and described on the Plat of Chesser Reserve, Phase I, as recorded in Map Book 38, Page 115 A & B in the Probate Office of Shelby County, Alabama (the "Plat"). Developer desires to develop, improve and sell the Property for residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations as set forth herein in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property; and

WHEREAS, Developer desires to establish uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefit all Owners of property therein and, to this end, desires to subject the Property to the provisions of this Declaration, all of which are for the benefit of the Property and each Owner thereof; and

WHEREAS, Developer has developed the Property as part of the Chesser Plantation planned unit development approved by Shelby County, Alabama and the development, improvement, sale and ownership of the Property, and any Lot and Dwelling situated within the Property, shall be in accordance therewith; and

WHEREAS, Developer shall cause or has heretofore caused the Association, as defined in Section 1.6 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.10 below, establishing annual budgets for maintaining the Common Areas, paying all costs and expenses incurred by the Association in connection therewith along with other Common Expenses, making Annual, Special and Individual Assessments, as defined in Section 1.5 below, enforcing the provisions of the Declaration, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that the Property, as described in Section 2.1 below, and such Additional Property as may hereafter be made subject to this Declaration pursuant to Section 2.2 below, is and shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the approved plan for Chesser Plantation planned unit development and the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of said Property and any of the Additional Property, as defined in Section 1.1 below, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I **DEFINITIONS**

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

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

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

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

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

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

1.6 **Association.** The term "Association" shall mean Chesser Reserve Owners Association, Inc., an Alabama nonprofit corporation, that has been organized by filing the Articles of Incorporation with the Judge of Probate of Jefferson County, Alabama.

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

1.8 **Building Maintenance Reserve Fund.** The term "Building Maintenance Reserve Fund" shall mean and refer to the escrow account into which Owners of Dwellings contribute funds to be used for purposes of Exterior Building Maintenance.

1.9 **Bylaws.** The term "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

1.10 **Common Area.** The term "Common Area" shall mean and refer to all real and personal property now or hereafter owned, leased or maintained by the Association within or without the Development for the common use and enjoyment of the Owners. The Common Areas shall include, but not be limited to, those areas designated as Common Area on the Plat together with (a) all public or private roadways or easements within the boundaries of the Property upon which public or private roadways providing ingress to and egress from the Development for use by all Owners of the Property have been constructed, (b) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, improvements, landscaping and landscaped areas or other areas adjacent to any public or private

roadways, including all medians within any public or private roadways, which provide ingress to and egress from any portion of the Development (other than any such areas located solely within the boundary lines of a Lot), (c) all lakes, water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, dams, basins or other areas and facilities located within the Development (other than such areas located solely within the boundary lines of a Lot), (d) all maintenance areas and parking areas located on any portion of the Development (other than such areas located solely within the boundary lines of a Lot), (e) subject to the rights of others therein, all public and private utility lines, pipes, ducts, conduits, lift stations, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and (f) all landscaping, parks, open spaces, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Development, if any, which are designated by Developer or the Association as Common Area from time to time. The designation of any land and/or Improvements as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof and the use and management of such Common Areas shall be exclusively governed by the terms and conditions of this Declaration.

1.11 **Common Expenses.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.2(b) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.12 **Declaration.** The term "Declaration" shall mean and refer to this Chesser Reserve Declaration of Covenants, Conditions and Restrictions, together with all amendments hereto.

1.13 **Developer.** The term "Developer" shall mean CHESSER PLANTATION, LLC, an Alabama limited liability company, and its successors and assigns, if such successors or assigns acquire any portion of the Property and/or the Development and are designated as successor developer by Developer.

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

1.15 **Dwelling.** The term "Dwelling" shall mean and refer to any home or residence constructed for use as an attached or detached single-family residential housing unit upon a Lot.

1.16 **Exterior Building Maintenance.** The term "Exterior Building Maintenance" shall mean and refer to the Association's ordinary, reasonable and periodic care (i) to keep the exterior trim, shutters, siding and columns for all Dwellings painted and in good repair; and (ii) to keep the roof materials of a Dwelling, such as shingles, roof felt, and decking, in good repair. Exterior Building Maintenance by the Association shall not include exterior cleaning, housekeeping or repair or replacement of such exterior components of a Dwelling required by fire or other casualty.

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

1.18 **Governing Documents.** The term "Governing Documents" shall mean and refer to this Declaration, the Articles of Incorporation, the Bylaws, the Architectural Standards, and the rules and regulations adopted by the Board or the ARC from time to time.

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

1.20 **Landscaping and Irrigation**. The term "Landscaping and Irrigation" shall mean and refer to the Association's ordinary, reasonable and periodic care of all landscaping and irrigation systems throughout the Development including the landscaping and irrigation systems in the Common Areas and within the Lots, but excluding enclosed areas in the rear yards of Lots to which the Association has no reasonable access.

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

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

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

1.24 **Mortgagee**. The term "Mortgagee" shall mean and refer to the holder of any Mortgage. The term "Mortgagee" shall not mean or refer to a lender holding a mortgage on Lots unsold by Developer.

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

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

1.27 **Property**. The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described as follows:

Lots 1 through 38, inclusive, Lots 115 through 140, inclusive, and the Common Areas as shown on the subdivision plat of Chesser Reserve, Phase

I, as recorded in Map Book 38, Page 115 A & B, in the Probate Office of
Shelby County, Alabama.

The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

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

2.2 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot) and shall (a) refer to this Declaration stating the instrument number where this Declaration has been recorded in the Probate Office of Shelby County, Alabama, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property, including use of such Additional Property for single-family or multi-family residential areas or for commercial or recreational purposes. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Shelby County, Alabama submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.2 of this Declaration.

2.3 **Right of Developer to Modify Restrictions with Respect to Lots and Other Property Owned by Developer.** With respect to any Lot or other real property within the Development owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot or other property.

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

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

2.6 **Right to Development Activities.** The Developer and its contractors, employees, agents, designees, successors and assigns shall have a right of access and use and an easement over and upon all of the Common Areas for the purpose of making, constructing and installing such Improvements to the Common Area, and to the Additional Property, as it deems appropriate in its sole discretion. Each Owner acknowledges that the Development is part of a master planned community, the development of which is likely to extend over several years, and agrees not to protest, challenge or otherwise object to changes in uses, design, layout or density of the Property within the Development. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by the Developer or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by the Developer in its sole discretion, for the development and sale of the Lots within the Development. Notwithstanding any provisions herein to the contrary, no provision of this Declaration shall prevent, hinder or limit Developer in any manner whatsoever in connection with the development of the Property and the construction and sale of townhomes on the Lots, and any provision having any such effect shall be null, void and unenforceable against Developer.

2.7 **Subdivision Plat.** Developer reserves the right to record, modify, amend, revise and otherwise add to or delete from, at any time and from time to time, the subdivision plat of the Property setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Common Areas, Additional Property, public or private roads, public or private utility systems, drainage systems, utility easements, drainage easements, access



easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may also at any time or from time to time divide and redivide, combine and resubdivide any Lots, Common Areas and other portions of the Property owned by Developer. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved to Developer pursuant to this Section 2.7 may be exercised solely by Developer without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

ARTICLE III **EASEMENTS AND RESERVATION OF RIGHTS**

3.1 **Grant of Non-Exclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, the Association, and their successors and assigns, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot. The easement to use and enjoy the Common Areas granted hereby shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. The easements, rights and privileges granted in this Section 3.1 shall pass with each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot. The easements and rights granted pursuant to this Section 3.1 are expressly subject to (i) the Declaration and (ii) any restrictions or limitations contained in any deed conveying such property to the rights reserved by Developer to restrict the use of the Common Areas. In addition, such easements and rights are further subject to the Board's right to (i) adopt rules regulating Common Area use and enjoyment; (ii) suspend an Owner's right to use Common Area facilities; (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration. Any Owner may extend his or her right of use and enjoyment of the Common Areas to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation.

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

3.3 **Reservation of General Access Easement.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, contractors, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (i) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration, (ii) for equipment and activities reasonably required in emergency or perceived emergency situations in order to prevent or minimize damage to persons or property, and (iii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or

permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration and for the performance of the Association's maintenance obligations described in Section 7.2 below; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies or perceived emergencies, the foregoing easement shall be utilized only during normal business hours.

3.4 **Reservation of Easements With Respect to Common Areas.**

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

(b) **Changes in Common Areas.** Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas whether owned by Developer or the Association, and any Lots owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey, and the Association shall accept such conveyance, by quitclaim or other deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas as Developer, in its sole discretion, may determine subject to all existing restrictions, conditions, limitations, reservations and easements of record. Developer expressly reserves the right to create additional non-exclusive utility easements, drainage easements, water retention easements and ingress and egress easements in the Common Areas.

3.5 **Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual non-exclusive blanket easement over, across, under, through and upon all property within the Development for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the any portion of the Development or neighboring properties including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, dams, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or neighboring properties and any other service such as, but not limited to, a master television system, or security system which the Developer or the Association might decide to have installed to serve the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Developer, the Association or the designee of either, as the case may be, may install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining the wires, conduits, cables and other equipment related to the providing of any utility or service. Developer hereby further establishes for the

benefit of each Lot a nonexclusive easement for maintenance, repair, replacement and use of all pipes, wire cables, conduits, utility lines, flues and ducts serving such Lot and situated in any other Lot or the Common Areas. In the event an Owner fails to timely pay for a utility service, the easements established and reserved herein shall include the right of such utility service to enter the Lot of such Owner to disconnect the Dwelling from such utility service. The Developer or the Board shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Development under, through, or over the Lots, as may be reasonably necessary to or desirable for the ongoing development and operation of the Development.

3.6 **Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, contractors, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards, to effect storm water run-off, or to effect any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, the right to improve drainage and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any applicable Governmental Authority. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot. No object or Improvement may be placed or constructed, either partially or wholly, and no Owner shall otherwise do anything that prevents, impairs or diverts, in any way, the free flow of water in and through drainage channels. No water shall be diverted by any Owner to other Lots except through established drainage channels.

3.7 **Reservation of Easements for Signs, Walks, Walls and Fences.** Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant, over, across, through and upon the Property and each Lot for the purpose of (i) constructing, installing, maintaining, repairing, operating, replacing and the use of roadways, medians, landscaped areas, guard houses, security gates, sidewalks, walkways, trails, bicycle paths, jogging paths, lanes, fences, walls, berms, curbing, gutters, informational and traffic directional signs and related and other improvements thereon and (ii) doing all things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. The easements established and reserved pursuant to this Section 3.7 shall include the right to cut and remove trees, underbrush, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to install any of the improvements contemplated pursuant to this Section 3.7.

3.8 **Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 7.2(b) below, Developer does hereby establish and reserve for itself, the Association and their respective agents, contractors, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions except as provided in Section 7.2(b) below. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons; to perform maintenance; to inspect for compliance with the Declaration; and to enforce the Declaration and such entry shall not be deemed a trespass. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their

duties may exercise such right. Except in an emergency or perceived emergency situation, entry shall only be during normal business hours.

3.9 **Easement for Lot Maintenance.** Developer hereby reserves for the Association and for the benefit of each Lot perpetual reciprocal appurtenant easements between, over and across adjacent Lots as may be reasonably necessary for the purpose of maintaining or repairing the Improvements located on each Lot. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which arises out of such maintenance or repair work.

3.10 **Easements for Townhomes.** Developer intends that a townhome be constructed on each Lot and construction of such townhomes may require that certain eaves, roof overhangs, party walls, brick veneers, siding and other architectural features and building materials encroach upon or hang over contiguous Lots. Accordingly, there is hereby created, granted and reserved as an appurtenance to each Lot, a perpetual easement over and across each Lot contiguous thereto for all such encroachments and overhangs, as well as for all encroachments and overhangs resulting from any natural movement or settling of any such townhome. Developer grants perpetual reciprocal appurtenant easements for encroachments, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture that extends unintentionally from one Lot onto another. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Owner claiming the benefit of such easement.

3.11 **Easements for Driveway Encroachment.** There is hereby reserved appurtenant easements for encroachment as between each Lot and such portion or portions of the driveway serving an adjacent Lot due to the placement or settling or shifting of the driveway constructed, reconstructed, or altered thereon (as approved under Article V of the Declaration); 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 or Occupant after the initial construction of the Dwelling.

ARTICLE IV **ASSOCIATION**

4.1 **Membership.** The Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot owned by Developer in the Development, (b) in the event any Lot is owned by more than one (1) person, then the Owners of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot owned by such Owners and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the Governing Documents including without limitation the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board, the ARC or the members of the Association.

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

4.3 **Voting Rights.** Subject to the rights reserved to Developer herein and in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Article XI below, the Owner of each Lot shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot owned. Such voting rights shall continue to apply to each Lot upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.7 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted. For purposes of this Section 4.3, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots owned by Developer.

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

specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

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

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

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

4.8 **Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the ARC and the Board harmless from and against

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

ARTICLE V
ARCHITECTURAL REVIEW COMMITTEE
AND
ARCHITECTURAL STANDARDS

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

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

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

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

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

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

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

5.5 **Approval of Plans and Specifications.**

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

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

(i) two copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces and patios and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling;

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

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

(iv) two copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot, Dwelling or other Improvement;

(v) two copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.6 below;

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

(vii) such fee as may from time to time be imposed by the ARC for review, approval, and inspection of the plans and specifications and the construction of the Improvements as herein provided.

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are complete and acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed Improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Development. The ARC shall establish a fee sufficient to cover the

expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking the ARC's approval of plans and specifications. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance and the Association may make interior improvements and alterations within any buildings or structures it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that the approval or consent of the ARC be obtained. Article V shall not apply to the activities of Developer or affiliates of Developer.

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

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

(f) If construction of the Dwelling or the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within three (3) months of approval by the ARC of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced (or continued) on such Lot or Dwelling and the Owner of such Lot shall be required to resubmit all plans and specifications for any Dwelling or other Improvements to the ARC for approval in the same manner specified above.

THE ARC'S SCOPE OF REVIEW IS LIMITED TO AESTHETICS AND APPEARANCE ONLY. PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER DEVELOPER, THE ARC, THE BOARD, 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 DEVELOPER, THE ASSOCIATION, THE ARC, 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 OR 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 SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DEVELOPER, THE ASSOCIATION, THE ARC, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, 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.

5.6 **Landscaping Approval.** In order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner or the Association, other than Developer, on any Lot, Dwelling or Common Area unless and until landscaping plans therefore have been submitted to and approved by the ARC. The provisions of Section 5.5 above

regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

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

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

5.9 **Subsurface Conditions.**

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

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

5.10 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, contractor, subcontractor, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted by Owner and reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any Improvements constructed or done by Owner according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any

Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, radon gas, underground mines, tunnels and water channels and limestone formations) on or under any Lot or Dwelling and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling, or any Improvements situated thereon.

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

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

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

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

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

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

6.1 **Use Restrictions.** Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.1, each Lot shall be used only for single-family residential purposes and no trade or business of any kind may be carried on, in or from any Lot, except as the Developer may otherwise authorize with respect to the construction, marketing and sales activities of the Developer. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use (i) is not apparent or detectable by sight, sound or smell from outside of a Dwelling; (ii) complies with applicable zoning requirements; (iii) does not involve regular customer, client or employee traffic or involve door-to-door solicitation within the Development; and (iv) is consistent with the Development's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its sole discretion. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association. Notwithstanding anything provided in this Section 6.1 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas or single-family residential purposes, then such use must be approved in writing by the ARC.

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

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

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

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

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

6.7 **Minimum Living Space.** Minimum Living Space shall not be less than eleven hundred (1,100) square feet for any Dwelling. The ARC can reduce or increase the minimum Living Space requirements for a Dwelling if, in the opinion of the ARC, such is needed for the appearance of the Dwelling on the Lot to be consistent with the other Dwellings within the Property.

6.8 **Landscaping.**

(a) The landscaping plan for each Lot or Dwelling in the Development has been approved by the ARC pursuant to the provisions of Section 5.6 above and will be installed within the Lots upon completion of construction of the Dwellings. Each Owner shall be prohibited from making any changes to any landscaping on any Lot or any of the Common Areas, it being understood that all Dwellings and landscaping are designed to blend harmoniously together. No Owner shall be allowed to divert or obstruct surface water from its drainage channels or otherwise divert or obstruct surface water so as to adversely impact adjoining or neighboring Lots or Dwellings. The determination of whether any such diversion or obstruction of surface water exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

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

(c) The ARC may from time to time promulgate rules and regulations with regard to the maintenance and appearance of yards including, but not limited to, rules and regulations as to acceptable and unacceptable lawn fixtures, decorations, accessories, flowers, flower pots and plant life.

(d) No rocks, rock walls, fencing or other substance shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on any portion of a Lot.

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

6.10 **Exterior Lighting and Security Devices.** Exterior lighting on any Lot, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to any Improvement is prohibited unless approved by the ARC. In addition, no exterior security device including, without limitation, window bars, shall be permitted on a Lot.

6.11 **Exterior Materials and Finishes.** Any change to the exterior color or materials of any Improvement located on a Lot including, without limitation, the Dwelling or any fence located on a Lot, must be approved by the ARC.

6.12 **Driveways.** All driveways for the Lots shall be constructed of such hard surfaced material as may be specified in the Architectural Standards or approved by the ARC. Chert, gravel and loose stone driveways are prohibited.

6.13 **Off-Street Parking.** Each Lot shall provide for parking for one automobile in a garage with a garage door. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC. No automobiles, vehicles, machinery and equipment shall be parked on the street; provided, however, that visiting automobiles and vehicles shall be parked temporarily, to the greatest extent possible, (i) in the off-street parking area of the Lot being visited or (ii) on the street in front of the Dwelling being visited. Vehicles shall not be parked on any landscaped or natural areas of a Lot. Carports are prohibited.

6.14 **Inoperable and Recreational Vehicles; Machinery and Equipment.**

(a) Any vehicle which is inoperable shall be immediately removed from the Development. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside the Development.

(b) No mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks (other than pick-up trucks), commercial vehicles, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles or motorized go-carts shall be parked or maintained on the right-of-way or in the driveway of any Lot. The prohibitions of this Section shall not apply to temporary parking of trucks and other commercial vehicles providing construction or commercial services to a Lot or to the efforts and activities of Developer in connection with the development of the Property and the construction of the Dwellings.

6.15 **Fences.** No fences or fencing type barrier of any kind or material shall be placed, erected, allowed or maintained on any Lot by an Owner without the prior written approval of the ARC. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC, and if a fence is so approved by the ARC, then the Owner of such Lot shall be solely responsible for maintaining the same in good condition and repair at all times. The provisions of this Section 6.15 shall not apply to the party walls and fences subject to Section 7.4 below.

6.16 **Outdoor Furniture, Recreational Facilities and Clotheslines.**

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

(b) Outside clotheslines or other outside facilities for drying or airing clothes are prohibited on any Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

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

(d) Free-standing playhouses, tree houses and basketball backboards are prohibited on any Lot.

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

(f) Artificial vegetation, exterior sculpture, fountains, flags and similar items shall not be permitted in the front or side yards of any Lot unless approved by the ARC; provided, however, the display of flags for generally recognized holidays on which flags are customarily displayed shall be permitted for a period from one (1) week prior to the date of such holiday until one (1) week after the date of such holiday. No awnings, shades or window boxes shall be attached to or otherwise placed on the exterior of any Dwelling or other Improvement on a Lot without the prior written consent of the ARC.

(g) Fire wood storage shall be located only behind a Dwelling.

(h) Holiday decorations shall not be installed prior to thirty (30) days before the applicable holiday and shall be removed within fifteen (15) days after the holiday.

6.17 **Mailboxes.** Only one (1) mailbox shall be allowed on any Lot. All mailboxes shall be of the type, design, color and location approved by the ARC. Mailboxes shall contain only the name and/or house number of the Lot as approved by the ARC, but no further inscription, paintings, ornaments or artistry shall be allowed.

6.18 **Windows, Window Treatments and Doors.** All exterior windows and doors shall be subject to ARC approval. Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. No aluminum or metal windows shall be utilized on the front or sides of any Dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling. Aluminum or metal doors with glass fronts (e.g., storm doors) shall not be allowed on the front of any Dwelling unless approved by the ARC.

6.19 **Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall be located, to the extent practicable, at the rear of all Dwellings. All exterior heating, ventilating and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of the Dwelling and, if the same are visible from the street, such compressor units and equipment shall be screened from public view by either walls or landscaping to be approved by the ARC. No window mounted heating or air conditioning units or window fans shall be permitted.

6.20 **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware 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 ARC.

6.21 **Satellite Dishes and Antennae.** Subject to the approval of the ARC as to size, appearance, location and function, miniature satellite dishes which are twenty one (21) inches in diameter or less may be allowed on a Lot or Dwelling where not visible from any street. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Property unless the same is contained entirely within the interior of the Dwelling. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot which may interfere with the reception of radio or television signals within the Development; provided, however, that, although not obligated to do so, Developer shall not be prohibited from causing to be installed

and operated, either directly or indirectly by contract or otherwise with another entity, any equipment necessary for master antenna, cable television, satellite television or radio, security, mobile radio or similar systems within the Development.

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

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

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

6.25 **Trash, Rubbish and Nuisances.**

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

Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Dwelling or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in trash cans or containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and out of sight at all times; provided however that trash cans and containers can be moved to the front yard of the Lot on trash collection days for such Lot.

(c) Except during construction of a Dwelling or other Improvements, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or other portion of the Development.

(d) Exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, are a nuisance and shall not be located, used or placed upon any Lot or other portion of the Development.

6.26 **Signage.** No signs or advertising posters of any kind (other than one (1) "For Sale" sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. Notwithstanding the foregoing, (a) the restrictions set forth in this Section 6.26 shall not be applicable to Developer or its agents or affiliates and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Article III above. The ARC shall have the right to enter any of the Property for the purpose of removing and destroying any unauthorized signs without recourse from any Owner. So long as it owns any Lots within the Property, the Developer shall have the right to place any type of signs on or about the Property for the purpose of advertising the Property and/or the Development and promoting the sale of Lots.

6.27 **Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.27 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.28 **Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts are prohibited within any Lot.

6.29 **Traffic Regulations.** All vehicular traffic on the roads in the Development shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic and parking, including adopting reasonable safety measures and speed limits for any of the roads within any portion of the Development, and from time to time to establish, modify, and enforce reasonable rules and regulations regarding the use of such roadways. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic rules and regulations promulgated by the Board, the laws of the State of Alabama shall govern. Only drivers licensed to operate motor vehicles by the State of Alabama or by any other state in the United States may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner, with due consideration for the rights of all Owners and Occupants of the Development.

6.30 **Common Areas and Storm Water System.** (a) No Owner or Occupant may cut, remove, damage, mutilate or destroy any of the Improvements, trees, plant life or other vegetation situated within the

Common Areas. No Owner or Occupant may construct, install, place, erect or otherwise maintain any Improvements, vehicles or devices of any nature on or within a Common Area.

(b) No Owner shall deposit or place by any means into the storm water system any item that would tend to block or obstruct the storm water system. Owners shall not place items in gutters, streets, ditches or swales that could wash into the storm water system. Blockage of storm water inlets can cause flooding that could result in damage to persons and property. No Owner shall allow or rake leaves or other landscaping debris into inlets or gutters where such debris could wash into inlets. No Owner shall place trash bags, garbage cans or other objects in gutters where flowing water could wash trash, garbage or objects into inlets.

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

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

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

6.34 **Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Board and/or the ARC shall each have the right, at their option, to do any or all of the following: (a) require cessation of such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Board or the ARC in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Board or the ARC in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an Individual Assessment to such Owner pursuant to Section 8.6 hereof, and if the same is not paid when due, shall bear interest, and shall be subject to the lien provided for in Section 8.8 hereof and shall be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Board and the ARC set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by the Board or the ARC at law or in equity or any of the enforcement rights specified in Article XI below.

ARTICLE VII
MAINTENANCE RESPONSIBILITIES

7.1 Responsibilities of Owners.

(a) Except as provided in Section 7.2 below, all maintenance of the Lot and the Improvements situated thereon shall be the sole responsibility of the Owner thereof and each Owner shall keep his Lot, Dwelling and Improvements in good order and repair and with such frequency as is consistent with good property management practices. Each Owner shall maintain his Lot and Dwelling in such a manner as to be consistent and harmonious with other Dwellings, Improvements and the Development. Without limiting the generality of the foregoing, the repair and maintenance responsibility of an Owner includes the repair, maintenance, and replacement of all fences installed by the Owner (that must be approved by the ARC), and all exterior glass and screens and the hardware thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Improvements located within the Lot's boundaries or, if located outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cutoff valves for same serving only the Lot). All such maintenance shall be performed consistent with this Declaration. Any maintenance that involves an exterior change shall require prior approval of the ARC pursuant to Article V of this Declaration. Finally, in the event of any loss or damage to the Dwelling or other Improvements (including any landscaping) on a Lot caused by or arising from a casualty event, the Owner of such Lot shall be obligated to repair such loss or damage.

(b) In addition, each Owner also shall be obligated to:

(i) perform the Owner's responsibility in such manner so as not to unreasonably disturb other persons in other Lots;

(ii) promptly report to the Association any defect or need for repairs for which the Association is responsible;

(iii) not make any alterations in the portions of the Lot that are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the ARC, nor shall any Owner impair any easement without first obtaining written consent of the Board;

(iv) pay for the cost of repairing, replacing or cleaning up any item that is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner or Occupant with the cost thereof to become an Individual Assessment to which such Owner is subject and shall become a lien against the Lot of such Owner; and

(v) aid and assist the Association as requested by the Association including, without limitation, removing, covering, shielding, or otherwise protecting any and all personal property in the areas to be maintained or repaired by the Association in order for the Association to conduct its maintenance and repair obligations on the Lots. The Association shall not be liable for any injury, damage or loss to such

personal property that is not removed, covered, shielded or otherwise protected by the Owner or Occupant of the Lot on which such personal property is located as requested by the Association.

7.2 **Responsibilities of Association.**

(a) **Maintenance of Common Areas.** Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient funds from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas and the Landscaping and Irrigation therein. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, Acts of God or any Owner, Occupant or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property or caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling, or (3) resulting from theft, burglary or other illegal entry into the Development, any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of Governmental Authorities.

(b) **Maintenance of Lots.** To the extent it has received sufficient funds from the Owners through Assessments, the Association is responsible for the following maintenance within the Lots:

(i) **Exterior Building Maintenance.** The Board will make all decisions regarding Exterior Building Maintenance as may be required from time to time. The frequency of the Association's Exterior Building Maintenance will be consistent with good property management practices. The Association shall not be responsible for exterior glass, routine cleaning of exterior surfaces or exterior housekeeping. The Association shall NOT be responsible for damage, repair or replacement of any Dwelling, or any portion thereof, due to weather, fire, casualty, accident, or Owner negligence or neglect. Damage to interiors of Dwellings as a result of roof leaks are NOT the responsibility of the Association;

(ii) **Landscaping and Irrigation,** but excluding enclosed areas located at the rear of a Lot to which the Association has no reasonable access. In the event irrigation maintenance or repair is required within an inaccessible enclosed area of a Lot, the Owner thereof shall grant the Association the right of entry thereto to perform such maintenance or repair. No landscaping shall be changed by any Owner without the approval of the ARC; and

(iii) **the maintenance of a termite bond for all Dwellings.** Each Owner shall cooperate with any inspections or treatments of its Dwelling for purposes of maintenance of the termite bond. The Board will make any decisions regarding the termite bond as may be required from time to time.

(c) **In the event of any casualty event causing loss or damage to any Lot or Dwelling or other Improvements thereon,** the Owner of such Lot shall be obligated to repair such loss or damage, utilizing available insurance proceeds but otherwise completing repairs to the condition prior to such casualty event

(d) **Upon resolution of the Board,** the Association may assume responsibility for providing additional exterior maintenance for Improvements within Lots. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

(e) **The Association shall not be liable for injury or damage to person or property caused by the elements, Acts of God or by the Owner of any Lot, or any other person, or resulting from any utility,**

rain, snow or ice that may leak or flow from any portion of the Common Areas or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to an Owner or Occupant for loss or damage, by theft or otherwise, of any property. The Association shall not be liable to any Owner or Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section 7.2 where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, 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.

(f) In performing its responsibility hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

7.3 **Failure to Maintain.** In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which the Owner is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by or arises out of the willful or negligent act or omission of an Owner or Occupant, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have ten (10) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such ten (10) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be collected as provided herein for the collection of Assessments.

7.4 **Party Walls.** Each wall and privacy patio fence built as a part of the original construction of the Dwellings on the Lots (and not additional fencing built in the rear yard of a Lot by an Owner after ARC approval) and serves to separate any two (2) adjoining Dwellings 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 negligent or willful acts or omissions shall apply thereto. 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. If a party wall or fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence may restore it, and the other Owner who has used or is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section 7.4 shall be appurtenant to the Lot and shall run with title to the Lot.

7.5 **Landscaping and Irrigation.** As provided in Section 7.2 above, the Association shall maintain and keep in good repair the Landscaping and Irrigation within the Common Areas and Lots, except for landscaping in an inaccessible enclosed or fenced area, if any, which shall be the responsibility of the Owner as provided in Section 7.1 above. The Board in its sole discretion may leave portions of the Development as undisturbed natural areas and may change the landscaping in the Development at any time and from time to time or may, with the consent of the Developer, change the level of landscaping maintenance

performed within Lots. The Board may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping including, for example, allowing seasonal flowering plants in certain areas of the Development at the expense of the Owner.

ARTICLE VIII **ASSESSMENTS**

8.1 **Assessments and Creation of Lien.** Each Owner of a Lot, except for Developer, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.4 below, (b) Special Assessments, to be established and collected as provided in Section 8.5 below, and (c) Individual Assessments against any particular Lot which are established, assessed and to be collected pursuant to Section 8.6 below and the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided in Section 8.8(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.8(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.8(a) below, court costs and attorneys' fees incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Common Area, or any other portion of the Development or any other cause or reason of any nature.

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

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

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

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

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

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

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

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

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

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

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

(x) Exterior Building Maintenance;

(xi) Landscaping and Irrigation; and

(xii) The maintenance of a termite bond for all Dwellings.

8.3 Uniform Rate of Assessments.

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

(b) Notwithstanding anything provided in Section 8.3(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots and/or Dwellings within the Additional Property shall be subject to the same Annual or Special Assessments then being paid by the Owners of all other Lots in the Development.

8.4 Computation of Annual Assessments.

(a) Notwithstanding anything provided to the contrary in this Declaration, the Annual Assessment for each Lot within the Development, except Lots owned by Developer, commencing on the date hereof and continuing until and including December 31, 2008 shall be NINE HUNDRED SIXTY AND NO/100 DOLLARS (\$960.00) per Lot based upon the Board's estimate of the amount required to fund the Common Expenses expected to be incurred by the Association during such period. The Board shall not be required to base such Annual Assessment on an actual budget of projected Common Expenses during such period but instead may base the Annual Assessments on assessments made in comparable developments and such other factors as the Board deems reasonable. The foregoing shall not limit or restrict any Special Assessments levied pursuant to Section 8.5 below or any Individual Assessments levied in accordance with the provisions of Section 8.6 below.

(b) The Annual Assessment as set forth in Section 8.4(a) above shall be paid in advance in equal monthly installments of EIGHTY AND NO/100 DOLLARS (\$80.00).

(c) Commencing with the calendar year which begins on January 1, 2009 (i.e., from January 1, 2009 through December 31, 2009, which period is hereinafter referred to as the "Base Year") and annually thereafter, the Board and Developer, so long as Developer owns any Lot within the Development, shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for the then applicable year and, subject to the provisions of Section 8.7 below, each Owner shall pay his prorata share of the same as provided in Section 8.3 above. Unless otherwise decided by the Board, Annual Assessments shall be paid in equal monthly installments. A copy of the budget approved by the Board and Developer, so long as Developer owns any Lot within the Development, setting forth the amount of Annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner. At such time as Developer no longer owns any Lot within the Development, the Board shall determine and approve the annual budget covering the estimated Common Expenses for the Development. A copy of the budget approved by the Board setting forth the amount of Annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner.

(d) Subject to the provisions of Section 8.4(e) below, Annual Assessments may increase each year in the amount reasonably necessary to cover the estimated Common Expenses for the Development for the upcoming year. If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.5 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(e) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of Annual Assessments which exceed (without regard to proration or adjustment as provided in Section 8.7 below) one hundred ten percent (110%) of the Annual Assessments payable for the entire immediately preceding calendar year, then the budget and the amount of the Annual Assessments shall be presented for approval by the vote of the Owners of a majority of the Lots who are voting in person or by

proxy at such meeting. In the event the amount of the Annual Assessments exceeds the limitation set forth above or until such time as the Owners of a majority of the Lots have approved such increase in the amount of the Annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the limitation set forth above on the amount of increase in Annual Assessments.

Notwithstanding anything herein to the contrary, the Annual Assessments for the Base Year shall be determined in accordance with Section 8.4(c) and shall not be subject to the limitations on increases in the amount of Annual Assessments provided in this Section 8.4(e).

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

8.6 **Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots. The Individual Assessments provided for in this Section 8.6 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.6 shall apply, without limitation, to any Individual Assessments levied pursuant to Section 5.13, Article VI, Section 7.2(c) and Section 7.3 above and Article XI below.

8.7 **Date of Commencement of Assessments.**

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

(b) The Association shall establish a Building Maintenance Reserve Fund to be held in escrow by the Association for Exterior Building Maintenance. The Building Maintenance Reserve Fund is not for purposes of replacement or repair of roof materials or exterior building components necessitated by fire or other casualty, which shall be the obligation of the Owner thereof, or the Owner's insurer. To fund the Building Maintenance Reserve Fund, each Owner, other than Developer or its affiliates, shall pay at the closing of the purchase of the Owner's Lot upon which a Dwelling has been constructed an amount equal to one month's installment of the Annual Assessment which, as of the date hereof, is EIGHTY AND NO/100 DOLLARS (\$80.00), which contribution shall be in addition to the prorated amount set forth in Section 8.7(a)

above. The Building Maintenance Reserve Fund, as funded by the Owners as described in this paragraph, shall in its entirety be available to the Association to use for Exterior Building Maintenance as of the date of Developer's sale of Developer's last Lot and shall not be used by the Association for Exterior Building Maintenance prior to such date. Thereafter, further contributions to the Building Maintenance Reserve Fund shall be a Common Expense made a part of the Association's annual budget and the amount of such contributions shall be determined by the Board.

(c) In the event a deficit exists between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Development, Developer shall have the option to either pay Annual Assessments on Lots owned by Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Development. Calculation of such deficit shall be without regard to the Building Maintenance Reserve Fund to which Developer, and its affiliates, shall have no obligation to contribute. Upon Developer's sale of Developer's last Lot in the Development or as of December 31, 2010, whichever first occurs, Developer shall have no further obligation of any nature to pay any Annual or Special Assessments or otherwise fund any deficits relating to the Common Expenses or Common Areas.

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

(a) Each Owner of a Lot, except Developer, is and shall be deemed to covenant and agree to pay to the Association, all Annual and Special Assessments provided for herein and any Individual Assessments levied or assessed pursuant to the terms of this Declaration. In the event any Assessments or any portions thereof are not paid when due, the same shall be subject to a late charge in an amount determined from time to time and uniformly applied by the Board, and the Owner of such Lot shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessments shall accrue simple interest at the lesser of 18% per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot for Assessments shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

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

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

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

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late

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

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

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

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

Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Mortgagee on such Owner's Lot.

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

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

9.1 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to substantially the condition to which they existed immediately prior to such casualty. In the event of damage or destruction to any of the Common Areas by the act or omission of an Owner and the Owner has not repaired, replaced or restored such damaged portion of the Common Area as required by Section 7.2 above,, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such damage and the cost thereof shall be an Individual Assessment assessed against such Owner and such Owner's Lot.

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

9.2 **Damage or Destruction to Lots or Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable

rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within sixty (60) days following the occurrence of such fire or other casualty.

9.3 **Condemnation of Common Areas.**

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

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

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

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

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

9.4 **Condemnation of Lots.** In the event that all or any portion of a Lot is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

9.5 **Insurance.**

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

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

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

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

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

9.6 **Indemnity.** Each Owner hereby waives and releases any and all claims against Developer, the Association, the Board and the ARC, and any of their respective agents, contractors, employees, representatives, partners, shareholders, members, managers, officers and directors, for damages to persons or personal property occurring in, on, about or upon the Common Areas and does hereby indemnify, agree to defend and hold harmless the Developer, the Association, the Board and the ARC, and any of their respective agents, employees, contractors, representatives, partners, shareholders, members, managers, officers and directors, from and against all claims, demands, liabilities, losses, damages, costs and expenses (including

reasonable attorneys' fees) of any nature arising out of or in connection with any injury or damage to person or personal property occurring in, on or about such Owner's Lot or any of the Common Areas caused by or resulting from any negligent act or omission or any willful act or omission of any Owner, Occupant or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant.

ARTICLE X

TERM AND AMENDMENTS

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

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

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

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

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.3(a) above shall be set forth in a written instrument executed by the President of the Association and such written instrument shall include the sworn statement of the President of the Association or the

Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was duly obtained in accordance with the provisions of this Declaration. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama.

10.4 **Restriction on Amendments.** Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to any provisions of this Declaration which requires Developer's consent or approval be effective unless Developer consents to the same in writing. The consent of Developer to any proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE XI **ENFORCEMENT**

11.1 **Authority and Enforcement.** Every Owner, Occupant, and visitor to a Lot or Dwelling must comply with the provisions of the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the Occupants, tenants, guests, or invitees to their Lots, and for any damage to the Common Area that such persons may cause. In addition to the rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of the Governing Documents, then the Board and the ARC shall each have the power and right, at its option, to (a) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and shall be a personal obligation of such Owner which is guilty of such violation, (b) suspend an Owner's right to vote in the Association, (c) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the recreational facilities located in or upon the Common Areas, (d) enjoin such violation or noncompliance and/or (e) through its respective designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. The Board and the ARC shall each have the power to impose all or any combination of any of the foregoing sanctions and any suspension of rights may be for the duration of the infraction. All costs and expenses incurred by the Board and the ARC in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of the Governing Documents and all such costs shall be deemed Individual Assessments pursuant to Section 8.6 above. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Board and the ARC set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by the Board or the ARC at law or in equity in the event of any violation or breach by any Owner or Occupant of any of the terms and provisions hereof. In addition to any other rights or remedies available to the Board and the ARC hereunder or at law or equity, the Board or the ARC shall have the right to file in the Probate Office of Shelby County, Alabama a Certificate or Notice of Violation of this Declaration upon failure of an Owner to timely correct the violation of this Declaration.

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

11.3 **Discretionary Power.** The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking

enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THE GOVERNING DOCUMENTS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD AND ARC AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTIONS 4.2 AND 5.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Developer shall have the authority to appoint and remove members of the Board, the ARC and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Sections 4.2 and 5.2 above. At such time as Developer no longer owns any interest in any Lot within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.

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

12.3 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or

unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

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

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

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

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

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

12.9 **Interpretation.** The provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The Developer and the Board shall have the right to construe and interpret the provisions of this Declaration and, in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all Owners and the Property benefited and bound by this Declaration. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its recording in the Office of the Judge of Probate of Shelby County, Alabama. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

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

12.11 **No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, contractors, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon

or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

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

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

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

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

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

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

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

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

12.20 **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 George W. Bush, President of the United States.


12.21 **Safety and Security.** Each Owner and Occupant of a Lot or Dwelling is responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Developer shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Development, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its guests, tenants and all Occupants of its Lot or Dwelling that the Association, its Board, the ARC and Developer are not insurers or guarantors of security or safety and that each person within the Development assumes all risks of personal injury and loss or damage to property, including Lots and Dwellings and the contents of Lots and Dwellings, resulting from acts of third parties.


[SIGNATURES ON FOLLOWING PAGES]

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

CHESSER PLANTATION, LLC, an Alabama limited liability company

By: The Crest at Greystone, Inc.
Its Manager and Member


By: 
William L. Thornton, III
Its President


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Shelby Cnty Judge of Probate, AL
07/10/2007 04:12:49PM FILED/CERT

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

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

Given under my hand and official seal, this the 29th day of June, 2007.


Notary Public

[SEAL]

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 21, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

CONSENT OF CHESSER PLANTATION, INC.

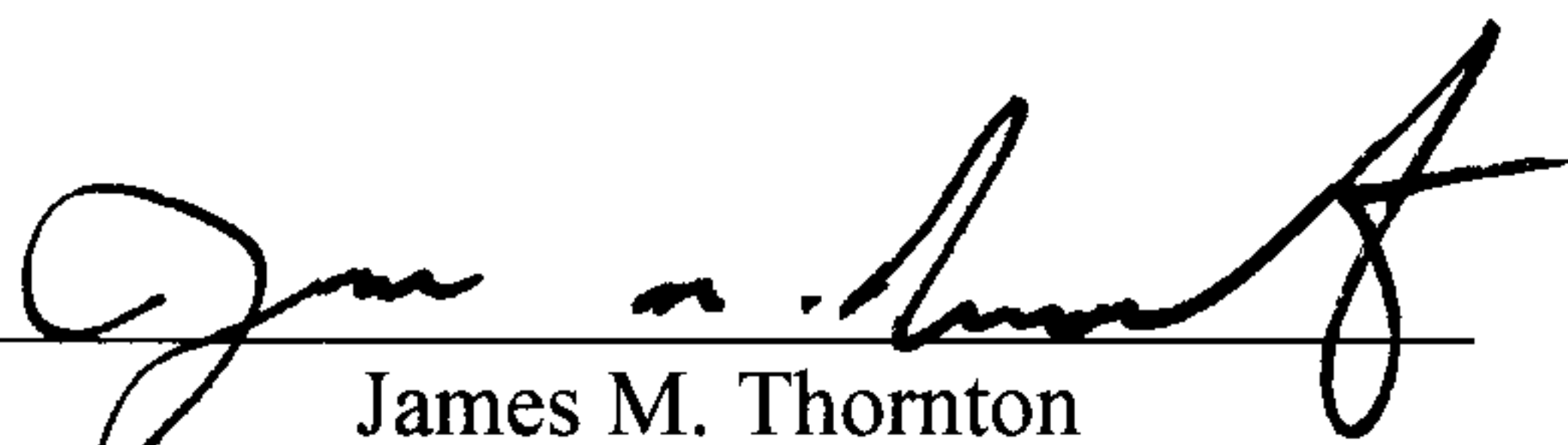
Chesser Plantation, Inc., an Alabama corporation, has purchased from Developer certain Lots situated within the Property which Lots are as follows:

Lots 1, 2, 3-14, 19-38, 125-140, inclusive, according to the subdivision plat of Chesser Reserve, Phase I, as recorded in Map Book 38, Page 115 A & B, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Chesser Plantation, Inc. hereby consents to and joins in the execution of this Chesser Reserve Declaration of Covenants, Conditions and Restrictions (the "Declaration"), and all of the terms and provisions set forth therein, for the purpose of the application of the Declaration to the Lots purchased by Chesser Plantation, Inc. prior to the date hereof and does hereby agree that said Lots shall be subject to the terms and provisions of the Declaration.

Dated as of the 29th day of June, 2007.

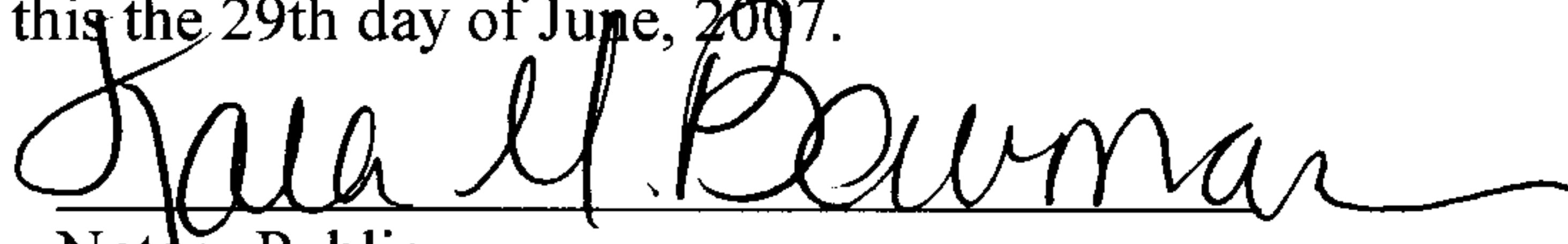
CHESSER PLANTATION, INC., an Alabama corporation

By: 
James M. Thornton
Its President

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that James M. Thornton, whose name as President of CHESSER PLANTATION, 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 said 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 official seal, this the 29th day of June, 2007.


Notary Public

[SEAL]

My commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 21, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

CONSENT OF MORTGAGEE

BankcorpSouth (aka BankcorpSouth Bank) ("Mortgagee"), as the holder of those certain Mortgages which secures the Property made subject to the foregoing Chesser Reserve Declaration of Covenants, Conditions and Restrictions (the "Declaration"), as recorded as Instrument # 20060719000347390, Instrument # 20070625000296170 and Instrument # 20070625000296180 in the Office of the Judge of Probate of Shelby County, Alabama, (the "Probate Office"), as such Mortgages have been and may be amended or modified from time to time, does hereby consent to the filing of the Declaration and does hereby agree that said Property shall remain subject to the terms and conditions of the Declaration if the Bank should succeed to the interest of the mortgagor by foreclosure of the Mortgage or by accepting a deed in lieu of foreclosure.

Dated as of the 29th day of June, 2007.

BANCORPSOUTH

By: Daryl Spears
Daryl Spears
Vice President

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Daryl Spears, whose name as Vice President of BANCORPSOUTH, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Bank.

Given under my hand and official seal, this the 5th day of June, 2007.

Shirley Marie Beck
Notary Public

[SEAL]

My commission Expires:

~~NOTARY PUBLIC STATE OF ALABAMA AT LARGE~~
MY COMMISSION EXPIRES: Dec 28, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

