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CHACE LAKE COMMERCIAL
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

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

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EXHIBITS:

- A Legal Description of Property
- B Chace Lake Commercial Rules and Regulations

SCHEDULES:

- I Master Plan

**CHACE LAKE COMMERCIAL
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS CHACE LAKE COMMERCIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the ____ day of September, 2008 by **CHACE LAKE COMMERCIAL, LLC**, a Delaware limited liability company (the "Developer").

RECITALS:

Developer and its Affiliate are the owners, respectively, of various parcels of real property situated in Jefferson and Shelby Counties, Alabama, containing approximately 123 acres in the aggregate, which Developer and its Affiliate intend to develop as a planned unit development (the "PUD") in accordance with the Master Plan hereafter described. The PUD will be comprised of mixed uses consisting of (1) single family residential housing on the Chace Lake Residential Property hereafter described, (2) parks, lakes, and natural areas on the Chace Lake Open Space Property hereafter described, and (3) commercial and other related business uses (including common areas) on approximately 20.20 acres of the real property (hereafter described as the "Chace Lake Commercial Property" or the "Property" and constituting the areas designated as "PC" on the Master Plan).

Developer desires to develop, improve, lease and sell the Chace Lake Commercial Property for office, retail, and commercial uses, subject to certain easements, covenants, conditions, restrictions, requirements and obligations, in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration and maintenance of the Property.

NOW, THEREFORE, Developer does hereby declare that all of the that certain real property situated in Jefferson and Shelby Counties, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to 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 the Property described in **Exhibit A** attached hereto and any of the Additional Property, as hereinafter defined, 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:

Section 1.01 **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 2.02 below. The Additional Property may also include additional Common Areas.

Section 1.02 **Affiliate.** The term "Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term "control" (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

Section 1.03 **Allocable Share.** The term "Allocable Share" shall have the meaning given to such term in Section 4.03(b) below.

Section 1.04 **Applicable Zoning Ordinance.** The term "Applicable Zoning Ordinance" means the zoning ordinance or resolution of the applicable Governmental Authority having zoning jurisdiction or authority over the applicable portion of the Property.

Section 1.05 **ARC.** The term or letters "ARC" shall mean the architectural review committee for the Association to be appointed pursuant to Article V hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

Section 1.06 **Articles of Incorporation.** The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 1.07 **Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of establishing policies, guidelines and minimum requirements with regard to the construction, location, landscaping, design, architectural style and elements and any other matters relating to the construction of Improvements on the Lots. In addition, the term "Architectural Standards" shall include, without limitation, any additional construction and development guidelines adopted from time to time by the ARC or the Board.

Section 1.08 **Assessment.** The term "Assessment" shall mean, collectively, the Annual Assessments (as defined in Section 8.03(a) below), Special Assessments (as defined in Section 8.04 below), and Individual Assessments (as defined in Section 8.05 below).

Section 1.09 **Association.** The term "Association" shall mean Chace Lake Commercial Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

Section 1.10 **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.

Section 1.11 **Building**. The term "Building," with an initial capital letter, shall mean and refer to any building or other structure of any nature constructed, situated, erected, maintained, placed or installed on any of the Lots.

Section 1.12 **Bylaws**. The term "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

Section 1.13 **Cahaba River Buffer Area**. The term "Cahaba River Buffer Area" shall mean a buffer area of 100' running along the Cahaba River which is shown on the Master Plan, and which provides a benefit for the Chace Lake Commercial Property, the Chace Lake Residential Property, and the Chace Lake Open Space Property, and which shall be maintained by the Association and the Residential Association pursuant to the separate agreement hereafter described.

Section 1.14 **Chace Lake Open Space Property**. The term "Chace Lake Open Space Property" means approximately 11.3 acres of land shown on the Master Plan as "PR-1 Open Space."

Section 1.15 **Chace Lake Residential Property**. The term "Chace Lake Residential Property" means approximately 60 acres of land shown on the Master Plan as "PR-1 Single Family," which such property is being developed by Chace Lake Residential, LLC, an Alabama limited liability company and an Affiliate of Developer, for residential use.

Section 1.16 **Chace Lake Residential Association**. The term "Chace Lake Residential Association" shall mean Chace Lake Residential Association, Inc., an Alabama nonprofit corporation, and its successors and assigns, formed or to be formed as the owner's association for the Chace Lake Residential Property.

Section 1.17 **Common Areas**. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter for the common use and enjoyment of the Owners and which shall include (regardless of whether legal title to the same has been conveyed to the Association) (a) the entrance area situated on Lot 1, according to the Final Plat which is designated on the Final Plat as "Sign Easement" and which is subject to the Entrance Easement; (b) the Slope Easement; (c) all signage for the Property situated on or within the Sign Easement situated on Lot 1, according to the Final Plat, or within rights-of-way of any public roads within the Property (but specifically excluding any signage located within the boundaries of any Lot unless an easement has been granted to (and accepted by) Developer or the Association for signage on such Lot), including, without limitation, informational, traffic and street signage; (d) all street lights and street and landscaping lighting situated within the right-of-way of any streets within any portion of the Property (to the extent the same are not being maintained by any Governmental Authority), (d) all sidewalks, paths and on-street parking spaces, if any, situated within any portion of the Property (other than such areas located within the boundary lines of any Lot or which are maintained by any Governmental Authority), (e) all gates, walls, fences,

Improvements, landscaping and landscaped areas situated within the rights-of-way of any public roadways within the Property, including all medians within any public roadways (other than any such areas located within the boundary lines of any Lot or which are owned or maintained by any Governmental Authority), (f) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located within the boundary lines of any Lot or which are maintained by any Governmental Authority), (g) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers or any Governmental Authorities) and (h) any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or Improvements as Common Areas 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 Common Areas shall also include the Chace Lake Open Space Property, which shall be held for the common use and enjoyment of the Owners in common with the common use and enjoyment of all Owners of the Chace Lake Residential Property, until such time, if any, that the Chace Lake Open Space Property is conveyed to the City of Hoover as a public park.

Section 1.18 **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 8.03(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

Section 1.19 **Declaration.** The term "Declaration" shall mean and refer to this Chace Lake Commercial Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

Section 1.20 **Developer.** The term "Developer" means Chace Lake Commercial, LLC, an Alabama limited liability company, and its successors and assigns.

Section 1.21 **Entrance Easement.** The term "Entrance Easement" shall have the meaning set forth in Section 3.03 hereof.

Section 1.22 **Final Plat.** The term "Final Plat" means the Final Plat of Commercial Subdivision of Chace Lake - Phase 1, recorded in Map Book 229, Page 69 in the Office of the Judge of Probate of Jefferson County, Alabama, and also recorded in Map Book 40, Page 69 in the Office of the Judge of Probate of Shelby County, Alabama.

Section 1.23 **First Owner.** The term "First Owner" shall mean and refer to the first third party purchaser/grantee of any Lot who is not Developer or any Affiliate of Developer.

Section 1.24 **Frontage Lots.** The term "Frontage Lots" shall mean Lots 1, 2, 3, 4 and 5, as shown on the Final Plat.

Section 1.25 **Governmental Authority.** The term "Governmental Authority" shall mean and refer to 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 Property or any Improvements thereto.

Section 1.26 **Ground Coverage Ratio.** The term "Ground Coverage Ratio" shall mean the ratio for each Lot having as its numerator the total area (expressed in square footage) within such Lot upon which Buildings, parking areas, driveways, walkways and other Impervious Surfaces have been or will be constructed and having as its denominator the total area of such Lot (expressed in square footage).

Section 1.27 **Impervious Surfaces.** The term "Impervious Surfaces" shall mean the total square footage of all (a) roofs and (b) all roads, streets, roadways, sidewalks, and parking areas which are paved with either concrete or asphalt which are located within the PC land use districts as shown on the Master Plan, but specifically excluding any areas of any such streets, roadways, sidewalks or parking areas which are landscaped.

Section 1.28 **Improvement.** The term "Improvement," with an initial capital letter, shall mean and refer to any Building, structure or device constructed, erected or placed upon any Lot which in any way affects, alters or causes a change in the exterior appearance of any Lot. Improvements shall include, by way of illustration and not limitation, Buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Building. "Improvements" shall also mean any exterior alterations or additions to any existing Building or other structure situated on a Lot and any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

Section 1.29 **Lot.** The term "Lot" shall mean and refer to any portion of the Property upon which it is intended that a Building be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon (other than any lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration; provided, however, that a Lot may be unplatted and may be described by metes and bounds legal description. Each condominium unit within the Property shall also constitute a Lot for the purposes of this Declaration.

Section 1.30 **Master Plan.** The term "Master Plan" shall mean and refer the Chace Lake Master Plan, as the same has been approved by the City of Hoover, Alabama, a copy of which is attached hereto as Schedule I, together with all amendments or modifications as the same may hereafter be approved by the City of Hoover, Alabama, or other applicable Governmental Authority.

Section 1.31 **Mortgage.** The term "Mortgage," with an initial capital letter, 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 . The term "Mortgagee," with an initial capital letter, shall mean and refer to the holder of any Mortgage which has been duly and properly recorded in the Probate Office.

Section 1.32 **Mortgagee.** The term "Mortgagee," with an initial capital letter, shall mean and refer to the holder of any Mortgage.

Section 1.33 **Non-Frontage Lots.** The term "Non-Frontage Lots" means Lots 6 and 7, according to the Final Plat.

Section 1.34 **Occupant.** The term "Occupant" shall mean and include any family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Lot or Building within the Property. All actions or omissions of any Occupant are and shall be deemed the action or omission of the Owner of such Lot.

Section 1.35 **Owner.** The term "Owner," with an initial capital letter, shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot, 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.

Section 1.36 **Person.** The term "Person" with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

Section 1.37 **Probate Office.** The term "Probate Office" shall mean and refer, collectively, to the Office of the Judge of Probate of Jefferson County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Jefferson County, Alabama, and to the Office of the Judge of Probate of Shelby County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Shelby County, Alabama.

Section 1.38 **Property.** The term "Property," with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson and Shelby Counties, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference and which is shown on the Master Plan as the "PC Planned Commercial" areas. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof. The Property is also sometimes referred to herein as the "Chace Lake Commercial Property." The Property does not include the Cahaba River Buffer Area, the Chase Lake Residential Property, or the PR-1 Open Space area shown on the Master Plan.

Section 1.39 **Rules and Regulations.** The term "Rules and Regulations" shall mean and refer to the Rules and Regulations, as the same may be amended from time to time by the Board of Directors pursuant to the terms and provisions of Section 6.02 below. The initial Rules and Regulations are attached hereto as Exhibit B and are incorporated herein by reference.

Section 1.40 **Slope.** The term "Slope" shall mean the self-supporting slope to be constructed by Developer within the Slop Easement Area.

Section 1.41 **Slope Easement Area.** The term "Slope Easement Area" means, collectively, those certain slope areas of variable widths which are shown on the Final Plat along the entirety of the southerly or southeasterly boundaries of the Non-Frontage Lots, and identified on the Final Plat as "Common Area Lot CA1 and Common Area Lot CA2."

Section 1.42 **Slope Easement.** The term "Slope Easement" shall mean the easements for construction and maintenance of the Slopes described in Section 3.04 hereof.

Section 1.43 **Turnover Date.** The term "Turnover Date" shall mean the later of the following:

- (a) five (5) years from the date hereof; or
- (b) the first to occur of the following: (i) the date on which Developer and any of its Affiliates cease to own any portion of the Property; or (ii) the date on which Developer elects, in its sole and absolute discretion, to relinquish (1) all rights to appoint and remove members of the Board pursuant to Section 4.02 and below and (2) all voting rights in the Association reserved to Developer pursuant to Section 4.03 below; or
- (c) the first to occur of the following: (i) the date on which Chace Lake Residential, LLC ceases to own any portion of the Chace Lake Residential Property; or (ii) the date on which Chace Lake Residential, LLC elects, in its sole and absolute discretion, to relinquish (1) all rights to appoint and remove members of the board of directors of the Chace Lake Residential Association, pursuant the protective covenants for the Chace Lake Residential Property to be created hereafter, and (2) all voting rights in the Chace Lake Residential Association reserved to Chace Lake Residential, LLC.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

Section 2.01 **General Declaration.** 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 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 all Owners and Occupants of the Property and each Lot and all Common Areas 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.

Section 2.02 **Additional Property.** Subject to the remaining terms and conditions of this Section 2.02, Developer shall have the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration (whether before or after the

Turnover Date), 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, 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, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) set forth any such other or different covenants, conditions and restrictions which Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the voting rights and percentages of the Owners in the Association shall be changed so that each Lot is entitled to the voting percentage determined in accordance with the terms and provisions of Section 4.03(b) below. 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 Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, consents to the transfer and conveyance to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, whether before or after the Turnover Date, then this Declaration may be amended solely by Developer in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

Section 2.03 **Right to Modify Restrictions with Respect to Lots Owned By Developer.** With respect to any Lot or other portion of the Property owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.02 (and consented to by Developer) above, modify the provisions of this Declaration as the same apply to any such Lot or other portion of the Property owned by Developer.

Section 2.04 **Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot 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 Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

Section 2.05 **Additional Covenants.** Developer may, in its sole and absolute discretion, create additional restrictive covenants, in addition to the terms and provisions of this

Declaration, for any portions of the Property. Furthermore, other owner associations may be created for portions of the Property subject to any such additional covenants. Only those portions of the Property which are specifically subjected to and encumbered by any such additional restrictive covenants shall be bound by the terms and provisions thereof or shall be allowed to have any membership interest in any such additional owners' associations which may be established from time to time by Developer. In the event of any conflict or ambiguity between the terms and provisions of any such additional restriction covenants and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall at all times control.

Section 2.06 **Development of Property.** At any time prior to the occurrence of the Turnover Date and at any time thereafter for so long as Developer owns any portion of the Property, Developer shall have the right to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installing and maintaining any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) installing and maintaining any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas, (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses and (f) removing or exempting any portion of the Property and any Lots or Common Areas from the terms and provisions of this Declaration. The exercise by Developer of any of the rights reserved unto Developer in this Section 2.06 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer and its respective Affiliates 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 2.02 above.

Section 2.07 **Subdivision.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more subdivision plats setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots and Common Areas, public roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats and 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, the rights reserved by Developer pursuant to this Section 2.07 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Common Areas and other portions of the Property owned by Developer, and (b) amend from time to time and at any time Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property.

ARTICLE III **EASEMENTS**

Section 3.01 **Grant of Non-Exclusive Easements to Common Areas.** Subject to the remaining terms and provisions of this Declaration and the Rules and Regulations, 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, all other Owners, Occupants and other parties having any rights or interest therein, and their respective successors and assigns. Subject to the remaining terms and provisions of this Declaration, the easement and rights granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot.

Section 3.02 **Grant of Easement to Governmental Authorities.** Subject to the provisions of Section 3.03 below, 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 non-exclusive easement over, across, through and upon the Property for the purposes of performing such duties and activities related to law enforcement, fire protection, trash 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.

Section 3.03 **Entrance Easement.** Developer hereby establishes and grants to the Association and declares a permanent and perpetual easement across the Sign Easement located on Lot 1 as shown on the Final Plat for a landscaped entrance area into the Property, together with monument signage to be situated within such Sign Easement on Lot 1 (the "Entrance Easement"). The Entrance Easement shall constitute Common Areas and shall be subject to all terms and conditions set forth in this Declaration with respect to Common Areas.

Section 3.04 **Slope Easement.**

(a) Developer hereby declare, establish, grant, and convey to the Association, for the benefit of the Lots, and declares a permanent and perpetual non-exclusive easement (the "Slope Easement") for the purposes of permitting Developer to construct the Slope, and thereafter, for the purpose of permitting Developer, the Association, and/or any Owner of a Non-Frontage Lot, to enter upon the Slope Easement Area, from time to time as necessary, to maintain and repair, as the case may require, any damage or weathering on the Slope which may endanger the stability of the Slope or interfere with the use of Property (and in particular, any Non-Frontage Lots), and the Association and its successors and/or assigns shall be responsible to keep the Slope in good order and repair. The Slope and use of the Slope Easement Area are vital to the development of the Property, and, in particular, to the use of the Non-Frontage Lots, and the Association shall not cause or allow any interference with the use of the Slope Easement Area. The Slope Easement shall constitute Common Areas and shall be subject to all terms and conditions set forth in this Declaration with respect to Common Areas.

(b) There is hereby expressly reserved to each Owner of a Non-Frontage Lot a right of self-help in order to maintain or repair the Slope appurtenant to such Owner's Lot following the Association's failure to do so within thirty (30) days of written notice from the Owner to the Association of any Slope failure, maintenance, or repair that is needed in order to maintain the Slope for the purpose for which the same was constructed; provided, however, that such thirty (30) days cure period will be extended for such period of time as is necessary to complete the work as long as the Association commences such work within the initial thirty (30) days and thereafter diligently and in good faith prosecutes the work to completion. All reasonable costs lawfully incurred by an Owner in exercising its rights of self-help may be offset against Assessments owned by such Owner pursuant to these Covenants until such amount is recouped by such Owner.

Section 3.05 **Reservation and Grant of General Access and Maintenance Easement.** Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purposes of (a) 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 and (ii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Building, then the foregoing easement shall not be deemed to allow or grant any rights to Developer, the ARC or the Association to enter into any Buildings, shall, except in the case of emergencies, be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot directly affected thereby, and (b) 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 Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

Section 3.06 **Reservation and Grant of Easements With Respect to Common Areas.**

(a) Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas, if any, situated on such Owner's Lot for the purposes of (i) constructing Improvements in and to any Lots and Common Areas, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, 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, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its successors and assigns, the permanent

right to change, modify and realign the boundaries of any of the Common Areas, if any, situated on such Owner's Lot. Developer does further establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its successors and assigns (i) a permanent and perpetual non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all Improvements thereon, if any, situated on such Owner's Lot for such purposes as Developer or the Association deems appropriate, (ii) the right to grant to third parties rights to use the Common Areas if any, situated on such Owner's Lot and (iii) the right to grant to third parties, other real property and the owners of such real property rights to use any of the Common Areas. Developer reserves the right, but shall not have any obligation, to convey by quitclaim 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 may, in its sole discretion, determine.

Section 3.07 **Reservation and Grant of Easement for Utilities.** Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Common Areas and all Lots, which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property or other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property. The easements established, reserved and granted herein shall include the right of Developer and the Association and any of their respective successors and assigns 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. Notwithstanding anything provided in this Section 3.07 to the contrary, (i) the utilization of any of the easements and rights established, reserved and granted pursuant to this Section 3.07 shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot, (ii) shall not be deemed to allow the exercise of any easement rights inside any Buildings situated on any Lot, (iii) Developer and the Association shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved, established or granted pursuant to this Section 3.07 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established, reserved and granted herein and (iv) the establishment, reservation and grant of easements pursuant to this Section 3.07 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.07.

Section 3.08 **Reservation and Grant of Easements for Sidewalks and Signs.**

(a) Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot and any public roadway which is directly adjacent to and abuts such Lot for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, traffic directional signs and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

(b) Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Lot which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm and landscaping around the perimeter boundary of the Property; provided, however, that (i) neither Developer nor the Association shall have any obligation to construct any such perimeter wall, fence, mound or berm or any landscaping and (ii) to the extent either Developer or the Association desires to exercise the easement rights reserved in this Section 3.08, then either Developer or the Association shall have the further right, at any time and from time to time, to alter, change, modify, terminate and remove any improvements constructed by either Developer or the Association on any portion of the Property pursuant to this Section 3.08.

Section 3.09 **Reservation and Grant of Environmental Easement.**

Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots and all unimproved portions of any Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards and 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, reserved and granted herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any watershed, soil erosion, storm water discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved or granted in this Section 3.09 shall not unreasonably interfere with the use or occupancy of any Building.

ARTICLE IV **ASSOCIATION**

Section 4.01 **Membership.** The Owner of each Lot shall be a member of the Association. For purposes of determining membership in the Association, only one (1) membership in the Association shall be allowed per each Lot, regardless of the number of

Buildings situated on any Lot. 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 all votes attributable to each Lot owned by Developer, (b) in the event any Lot is owned by more than one (1) Person, then the Owner of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association, which representative shall exercise all voting rights attributable to the Lot owned by such Owner, (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 and (d) the Owner of any Lot may designate in a written instrument provided to the Association one (1) Person who may be a ground lessee of such Owner's Lot or an Occupant of any Building situated on such Owner's Lot who shall have the voting rights attributable to such Owner's Lot. Unless specifically designated in writing to the Association from the Owner of a Lot, no ground lessee or Occupant shall be entitled to any voting rights in the Association. 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 in, or the rights and benefits of, the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

Section 4.02 **Board**. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the Turnover Date, the number of members of the Board shall increase to five (5) and the Owners shall have the exclusive right to appoint and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot, vests in Developer the sole and absolute authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

Section 4.03 **Voting Rights and Allocable Share**.

(a) Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, Developer shall, subject to the remaining terms and provisions of this Section 4.03(a), have the sole and exclusive right to exercise all voting rights in the Association until the Turnover Date; provided, however, that prior to the occurrence of the Turnover Date (i) certain Special Assessments must be approved by the Owners in accordance with the terms and provisions of Section 8.04 below and (ii) certain amendments to this Declaration are subject to the terms and provisions of Section 10.02 below. Each Owner, by

acceptance of a deed to any Lot, shall be deemed to have irrevocably and unconditionally agreed to the foregoing terms and provisions of this Declaration and shall further be deemed to waive any and all voting rights in the Association prior to the Turnover Date other than as specifically set forth in Sections 8.04 and 10.02 hereof.

(b) With respect to those two (2) matters described in Section 4.03(a) above which must be approved or voted on by the Owners prior to the occurrence of the Turnover Date and at all times following the Turnover Date, the Owner of each Lot who is "in good standing," as defined in the Bylaws, shall be entitled to that number of votes equal to the Allocable Share for such Lot. As used in this Declaration, the term "Allocable Share" shall mean, subject to the provisions of Sections 4.03(c) and 4.03(d) below, the voting rights of (and the percentage of Annual Assessments and Special Assessments payable by) each Lot determined by dividing the total gross acreage of each Lot by the total gross acreage of all Lots subject to this Declaration (but specifically excluding any Lots which have been exempted, in whole or in part, from the payment of Annual Assessments or Special Assessments pursuant to Section 8.11 below). The Allocable Share of each Lot shall be recalculated each time Additional Property is added to this Declaration, any Lots are exempted from payment of Annual Assessments and Special Assessments pursuant to Section 8.11 below or if Developer exercises any of its rights under Sections 2.07 or 2.08 above.

(c) Notwithstanding anything provided to the contrary in Section 4.03(b) above, Developer reserves the right, in its sole discretion, at any time on or before the Turnover Date to change the method of determining the Allocable Share for each Lot to a method based on the gross square footage of heated and cooled space within all Buildings on all Lots within the Property, in which event the voting rights of (and the percentage of Annual Assessments and Special Assessments payable by) each Lot shall be determined by dividing the total gross square footage of heated and cooled space within all Buildings situated on each Lot by the total gross square footage of all heated and cooled space within all Buildings on all Lots within the Property (but specifically excluding the gross square footage of heated and cooled areas of any Buildings situated on any Lots which have been exempted, in whole or in part, from the payment of Annual Assessments or Special Assessments pursuant to Section 8.11 below). If Developer makes the decision to change the method of determining Allocable Share, such decision must be made on or before December 31 of any year and such new method of determining Allocable Share shall only be applied from and after January 1 of the subsequent year (and all subsequent years thereafter). Such election by Developer shall be made by providing written notice which shall be given to the Owners in accordance with the terms and provisions of this Declaration.

(d) To the extent any Lot is subject to a condominium regime form of ownership, then, notwithstanding anything provided in this Declaration to the contrary, the following terms and provisions shall be applicable:

(i) For the purposes of this Declaration, the condominium owners' association created for such condominium shall be deemed the Owner of the Lot (and any Buildings thereon) which is subject to the condominium form of ownership;

(ii) All voting rights attributable to such Lot (and any Buildings thereon) shall be exercised solely by the condominium owners' association created for such condominium;

(iii) To the extent any Lot (or Building) is subject to more than one (1) condominium regime form of ownership, then the master condominium owners' association shall be deemed the Owner of such Lot (and any Buildings situated thereon) and shall be entitled to exercise all voting rights in the Association attributable to such Lot (and any Buildings thereon);

(iv) The condominium owners' association which is deemed to be the Owner of such Lot (and any Buildings thereon) shall be responsible for paying all Assessments which are levied under this Declaration by the Association, which Assessments may include any Individual Assessments which may be levied by the Association against any Occupants of the individual condominium units situated on such Lot (and any Buildings thereto);

(v) The lien rights of the Association hereunder which secure the payment of Assessments shall extend and apply to all portions of the Lot, all Buildings thereon and all condominium units and common elements which form a part of such condominium; and

(vi) To the extent of any conflict or ambiguity between the terms and provisions of this Declaration and any condominium documentation affecting any Lot (or any Buildings thereon), then the terms and provisions of this Declaration shall at all times control.

(e) For purposes of this Section 4.03, at all times prior to and after the Turnover Date, Developer shall be deemed the Owner of, and entitled to, all voting rights attributable to all Lots owned by Developer. To the extent any Owner is not "in good standing," as defined in the Bylaws, then the voting rights of such Owner shall be suspended and shall not be counted or included in determining whether a quorum is present or whether the applicable number of votes have been cast in any vote of the Owners, as more particularly described and provided in the Bylaws.

(f) Each Owner, by acceptance of a deed to a Lot, consents and agrees to the dilution of such Owner's voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.07 above or the submission of any Additional Property to the terms of this Declaration. The votes attributable to each Lot must be voted or cast as a whole.

Section 4.04 **Duties and Powers of Association.**

(a) 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. The powers and authority granted herein and in the Articles of Incorporation and Bylaws of 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. 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 Property.

(b) 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 Common Areas, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association or any of the Common Areas shall be part of the Common Expenses. 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 reserved to the Board or the officers of the Association by this Declaration, the Articles of Incorporation or the Bylaws. Such manager may be any Person and may be bonded in such manner as the Board may require, with the cost of such bond to be part of the Common Expenses. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal, accounting and other professional services as are necessary or desirable in connection with the administration and operation of the Property and the Association or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, the Architectural Standards or any rules and regulations of the Association.

Section 4.05 **Meetings of Members of Association.** Notwithstanding anything provided in this Declaration, the Articles of Incorporation or the Bylaws to the contrary, no meetings of the Owners (*i.e.*, members of the Association) shall be held prior to the Turnover Date. Following the occurrence of the Turnover Date, annual meetings of the Owners (members of the Association) shall be held in accordance with the terms and provisions of the Bylaws.

Section 4.06 **Management by Developer or its Affiliates.** Developer or any of Developer's Affiliates may be employed as the manager of the Association and for the Property until the Turnover Date 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 Property.

Section 4.07 **Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a



committee member on any committee established by the Board) of the Association 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 to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by 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 members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by 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 Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) harmless from and against 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 member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) may be entitled, including anything provided to the contrary in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.07 and the costs of such insurance shall constitute a Common Expense.

Section 4.08 **Turnover**. On or prior to the occurrence of the Turnover Date, all Common Areas, if any, owned by Developer shall be transferred and conveyed by Developer to the Association by quitclaim deed. Developer may, in its sole and absolute discretion, elect to transfer and convey to the Association by quitclaim deed any other real property owned by Developer at any time prior to or after the occurrence of the Turnover Date. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, cause any real property conveyed by Developer to the Association to be conveyed free and clear of all liens and encumbrances other than taxes for the then current year and all subsequent years thereafter, the terms and provisions of this Declaration and all other easements, restrictions, rights-of-way, reservations and other matters of record and such other terms, covenants and agreements as may be required by Developer (which may include, by way of illustration, but not limitation, the reservation of easements and other rights as to such real property conveyed by Developer to the Association). The Association, by execution of this Declaration, agrees to accept conveyances by quitclaim deeds of any and all real property which may be conveyed to it by Developer and, if requested by Developer, from any developers of any portion of the Property, and all such property conveyed to the Association shall thereafter constitute and be deemed to be part of the Common Areas. In addition, on or before the Turnover Date, Developer shall transfer and assign to the Association and the Association shall assume all of Developer's rights and obligations under any and all

agreements entered into by Developer on behalf of the Association or which benefit the Association. Developer does not make, and has not made, any representations or warranties, either express or implied, as to the physical condition of any of the Common Areas or any other real or personal property which may be conveyed by either Developer or any third parties to the Association and the Association shall accept the Common Areas and any such other real or personal property in its then "AS IS" condition, "WITH ALL FAULTS".

ARTICLE V

ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

Section 5.01 **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 5.02 below. The persons designated to serve on the ARC may, but shall not be required to be, Owners or Occupants. The regular term of office for each member of the ARC shall be three (3) years, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.02 below.

Section 5.02 Appointment and Removal of ARC Members

(a) DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AT ALL TIMES (EITHER PRIOR TO OR AFTER THE OCCURRENCE OF THE TURNOVER DATE) TO APPOINT AND REMOVE ALL MEMBERS OF THE ARC. Any person appointed as a member of the ARC by Developer may be removed, with or without cause, at any time by Developer. In the event of the death or resignation of a member of the ARC who has been appointed by Developer, then Developer shall appoint a substitute member of the ARC to fill such vacancy.

(b) Developer reserves the right, at any time either prior to or after the occurrence of the Turnover Date to elect, in a written notice given to the Association, to no longer retain the exclusive rights to appoint and remove members of the ARC as set forth in Section 5.02(a). Following the giving of such written notice by Developer to the Association, the Board shall, at all times thereafter, have the right to appoint and remove all persons who will serve on the ARC. Any person appointed as a member of the ARC by the Board may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC who has been appointed by the Board, then the Board shall appoint a substitute member of the ARC to fill such vacancy. Any person appointed by the Board to serve on the ARC shall be deemed an agent of the Association. The terms and provisions of this Section 5.02(b) shall not be effective until such time as Developer elects, in its sole and absolute discretion, to relinquish the right to appoint and remove members of the ARC, which election must be evidenced by a written notice provided by Developer to the Association in accordance with the terms and provisions of Section 5.02(a) above.

Section 5.03 **Procedure and Meetings**. The ARC shall elect a chairman and he or she, or in his or her absence, any vice-chairman so elected, 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-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a

majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. All such costs and expenses incurred by the ARC in the review of any plans shall be paid by the Owner submitting such plans to the ARC for review and approval. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

Section 5.04 **Architectural Standards.** The ARC is hereby authorized to promulgate and amend and modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Buildings and any other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Building or other Improvements on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Building or other Improvements on any Lot; provided, however, that any such Architectural Standards and any amendments and modifications thereto must be approved by (a) Developer, at all times that Developer has the right to appoint and remove the members of the ARC or (b) the Board of the Association, at all times that the Board of the Association has the right to appoint and remove the members of the ARC. The Architectural Standards and any and all amendments thereto adopted from time to time by the ARC (and approved by Developer or the Board, as provided above) shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

Section 5.05 **Approval of Plans and Specifications.**

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE BUILDINGS 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 (OTHER THAN BY DEVELOPER), WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR ANY BUILDING SITUATED THEREON UNLESS PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY BUILDINGS, SIDEWALKS,

DRIVEWAYS, PARKING LOTS AND AREAS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION TO AN EXISTING BUILDING OR OTHER STRUCTURE ON A LOT BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE), UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Buildings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Building 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) Three (3) copies of a professionally and accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Building to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot;

(ii) Three (3) copies of a foundation plan, floor plans, lighting plans (including specifically, any exterior lighting to be utilized with respect to such Lot) and exterior elevation drawings of the front, back and sides of the Building or other Improvements to be constructed on the Lot;

(iii) Three (3) copies of 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 Building 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 Building and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Building;

(iv) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below, together with the irrigation (underground sprinkler) plan for such Lot;

(v) Three (3) copies of a signage plan, which signage plan must incorporate and utilize signage design and construction criteria set forth in the Architectural Standards;

(vi) A copy of the impact permit (permit slip) issued to such Owner by Jefferson County, Alabama evidencing that such Owner has paid to Jefferson

County, Alabama all applicable sanitary sewer impact/tap fees for the Building and other Improvements to be constructed on such Lot; and

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

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot, 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 and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. 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. Approval of plans and specifications by the ARC for Improvements to one particular Lot 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. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other two (2) copies shall be returned to the Owner submitting the same marked "approved," "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within any Buildings situated on such Owner's Lot without the necessity or requirement that the approval or consent of the ARC be obtained so long as (i) such improvements and alterations do not affect the exterior appearance of such Building and (ii) the gross square footage of heated and cooled space within such Building is not increased.

(d) 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 approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot and the compliance with all of the terms, conditions and provisions of this Declaration and all interest earned on said deposit, if any, shall belong to and remain the property of the Association; provided, however, that the Association shall not be obligated to maintain such escrow/security deposit in an interest bearing account or to pay any interest, if any, earned on the escrow/security deposit to any

Owner. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner and such Owner's agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or such Owner's agents, employees or independent contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or such Owner's agents, employees or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's contractor, to execute a soil erosion and storm water discharge indemnity in favor of the ARC, the Association and Developer to the extent such Owner does not obtain its own soil erosion and storm water discharge permit from the applicable Governmental Authorities.

(e) In the event the ARC fails to approve in writing any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, then the plans and specifications so submitted to the ARC will be deemed to have been disapproved.

(f) 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.

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

(h) The ARC shall have the right to review and approve any general contractors to be utilized by any Owner in connection with the construction of any Buildings on any Owner's Lot.

Section 5.06 **Landscaping Approval.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and 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 (other than by Developer) on any Lot unless and until landscaping plans therefore have been submitted to and approved by the ARC. Notwithstanding the foregoing, an Owner may periodically remove, change, plant and replant

annual flowers in any flower beds on such Owner's Lot designated for annual flowers (as shown on the landscaping plans approved by the ARC) on such Owner's Lot.

Section 5.07 **Construction Without Approval.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without ARC 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 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 5.11 below.

Section 5.08 **Inspection.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot 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.

Section 5.09 **Subsurface Conditions.** The Property is located in an area which includes the use of fill dirt (which fill dirt was not placed on the Property by Developer), underground mines, tunnels, sinkholes and other subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Building or other Improvements on a Lot shall not be construed in any respect as a representation or warranty by the ARC or Developer 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. Each Owner, for such Owner and all Occupants of any Improvements situated on the Lot owned by such Owner, does hereby irrevocably and unconditionally waive and release Developer the ARC, the Association and each agent, employee, representative, shareholder, partner, officer, director or the holder of any ownership or financial interest in any of the foregoing entities or committees (but specifically excluding a release of any members of the Association (which members also constitute Owners)), of and from any and all damage, loss, action, cause of action, liability, cost, expense or prejudice suffered, claimed, paid or incurred by any Owner or Occupant of such Owner's Lot or any buildings constructed thereon on account of the use of fill dirt or the possibility that underground mines, tunnels, sink holes and other subsurface conditions which may result in sinkholes or other types of ground subsidence exist on, upon or under any of the Lots.

Section 5.10 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association, nor any agent, employee, representative, shareholder, partner, officer, director or the holder of any ownership or financial interest in any of the foregoing entities or committees (but specifically excluding a release of any members of the Association (which members also constitute Owners)) shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, shareholder, partner, officer, director, or the holder of any

ownership or financial interest in any of the foregoing entities or committees (but specifically excluding a release of any members of the Association (which members also constitute Owners)) from, any and all damage, loss, action, cause of action, liability, cost, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC 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, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) 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 Buildings, Improvements or the personal property of any Owner, Occupant or the respective 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 Buildings 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, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (vi) 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, or any Improvements situated thereon.

Section 5.11 **Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the 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 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 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Sections 8.01 and 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.11 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

Section 5.12 **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

ARC approvals have been obtained and whether any Building or other Improvements to a Lot have been constructed in accordance with the provisions of this Declaration.

ARTICLE VI
USE DEVELOPMENT AND PROPERTY RESTRICTIONS

Section 6.01 Permitted and Prohibited Uses.

(a) Subject to the provisions of Section 6.01(b) below, Lots may be used for such uses as are compatible with the land uses for such portion of the Property as established by the Applicable Zoning Ordinance for such portion of the Property and then, only to the extent that such use or purpose has been approved in writing by the ARC. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof may be utilized and developed for any of the uses included in the definition of the Common Areas.

(b) Notwithstanding anything provided herein to the contrary, in no event shall any portion of the Property be used or developed for any of the following uses or purposes:

(i) Adult book stores or facilities devoted primarily to the sale of pornographic books, films, tapes or similar audio or video products (as determined solely by the ARC);

(ii) Nightclub (not incident to a hotel), bar (not incidental to a hotel or permitted restaurant), restaurant incorporating more than ten (10) coin-operated amusements or showing adult movies to its customers, theater, discotheque, or social encounter bar/restaurant such as Hooters, as Hooters is presently operated in the metropolitan Birmingham, Alabama area (provided, however, restaurants such as Houston's, Ruby Tuesday, Canyon Café, etc. shall be expressly permitted hereunder)

(iii) Gambling establishment, exotic dance business, massage parlor, topless or nude bar or lounge; so called head shop; amusement arcade or game room; body and fender shop; off-track betting parlor, or kennel or pet store having outdoor boarding facilities; bowling alley; billiard parlor; funeral parlor or mortuary; flea market; coin-operated laundromat; industrial manufacturing facilities; automobile, RV, truck or trailer dealership; skating rink;

(iv) Mobile home, manufactured home or trailer sales facilities or parks; provided, however, that the foregoing shall not be deemed to prohibit the use of construction trailers or sales and leasing trailers during the initial construction, development, leasing and sale of any portions of Property;

(v) Labor camps, prisons, jails, honor farms or other correctional institutions;

(vi) Landfills or garbage disposal areas or areas for the dumping, processing, incineration or reduction of garbage, sewage, dead animals, refuse or

waste (other than on-site sanitary sewage disposal facilities, including septic tanks, which are specifically allowed as authorized uses);

(vii) Smelting of iron, tin, zinc or other ores, refining of petroleum or its products or mining activities;

(viii) Drive-in theaters;

(ix) Stock yards or slaughter houses or commercial poultry, livestock, swine or other animal production or breeding farms;

(x) Junk yards, baling, storage or processing of scrap metal, glass, paper or rags, storage or processing of wrecked or junked motor vehicles or any other type of outdoor storage other than for service areas and storage areas used in connection with any commercial buildings constructed within Property;

(xi) Racetracks, raceways or drag strips;

(xii) The sale of fireworks;

(xiii) Pawn shops;

(xiv) Flea markets;

(xv) Motor vehicle service station or establishment for the repair or maintenance of motor vehicles;

(xvi) Pregnancy termination clinic, planned parenthood and federally or state funded (in whole or part) medical services clinic;

(xvii) Adult day care, child care;

(xviii) Church or religious use; or

(xix) Any other uses which the ARC may, in its sole and absolute discretion, determine from time to time should be prohibited uses within any portion of the Property.

Section 6.02 **Plan Approval.** No Building or other Improvements of any nature whatsoever shall be constructed on any Lot unless such Building or other Improvements have been approved by the ARC in the manner set forth in Article V above.

Section 6.03 **Underground Utilities And Exterior Utility Equipment.**

(a) All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground; provided, however, that overhead or above ground wires, poles, pipes and other above ground machinery and equipment may be

utilized for temporary electrical service to any Building during the initial construction of a Building on a Lot.

(b) All electrical, gas, telephone and cable television meters, transformers and junction boxes, if any, for each Lot, shall be located, to the greatest extent possible, so as not to be visible from any roadway within or adjacent to the Property. All Owners shall install and maintain landscaping around all such meters and all electrical transformers and junction boxes situated on such Owner's Lot in a manner to visually screen, to the greatest extent practicable, all such meters, transformers and junction boxes from view from any roadway within or adjacent to the Property. All exterior heating, ventilating and air conditioning compressor units and equipment, including cooling towers, storage tanks and other similar equipment, shall be located either within a wholly-enclosed penthouse (equipment room) on top of the Building or on the ground level of such Building in a location and with appropriate screening by either walls or landscaping so that the same is not visible from any of the streets within or adjacent to the Property.

Section 6.04 Setback Requirements.

(a) Each Lot shall be subject to the setback requirements set forth on the Final Plat. In addition, the ARC may establish and prescribe setback requirements for any Lot which are stricter than those set forth on the Final Plat for pursuant to any zoning regulations, which ARC requirements may be applied to one or more Lots but not all of the Lots based on, among other things, the type uses contemplated for such Lot, any other requirements imposed on such Lot by the ARC pursuant to Article V of the Declaration and any other grounds which are consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, which the ARC may, in its sole and absolute discretion, determine to be necessary to cause such Lot and any Improvements thereto to be harmonious with the general plan of development contemplated for the Property.

(b) Subject to the provisions of Section 6.05 below, no Building shall be built within the setback lines established pursuant to Section 6.04(a) above. Furthermore, subject to the provisions of Section 6.05 below, no parking areas shall be built within the setback lines established pursuant to Section 6.04(a) above.

Section 6.05 Approval of all Setback Lines by ARC. Notwithstanding anything provided in Section 6.04 above to the contrary, the ARC shall have the right to require setback lines applicable to both Buildings and parking areas for any Lot which are different than those described or established pursuant to Section 6.04 above, including establishing setback lines which are less than or greater than those specified in or established pursuant to Section 6.04 above. The approval or establishment of setback lines by the ARC for one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar setback lines for any other Lot.

Section 6.06 Maximum Ground Coverage and Landscaping.

(a) The maximum Ground Coverage Ratio for each Lot shall in no event exceed the lesser of any such ratio established in the Applicable Zoning Ordinance (namely, eighty-five

percent (85%) of the total square footage of the total land area of applicable Lot) or any maximum Ground Coverage Ratio established by the ARC for such Lot. Notwithstanding anything provided herein to the contrary, the ARC may establish and prescribe ground coverage ratios for any Lot which are stricter than those set forth in the Applicable Zoning Ordinance (namely, eighty-five percent (85%) of the total square footage of the total land area of the Property), which ARC requirements may be applied to one or more Lots but not all of the Lots based on, among other things, the type uses contemplated for such Lot, any other requirements imposed on such Lot by the ARC pursuant to Article V of the Declaration and any other grounds which are consistent with the objectives and purposes of the Declaration, including purely aesthetic considerations, which the ARC may, in its sole and absolute discretion, determine to be necessary to cause such Lot and any Improvements thereto to be harmonious with the general plan of development contemplated for the Property.

(b) The ARC shall have the right to establish a list of plant life and species which are approved and may be used throughout the Property. In addition, invasive species, as determined from time to time by the ARC, are prohibited. The ARC shall have the right to identify from time to time what plant life constitutes invasive species.

(c) The ARC shall have the right to establish a schedule of approved turf grasses which may be used throughout the Property. In addition, the ARC may adopt recommended mowing heights as well as fertilization programs for all turf grasses.

(d) All areas of a Lot which do not contain Buildings, parking areas, driveways, walkways or other impervious surfaces shall be landscaped in accordance with landscaping plans to be submitted to the ARC for approval as part of the requirements of Section 5.05(b) of the Declaration. All landscaped areas of each Lot shall be irrigated by underground lawn sprinkler systems. If an irrigation system will be installed on any Lot, it should be designed by a certified irrigation designer and installed by a certified irrigation contractor. The ARC may establish approved irrigation designers and irrigation contractors who will be authorized to design and install irrigation systems within the Property.

(e) All landscaping for each Lot must be installed no later than the date any portion of any Building situated on such Lot is occupied for the conduct of business.

(f) All exterior Improvements, including, without limitation, fountains, reflectors, flagpoles, statues, exterior sculptures, exterior or outdoor furnishings and any and all fixtures or accessories of any nature, must be approved in writing by the ARC.

Section 6.07 **Height Limitations.** Subject to the provisions of Section 6.22 below, the maximum height limitations for any Buildings to be constructed on each Lot shall be determined by the ARC, in its sole and absolute discretion; provided, however, that (a) the maximum height limitations for any Building shall not exceed the lesser of the maximum height limitations, if any, established by the Applicable Zoning Ordinance or any height limitation imposed by the ARC on such Lot and (b) the approval or establishment of a maximum height limitation by the ARC for one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar Building heights for any other Lot or Building; **and provided, further, that each of Lots 6 and 7, according to the Final Plat, and any other Lot within the Property**

which may now or hereafter abut any Open Space area as shown on the Master Plan, shall be not greater than ten (10) stories. Notwithstanding anything provided herein to the contrary, the ARC may establish and prescribe height limitations for any Lot which are stricter than those set forth in the Applicable Zoning Ordinance, which ARC requirements may be applied to one or more Lots but not all of the Lots based on, among other things, the type uses contemplated for such Lot, any other requirements imposed on such Lot by the ARC pursuant to Article V of the Declaration and any other grounds which are consistent with the objectives and purposes of the Declaration, including purely aesthetic considerations, which the ARC may, in its sole and absolute discretion, determine to be necessary to cause such Lot and any Improvements thereto to be harmonious with the general plan of development contemplated for the Property.

Section 6.08 **Maximum Floor Area Ratio.** The maximum floor area ratio for each Building on each Lot shall be determined by the ARC, in its sole and absolute discretion; provided, however, that (a) the maximum floor area ratio for any Building shall not exceed the lesser of the maximum floor area ratio, if any, established by the Applicable Zoning Ordinance or the maximum floor area ratio established for such Lot by the ARC and (b) the approval or establishment of a maximum floor area ratio by the ARC for one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approval similar floor area ratios for any other Lot or Building. Notwithstanding anything provided herein to the contrary, the ARC may establish and prescribe maximum floor area ratios for any Lot which are stricter than those set forth in the Applicable Zoning Ordinance, which ARC requirements may be applied to one or more Lots but not all of the Lots based on, among other things, the type uses contemplated for such Lot, any other requirements imposed on such Lot by the ARC pursuant to Article V of the Declaration and any other grounds which are consistent with the objectives and purposes of the Declaration, including purely aesthetic considerations, which the ARC may, in its sole and absolute discretion, determine to be necessary to cause such Lot and any Improvements thereto to be harmonious with the general plan of development contemplated for the Property.

Section 6.09 **Exterior Lighting.** All exterior lighting for any Building, including, without limitation, free standing lighting and accent lighting, shall be in keeping with the Architectural Standards and must be approved by the ARC. All lighting shall, to the greatest extent practicable, illuminate only the Lot on which it is located and shall be positioned in such a manner so as, to the greatest extent practicable, not to constitute a nuisance or hazard to any other Lots or Buildings within the Property. Without limitation on the foregoing, all exterior building, parking lot and security lighting for any portions of the Property which are located immediately adjacent to or abut the Non-Frontage Lots and detached single-family dwelling residential areas shall be designed and constructed to avoid, to the extent practicable, excessive intrusion onto the adjacent residential areas by shortening light poles, spacing of light poles and utilizing high cut-off angles to minimize glare onto such Non-Frontage Lots and residential areas. Furthermore, all exterior lighting shall be consistent with lighting utilized in the commercial developments adjacent to the Property.

Section 6.10 **Off-Street Parking and Roadways.**

(a) No on-street parking shall be permitted for any Lot. Adequate off-street parking shall be constructed on each Lot as part of the construction of Improvements thereon. The size and location of all off-street parking on a Lot and the landscaping of all such parking areas shall

be approved by the ARC in accordance with the provisions of Article V of this Declaration; provided, however, that each Lot shall provide for off-street parking equal to the greater of either the minimum parking requirements established for such Lot in the Applicable Zoning Ordinance or the following parking requirements hereby established for such Lot by the ARC:

Lots 1, 2, 3 4, 5, according to the Final Plat, and any other Lot within the Property which may now or hereafter abut Highway 31:	5.0 parking spaces per each 1,000 gross square feet of floor area for the applicable Lot
Lots 6 and 7, according to the Final Plat:	4.0 parking spaces per each 1,000 gross square feet of floor area for the applicable Lot if used for office uses and 1.0 parking spaces per hotel room if used for hotel uses

(b) With respect to any hotels constructed on any Lot within the Property, permanent, non-exclusive reciprocal parking agreements which are recorded in the real property records may be utilized to satisfy the minimum parking requirements for such hotels if such reciprocal parking agreements are with Lots which directly adjoin the hotel facility and such adjoining Lots are used for office (as opposed to retail) uses.

(c) All parking areas situated on any Lot shall be subject to the landscaping provisions and requirements set forth in Section 6.16 below. Except for the reciprocal parking allowed pursuant to Section 6.10(b) above, no use shall be made of any Lot or Building(s) situated thereon which require or would reasonably be expected to require or attract parking in excess of the capacity of the parking facilities located on such Lot. Notwithstanding anything provided herein to the contrary, the ARC may establish and prescribe minimum parking requirements for any Lot which are stricter than those set forth above or in the Applicable Zoning Ordinance, which ARC requirements may be applied to one or more Lots but not all of the Lots based on, among other things, the type uses contemplated for such Lot, any other requirements imposed on such Lot by the ARC pursuant to Article V of the Declaration and any other grounds which are consistent with the objectives and purposes of the Declaration, including purely aesthetic considerations, which the ARC may, in its sole and absolute discretion, determine to be necessary to cause such Lot and any Improvements thereto to be harmonious with the general plan of development contemplated for the Property.

(d) All parking areas on each Lot shall (i) be paved to provide dust-free, all weather surfaces, (ii) be adequate in area and number of parking spaces provided in order to comply with the minimum standards required by any Applicable Zoning Ordinance or such increased number of parking spaces as may be required by the ARC, (iii) contain adequate driveways and space for movement of vehicles, (iv) meet at grade with connecting streets, (v) be striped to designate parking spaces, (vi) contain curbing (unless otherwise approved to the contrary by the ARC), sidewalks and walkways as well as proper drainage, (vii) satisfy and comply with all applicable rules and regulations of all Governmental Authorities and (viii) satisfy the setback and landscaping requirements of Sections 6.04 and 6.16 hereof. Each Owner shall maintain all parking areas and driveways on its Lot in a clean and good condition at all times and clear of all refuse, rubbish, trash or debris of any nature.

(e) All curb cuts providing access between any Lot and any public roadway or between two (2) adjoining Lots shall be subject to the prior written approval of the ARC.

(f) No portion of any Lot and no drive or roadway constructed within the boundary lines of any Lot may be utilized to provide access, ingress to or egress from any property lying outside of the boundaries of the Property without the express prior written consent of the ARC, which consent may be withheld by the ARC in its sole and absolute discretion.

(g) Each Lot within the Property shall provide a service yard or service area of adequate size and location to facilitate trash removal and for loading and unloading of merchandise, materials and otherwise handling deliveries. Such service yards or areas shall be paved, be accessible to a public or private street, be located (to the extent practicable) at the rear or on the side of the building/development, be enclosed on at least three (3) sides and be screened (to the extent practicable) from view from any public or private street by walls, fences or landscaping. The ARC shall have approval rights over the design, location and method of screening of all loading facilities and service yards or service areas.

Section 6.11 **Fences**. No fences of any kind or material shall be permitted within the Property except as approved by the ARC.

Section 6.12 **Satellite Dishes and Antennae**. No satellite dishes or radio, telephone (including cellular) or telecommunication antennae, receivers, aerials or other similar devices shall be attached to or installed on any Lot or Building unless the same are approved by the ARC, which approval may be conditioned upon, among other things, that such dishes, antennae and other devices not be visible from any adjoining Building or Lot or any streets within or adjacent to the Property. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Building which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity with the Property.

Section 6.13 **Soil Erosion and Drainage**. Each Owner shall provide and maintain on such Owner's Lot adequate soil erosion measures and drainage facilities to accommodate any storm water runoff resulting from any Improvements being constructed on such Owner's Lot. Each Owner shall also insure that such Owner's Lot and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all storm water drainage and run-off requirements regulations of all applicable Governmental Authorities and (c) all of the statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements and rulings of any Governmental Authorities. Each Owner shall, in connection with the construction of any Improvements on such Owner's Lot, be solely responsible for providing adequate storm water drainage improvements and facilities on such Owner's Lot which will be sufficient to adequately channel any storm water which may either cross or come upon such Owner's Lot from adjoining Lots or Common Areas, or which may originate and drain from such Owner's Lot and any Improvements thereto onto adjacent Lots and Common Areas. Each Owner shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, trustees and representatives harmless from and against any and all fines, penalties, costs and expenses,

including court costs and reasonable attorneys' fees, and all other amounts 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) to which any such Person may be made a party by reason of the violation by such Owner of the terms and provisions of this Section 6.13.

Section 6.14 **Signage**. Subject to the provisions of Section 6.22 below, all Building and other signage (whether attached to a Building or constructed as a freestanding sign) must satisfy all signage ordinances of applicable Governmental Authorities having jurisdiction over the Property and must be approved by the ARC. Subject to the provisions of Section 6.22 below, notwithstanding anything provided herein to the contrary, the ARC may establish and prescribe signage standards for any Lot which are stricter than those set forth in the Applicable Zoning Ordinance, which ARC requirements may be applied to one or more Lots but not all of the Lots based on, among other things, the type uses contemplated for such Lot, any other requirements imposed on such Lot by the ARC pursuant to Article V of the Declaration and any other grounds which are consistent with the objectives and purposes of the Declaration, including purely aesthetic considerations, which the ARC may, in its sole and absolute discretion, determine to be necessary to cause such Lot and any Improvements thereto to be harmonious with the general plan of development contemplated for the Property. No signs or advertising posters of any kind shall be maintained or permitted within any windows or glass doors or on the exterior of any Lot or Building or elsewhere on any portion of the Property without the express written permission of the ARC. If required by the ARC, all traffic, safety, informational and other signage constructed or installed by an Owner on such Owner's Lot shall be uniform in design and style as that type of signage used throughout the Property. The approval of any signs and posters, including, without limitation, political campaign signs, name and address signs, building and monument signage and for-sale and for-lease signs, shall be upon such terms and conditions as may from time to time be determined by the ARC. All banners and streamers of every kind, nature or description are prohibited. Any signage which any Owner desires to place on such Owner's Lot at such time as such Owner is constructing Improvements thereon shall be considered a part of the Improvements, the plans and specifications for which must be approved in writing by the ARC. Seasonal decorations on the outside of any Building (including the doors and windows of any Building) may be placed or installed on a Building with ARC approval. Notwithstanding anything provided herein to the contrary, Developer shall have the right (but not the obligation) to construct, erect and maintain on any of the Common Areas, on any of the Property owned by Developer or within any of the easement areas described in Section 3.07 of this Declaration no trespassing signs, traffic control signage, parking regulation signage, for sale or lease signage and informational signage as well as signage placing restrictions on the use of the Common Areas.

Section 6.15 **Design Concept; Building Exterior**.

(a) **Design Concept**. A relatively wide variety of architectural design and materials is permitted in the PUD. However, a basic harmony shall prevail among the buildings in the development so that no Building shall detract from the attractiveness of the overall environment. The ARC shall approve the design concept for each facility to ensure that all of the buildings relate to each other in positive manner in respect to massing, height, color and texture. Variety in design solutions is design in order to take full advantage of the existing topography and vegetation.

(b) **Exterior Building Materials.** All Buildings (including parking garages, if any) shall have an equally attractive exterior façade on all sides of the Buildings and shall have exterior walls of brick, stone, precast concrete, marble, granite, anodized aluminum or glass or an equivalent, permanent, architecturally finished material to finished grade and such other materials approved by the ARC. Colors shall be harmonious and compatible with the colors of the existing natural environment and other adjacent structures. The following materials are approved as possible choices for the exterior facades of all Buildings; however, all materials shall be approved by the ARC:

(i) Glass: Clear glass, gray tinted glass, or bronze tinted glass with black or bronze framing is acceptable. The use of colored or highly reflective glass is subject to ARC review and approval.

(ii) Brick and Mortar: Face brick of a suitable color and texture is acceptable.

(iii) Concrete: precast concrete with a smooth to medium sandblast texture is acceptable. Cast in place architectural concrete is also acceptable. ARC shall approve all colors and textures.

(iv) Metal: Prefinished metal panels shall be used only in a design concept, which is compatible with the existing environment

(v) Wood: The use of wood in the facade of a building shall be restricted to use as an accent and trim material.

(vi) EIFS (Dryvit): The use of EIFS materials shall be limited to architectural accents only.

(vii) Roof: Standing seam metal or accents, unless other material is approved by the ARC. Parapet walls shall be high enough to adequately screen any rooftop equipment or vents and architecturally acceptable from an aesthetic standpoint.

Unless otherwise approved by the ARC, no Building shall be covered with sheet or corrugated aluminum, asbestos, non-architectural quality iron or non-architectural quality steel. No foil or other reflective material shall be installed on any windows or used for sunscreen, blinds, shades or other purposes on any Buildings. In selecting building materials, the two most significant sources of environmental impact are energy use and occupant health. Considerations of those two impacts should be given in selecting all building materials to be utilized in any Building and other Improvements on any Lot. In addition, green building materials are highly encouraged. Each Owner should attempt to utilize energy efficient equipment, including, specifically, lighting, both inside and outside of such Owner's Building and other Improvements within such Owner's Lot.

Section 6.16 **Landscaping for Parking Areas.** All parking areas located on each Lot shall be landscaped in accordance with landscaping plans approved by the ARC. Perimeter landscaping may be required on all Lots.

Section 6.17 **Rezoning.** No Owner shall seek or obtain any rezoning of such Owner's Lot without first obtaining the prior written consent of the ARC to any such zoning or rezoning.

Section 6.18 **Construction of Improvements.**

(a) **Maintenance of Lots During Construction.** During the construction of any Improvements, (i) all Lots shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly. Construction refuse and debris may be burned on-site only in accordance with the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority and the written permission of the ARC; in no event, however, shall any construction refuse and debris be buried on or beneath any Lot or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot prior to such vehicles traveling on any roadways within or adjacent to the Property.

(b) **Signage During Construction.** During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas and (ii) utilize off-street parking only. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property. Upon completion of construction of any Improvements on a Lot, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot and such Lot shall be kept and maintained in a clean and uncluttered condition.

(c) **Compliance.** All Improvements to a Lot shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

(d) **Site Disturbance and Grading.** A key concept in sustainable development is to minimize site disturbance. In connection therewith, the ARC may require all lots to be flagged in order to clearly identify all clearing lines and may require the tagging of all trees which will be preserved. Grading, as well as any other vehicular movement, is to be kept to an absolute minimum within the drip line of any trees to be preserved. The ARC may institute color coding requirements for the flagging of Lots and the tagging of trees to be preserved.

(e) Site Drainage. Runoff from construction areas must be delivered into vegetative buffers through vegetative swales or into sumps or similar devices before such runoff is discharged to surface waters (i.e., creeks, streams, ponds, lakes or rivers). Turf grasses are recommended for soil stabilization and to reduce erosion and storm water runoff. No natural drainage swales on a Lot shall be altered without ARC approval.

(f) Construction Processes. Concrete washout shall be allowed only within specifically approved contained areas. In no event shall concrete washout occur within drainage ditches or storm drains of the Property.

(g) Burning and Debris. No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot without the prior written approval of the ARC and the satisfaction of all applicable laws, statutes, ordinances, rules, regulations and requirements of all Governmental Authorities.

Section 6.19 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 6.19 shall not be applicable to the subdivision, resubdivision or combination of any Lots or other real property owned by Developer. Furthermore, to the extent any Lot is to be re-subdivided and any private roads created by such subdivision, then Developer (at all times prior to the Turnover Date) or the Association (at all times after the Turnover Date) must execute such subdivision plat. No Lot shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs, provided, however, that the foregoing shall not prohibit the use of the condominium form of ownership of any Lot or Building.

Section 6.20 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 all Governmental Authorities.

Section 6.21 Deed Restrictions. To the extent any use restrictions or density restrictions (i.e., limitations which restrict the gross building areas for any Lot) are included in the deed to any Lot, then any amendments or modifications to such restrictions must be approved in writing by such grantor (or its assignee or designee) and by the ARC.

Section 6.22 Additional Covenants and Restrictions with Respect to Frontage Lots. With respect to all Buildings and other Improvements to be constructed on Frontage Lots, (a) the front and sides of any Buildings to be constructed thereon shall be finished with any combination of brick, stone and EIFS; the rear of the Building may be constructed of a different building material from the front or sides only as long as a visual landscaping buffer is installed that will block the view of the rear of such Building from the Buildings located on any of the Non-Frontage Lots, (b) all trash containers shall be located within enclosures made of materials matching the materials on the associated Building, (c) mechanical units on top of any Buildings shall be fully screened from view from the Buildings on the Non-Frontage Lots with a parapet wall, (d) the maximum height of such Buildings shall in no event exceed 35 feet in height (measured from the grade plane of such Building to the average height of the highest roof surface, as defined in the 2003 International Building Code, of such Building) and (e) free-

standing signage for any of the Frontage Lots will be no higher than the height of the Building on such Lot.

Section 6.23 **Consent of Non-Frontage Lots.** Notwithstanding anything provided to the contrary in this Declaration, the written consent and approval of all of the Owners of the Non-Frontage Lots is required in connection with the granting of any variances by the ARC pursuant to the provisions of Section 6.22 above.

Section 6.24 **Rules and Regulations.** The initial Rules and Regulations for the Property are attached hereto as Exhibit B. The Rules and Regulations are subject to change, modification, amendment, rescission, enlargement and alteration at any time and from time to time by action of the Board of Directors of the Association, without any requirement that the consent or approval of any Owner, Occupant or Mortgagee be obtained. All Owners and Occupants shall be bound by and must comply with all of the Rules and Regulations.

Section 6.25 **Variances.** Subject to the provisions of Section 6.23 above, notwithstanding anything provided herein to the contrary, the ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Articles V and VI of this Declaration and any of the Rules and Regulations. 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.

Section 6.26 **Enforcement and Remedies.** In the event any of the provisions of this Article VI or the Rules and Regulations 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 Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI or the Rules and Regulations, 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 ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI or the Rules and Regulations, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 6.26 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

Section 7.01 Responsibilities of Owners.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of each Lot, Building, all other Improvements situated thereon, including, without limitation, all utility lines, pipes, wiring, conduit and other apparatus which are situated on each Lot and all landscaping and grounds on or within a Lot, shall be the sole responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining such Owner's Lot, both inside and outside of any Buildings and other Improvements thereto, in a neat, clean and sanitary condition, both inside and outside of any Building or other Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Buildings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.06(b) above. All areas of any Lot which are not improved by the construction of a Building thereon shall at all times be maintained by the Owner thereof in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot up to the edge of the pavement of the roadway abutting such Lot and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. All dead vegetation, stumps, weeds, trash, refuse, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Property. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas or any other portion of the Property.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any Lot or the landscaping, grounds or other Improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC; provided, however, that any Owner may periodically remove, change, plant and replant annual flowers in any flower beds on such Owner's Lot designated for annual flowers (as shown on the landscaping plans approved by the ARC) without any further consents or approvals from the ARC.

Section 7.02 Responsibilities of Association.

(a) Except as otherwise provided in this Declaration to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas. The Association shall not be liable for injuries or damages to any person or property (i) caused by the elements, acts of God or any Owner or other person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or (iii) resulting from thief, burglary or other illegal entry onto the Property or any Lot. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by either the negligence or willful act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have 14 days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such 14-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, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Sections 8.01 and 8.07 below. If, and to the extent that, the Association undertakes any action pursuant to this Section 7.02(b) on behalf of any Owner, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

ARTICLE VIII

ASSESSMENTS

Section 8.01 **Assessments and Creation of Lien.** Each Owner of a Lot, 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 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.07(a) below, and all court costs and attorneys' fees and expenses 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 8.07(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while such Owner is the Owner of a Lot and such Owner's grantee shall take title to such Lot and all Improvements thereto subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from the 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 8.07(a) below, court costs and attorneys' fees and expenses 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 commence as to each Lot as provided in Section 8.06 below and 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, Building, Common Area or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments 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 Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Board. All Common Expenses must be reasonable and customary charges under the then prevailing conditions and circumstances and shall be at rates and prices which are competitive with those charged or paid by comparable office parks and mixed use developments in the greater Birmingham-Hoover, Alabama metropolitan area. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

Section 8.02 Rate of Assessments.

(a) Both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against and payable by each Lot on the basis of the Allocable Share attributable to such Lot.

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then (i) each Lot within the Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners of all other Lots in the Property, subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Property, (ii) any Assessments which have been previously assessed by the Association to the Owners for the then applicable calendar year shall not be subject to recalculation and (iii) in no event shall the amounts previously paid as either Annual Assessments or Special Assessments during such calendar year by any Owners be subject to recalculation or refund as a result thereof.

(c) Each Owner of a Lot, by acceptance of a deed to such Lot, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or any Lots are combined, subdivided or resubdivided pursuant to Sections 2.07 or 6.19 above (ii) any portion of the Property becomes Common Areas or (iii) any portion of the Property is exempted from the payment of Annual Assessments and Special Assessments as provided in Section 8.11 below.

Section 8.03 Computation of Annual Assessments.

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association and (ii) the Allocable Share of Annual Assessments which shall be payable by each Lot. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Property for the then applicable year and each Owner shall pay such Owner's Allocable Share of the same as provided in Section 8.02 above. As used herein, the term "Annual Assessments" with respect to each Lot shall mean the Allocable Share allocable to each Owner's Lot for the payment of the Common Expenses each calendar year. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) 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 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

(i) Until such time (if any) that the Chace Lake Open Space Property is conveyed the City of Hoover, any expenses for the maintenance or improvement for the Chace Lake Open Space Property pursuant to a separate agreement between the Developer (or the Association) and Chace Lake

Residential, LLC (or the Chace Lake Residential Association); pursuant to said separate agreement, the Association shall pay for fifty percent (50%) of the maintenance or improvement costs for the Chace Lake Open Space Property and the Chace Lake Residential Association shall pay for the remaining fifty (50%) of the maintenance or improvement costs for the Chace Lake Open Space Property;

(ii) fifty percent (50%) of the annual maintenance of the Cahaba River Buffer Area;

(iii) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(iv) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Association;

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

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

(vii) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

(viii) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(ix) The costs and expenses for conducting, promoting and advertising recreational, social, cultural or other related programs, as well as street fairs, festivals and other events for the benefit of the Owners and Occupants;

(x) The costs and expenses of installing, maintaining, repairing, purchasing, replacing and operating seasonal and holiday decorations and lighting for the Property;

(xi) 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 and absolute discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots; and

(xii) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, (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 and (4) for the payment of future Common Expenses.

(d) Notwithstanding any provision herein to the contrary, the cost of maintaining and/or repairing the Slope Easements shall be assessed only against the Owners on a prorata basis based upon the ratio that the acreage of such Owner's Lot bears to the total acreage of all Lots within the PC land use district as shown on the Master Plan.

(e) Lots and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace

Section 8.04 **Special Assessments**. In addition to the Annual Assessments authorized in Section 8.03 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments to be levied at any time (other than Special Assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below must be approved by a majority in interest of the members of the Association (*i.e.*, Owners) who are "in good standing," as defined in the Bylaws, voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 8.04 or Sections 9.01(b) and 9.03(a)(i) below. 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 8.02 above.

Section 8.05 **Individual Assessments**. The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot: (a) fines against an Owner and such Owner's Lot in accordance with the terms and provisions of this Declaration, (b) any costs or expenses, including, without limitation, collection costs, professional engineering and architectural fees and expenses, attorneys' fees and expenses, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any

Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors, to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association pursuant to Sections 5.11, 6.25, 7.02(b), 8.07 or 11.03 hereof, (c) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board and (d) any costs, charges or other amounts payable by any Owner for any special services which the Association and such Owner may have contracted for which have been or will be provided to such Owner by the Association. The Individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner, which due date shall be no later than 30 days from the date of such notice or billing invoice for such Individual Assessment.

Section 8.06 Date of Commencement of Assessments.

(a) Assessments shall commence as to each Lot on the day on which such Lot is conveyed to the First Owner and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board, subject to proration for the remainder of the then calendar year in which such Lot was conveyed to the First Owner. Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the day on which such Lot is conveyed to the First Owner, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such Additional Property was added to the terms of this Declaration. Notwithstanding anything provided herein to the contrary, until the occurrence of the Turnover Date, Developer shall fund the actual cash 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 (exclusive of funding of reserves) in any particular year; provided, however, that Developer shall have no obligations to fund any reserves established from time to time by the Association or the Board. The funding of such deficits by Developer may occur at any time during a calendar year (which may be at the end of any calendar year), as determined by Developer, in its sole and absolute discretion. From and after the occurrence of the Turnover Date, Developer shall have no further obligation of any nature to pay any Assessments (except for Lots owned by Developer) or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

Section 8.07 Effect of Non-payment; Remedies of the Association.

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. The Association shall provide written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). Any Individual Assessments levied or assessed against any Owner shall be separately assessed by a written notice or billing invoice sent directly by the Association to such Owner and such Individual Assessment shall be due and payable no later than 30 days from the date of such notice or billing invoice. In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of

such Lot shall be deemed in default hereunder and (ii) a late fee in the amount of \$25.00 (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot and any Improvements thereto. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been 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 and expenses, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot and any Improvements thereto for Assessments shall also include all late fee 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 within 30 days following the due date for the payment of such Assessments, 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 at any time thereafter 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 then applicable late fee charge and interest at the Applicable Rate, together with attorneys' fees and expenses, 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 Sections 8.01 and 8.07(c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and any Improvements thereto, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late fees or charges, interest at the Applicable Rate and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, 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 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:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address, if any, 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 and expenses 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 and any Improvements thereto 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 containing a power of sale 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 and any Improvements thereto. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Association and its 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 its agents 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.

Section 8.08 **Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and 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 prior to the filing of a claim of lien by the Association pursuant to Section 8.07(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 prior to the filing of a claim of lien by the Association pursuant to Section 8.07(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 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 Mortgagee on such Owner's Lot.

Section 8.09 **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.

Section 8.10 **Transfer Fees.**

(a) The Association, acting through the Board, shall have the option (but not the obligation) to elect to levy and collect from the First Owner of each Lot at the closing of the transfer of title of each Lot by Developer or any of its Affiliates to the First Owner of such Lot, a transfer fee equal to the greater of (i) \$500.00 per Lot or (ii) two (2) months of the Annual Assessments then payable by such Lot for the then current calendar year. Such contribution shall be paid directly to the Association and may be utilized by the Association for the payment of any costs and expenses and shall not be considered to be a prepayment of any Annual Assessments.

(b) The Association, acting through the Board, shall have the option (but not the obligation) to elect to levy and collect from each subsequent purchaser of any Lot after the First Owner at the closing of each subsequent conveyance of any Lot by any Owner (including any conveyance made by the First Owner), a transfer fee equal to the greater of (i) \$500.00 per Lot or (ii) two (2) months of the Annual Assessments then payable by such Lot for the then current calendar year, which contribution may be utilized by the Association for the payment of any costs and expenses of the Association and shall not be considered a prepayment of any Annual Assessments.

(c) Notwithstanding anything provided in this Declaration to the contrary, the transfer fees specified in Sections 8.10(a) and 8.10(b) above shall not (i) be applicable to or payable by the Association, to the extent the Association purchases a Lot in any foreclosure proceeding pursuant to the provisions of Section 8.07 above or (ii) be payable in connection with the transfer and conveyance of any Lots by Developer or any of its Affiliates to Developer or any of its Affiliates.

Section 8.11 **Exemptions from Assessments.** Notwithstanding anything provided to the contrary in this Declaration, Developer may, at any time and from time to time, designate any Lot as being exempt from the payment of Annual Assessments and Special Assessments or may by deed, contract or other written instrument reduce the amount of Annual Assessments or Special Assessments which may be payable by any Lot within the Property. To the extent any Lot is exempted from the payment of Annual Assessments and Special Assessments or the amount of Annual Assessments or Special Assessments payable by any Lot is reduced to an amount less than that which would have been payable as the Allocable Share for such Lot, then the following adjustments shall be made in determining the Allocable Share for all Lots within the Property and the voting rights in the Association: (a) to the extent the Allocable Share for Lots is determined on the basis of (i) gross acreage, then the gross acreage of any Lots which are either exempted or subject to reduced Annual Assessments shall be deducted from and not counted in determining the Allocable Share for all other Lots within the Property or (ii) the gross square footage of heated and cooled space within the Buildings, then the gross square footage of

heated and cooled space within any Buildings situated on any Lots within the Property which are either exempted or subject to reduced Annual Assessments shall be deducted from and not counted in determining the Allocable Share for all other Lots within the Property and (b) any such Lots which have been exempted from the payment of Annual Assessments and Special Assessments or which are paying a reduced amount of Annual Assessments or Special Assessments shall have no voting rights in the Association.

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

Section 9.01 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything to the contrary provided in Section 9.01(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, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner as provided in Section 8.02(a) above. 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 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.

Section 9.02 Damage or Destruction to Lots or Improvements. In the event of any fire or other casualty which damages or destroys any portion of any Lot or other Improvements thereto, then the Owner of such damaged Lot shall promptly repair and otherwise restore such Lot to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty (or such longer period of time as may be approved by the ARC) and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

Section 9.03 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 Property or the utilization of any other Common Areas within the Property, 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, which such Special Assessments shall be (1) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (2) levied against each Owner as provided in Section 8.02(a) above; and

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Property 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 9.03(c) below, no Owner or Mortgagee of any Lot 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 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.

Section 9.04 **Condemnation of Lots or Improvements.** In the event that all or any portion of a Lot or any Improvements thereto is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that

any such restoration shall be subject to all of the terms and conditions set forth in Articles V and VI 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.

Section 9.05 **Insurance.**

(a) The Board shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Board may from time to time deem appropriate for the benefit of the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Board in its sole and absolute discretion.

(b) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to such Owner's Lot, Building and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot, does hereby waive and release the Association, the ARC, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Association, the ARC, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

ARTICLE X
TERM AND AMENDMENTS

Section 10.01 **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) 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 ninety-nine (99) years from the date hereof, an agreement executed by at least seventy-five percent (75%) in interest (based on the Allocable Share of the Owners) of those Owners "in good standing," as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws, agreeing to terminate this Declaration has been recorded in the Probate Office; 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.

Section 10.02 **Amendments Prior to Turnover Date.** Until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument executed by Developer which is filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee; provided, however, that in the event any amendment proposed by Developer (a) materially and adversely alters or changes the rights of any Owner to the use of such Owner's Lot, as determined solely by Developer, in its reasonable discretion, or (b) seeks to amend Section 8.04 above, then such amendment shall be valid only upon (i) the written consent of Developer and (ii) the written consent or ballot vote of at least fifty-one percent (51%) in interest (based on the Allocable Share of the Owners) of those Owners (including Developer who shall have the voting rights attributable to any Lots owned by Developer) "in good standing," as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Notwithstanding anything provided to the contrary in this Section 10.02, each Owner, by acceptance of a deed to any Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot, acknowledges and agrees that (1) the addition of Additional Property to this Declaration pursuant to Section 2.02 above and the amendment of this Declaration to add Additional Property to the terms and provisions hereof, (2) any amendments to this Declaration made by Developer pursuant to Sections 2.03 and 2.07 above and (3) any amendments to this Declaration to reflect the resubdivision of any Lots pursuant to Section 2.08 above or Section 1.25 of the Rules and Regulations, shall not and do not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of such Owner's Lot and shall not require the consent or approval of any Owner or Mortgagee. Any amendments to this Declaration made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed 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 10.02. Except as specifically provided in Section 10.04 below and in this Section 10.02 (with respect to any amendments proposed by Developer which materially and adversely alter or change the rights of an Owner to the use of such Owner's Lot), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

Section 10.03 **Amendments after Turnover Date.** After the occurrence of the Turnover Date, amendments to this Declaration shall, subject to the provisions of Section 10.04 below, be proposed and adopted only by the affirmative vote of at least fifty-one percent (51%) in interest (based on the Allocable Share of the Owners) of those Owners (including Developer, who shall have the voting rights attributable to any Lots owned by Developer) "in good standing," as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the

Chairman of the Board, if any, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

Section 10.04 **Restrictions on Amendment**. Notwithstanding anything provided herein to the contrary, (a) none of the terms and provisions of Articles II and III hereof may be amended or modified in any respect without the prior written consent and approval of Developer and (b) the provisions of Section 6.01(b) above may not be amended or modified without the prior written consent of at least seventy-five percent (75%) of all of the Owners, and (c) no variance shall be granted and no amendments shall be made to Sections 6.22 or 6.23 without the written consent of all Owners of the Non-Frontage Lots.

ARTICLE XI

NON-EXCLUSIVE REMEDIES

Section 11.01 **Authority and Enforcement**. In addition to the other rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the Rules and Regulations, then the Board shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment or (b) suspend an Owner's right, if any, to vote in the Association. Any action to be taken by the Board pursuant to this Section 11.01 shall be subject to the satisfaction of the terms and provisions of Section 11.02 below.

Section 11.02 **Procedure**.

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any Rules and Regulations are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend or terminate any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Section 11.02(b) below and providing such Owner the opportunity to appear before and be heard by the Board.

(b) Any notices required by Section 11.02(a) above shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation;
- (iii) A time period of not less than 14 days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the Rules and Regulations may result in the imposition of sanctions; and

(iv) The date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear before the Board and be heard.

(c) The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

Section 11.03 **Non-Exclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the rights and remedies granted to Developer, the ARC and the Association pursuant to the terms and provisions of this Declaration upon the occurrence of any default by any Owner or the failure of any Owner to timely and completely perform all obligations required to be performed hereunder by any Owner 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 ARC or Association would have the right to exercise at law or in equity.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01 **Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR BUILDING, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT OTHERWISE PROVIDED TO THE CONTRARY IN SECTION 10.02 ABOVE).

Section 12.02 **Legal Expenses.** In addition to all of the other rights and remedies set forth in this Declaration, in the event either Developer, the Board, the Association, the ARC or any of their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, 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 Association and its agents and representatives, including the ARC, and the Board 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 violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure any such violation or breach by any Owner.

Section 12.03 **Severability.** If any provision of this Declaration or the application thereof to any person or circumstance 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 hereof shall be valid and enforceable to the fullest extent permitted by law.

Section 12.04 **Captions and Headings.** The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

Section 12.05 **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.

Section 12.06 **Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns and shall inure to the benefit of Developer, the Association, the ARC, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

Section 12.07 **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 ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between the *Code of Alabama*, any laws, regulations or ordinances of any applicable Governmental Authorities, 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*, any laws, regulations or ordinances of any applicable Governmental Authorities, 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.

Section 12.08 **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; provided, however, that nothing herein shall be deemed to alter or affect the Repurchase Option, the Participation Option and the other rights of Developer created in Section 11.01 above.

Section 12.09 **Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

Section 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 Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

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

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

Section 12.13 **Standards for Review.** Whenever in this Declaration 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 the ARC or the Association, as the case may be.

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

Section 12.15 **Notices.** Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Lot of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Association that all notices be submitted to such Owner by facsimile transmission or through the Internet utilizing a specific electronic mailbox for that particular Owner. All notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Association (or if no address has been furnished, then to the Lot of such Owner), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the Building, if any, situated on an Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of such Lot, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such facsimile notice or (d) sent by Internet to an electronic mailbox address provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Association. All notices to the Association (or to the ARC) shall be delivered or sent to the following address or facsimile number:

Chace Lake Commercial Association, Inc.
c/o Signature Homes
3545 Market Street
Birmingham, Alabama 35226
Facsimile: (205) 989-8884
Attention: Scott Rohrer

or to such other address as the Association (or the ARC) may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the following address or facsimile number:

Section 12.16 **Assignment**. Developer shall have the right, in its sole and absolute discretion, to transfer or assign any of its rights, powers, reservations, easements or duties contained herein to any Person, which Person shall thereupon have the same rights, powers, reservations, easements and duties hereunder as Developer, as the case may be. 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 to constitute 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 has transferred to any such third party.

Section 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, confirmatory or otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

Section 12.18 **No Waiver**. All rights, remedies and privileges granted to Developer, the Association and the ARC 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 by Developer, the ARC or the Association 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.

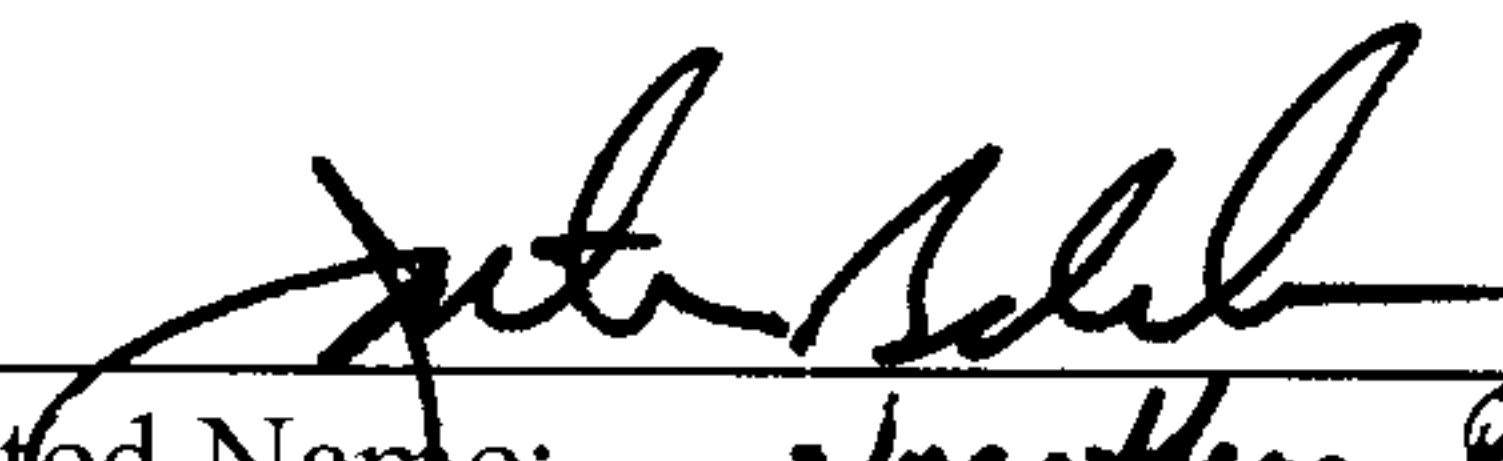
Section 12.19 **Perpetuities**. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

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

CHACE LAKE COMMERCIAL, LLC,
an Alabama limited liability company

By: NSH Corp., an Alabama corporation,
Its Sole Member

By: 
Printed Name: Jonathan Belcher
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 Jonathan Belcher, whose name as President of NSH Corp.,
an Alabama corporation, as Sole Member of **Chace Lake Commercial, 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 in its capacity as sole member of the aforesaid limited liability company.

Given under my hand and seal of office, this the 17th day of September, 2008.

[NOTARIAL SEAL]


Notary Public
My Commission Expires: 8/4/09

Consent of Association

The undersigned, Chace Lake Commercial Association, Inc., an Alabama nonprofit corporation, has joined in the execution of this Declaration in order to consent to and agree to be bound by all of the terms and provisions of this Declaration, including, without limitation, the provisions of Sections 4.08, 4.09 and 4.10 of this Declaration.

Dated as of the 17th day of September, 2008.

Chace Lake Commercial Association, Inc.,
an Alabama nonprofit corporation

By: _____

Its: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jonathan Belcher, whose name as President of Chace Lake Commercial Association, Inc., an Alabama nonprofit 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 17th day of September, 2008.

[NOTARIAL SEAL]

Notary Public

My Commission Expires: 8/4/09


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Shelby Cnty Judge of Probate, AL
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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1, 2, 3, 4, 5, 6, 7, together with Common Area CA1 and CA2, according to the Final Plat of the Commercial Subdivision: Chace Lake - Phase 1, recorded in Map Book 229, Page 69 in the Office of the Judge of Probate of Jefferson County, Alabama and also recorded in Map Book 40, Page 69 in the Office of the Judge of Probate of Shelby County, Alabama.

SCHEDULE I
CHACE LAKE MASTER PLAN

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Shelby Cnty Judge of Probate, AL
09/24/2008 02:14:41PM FILED/CERT

Chace Lake

Master Plan

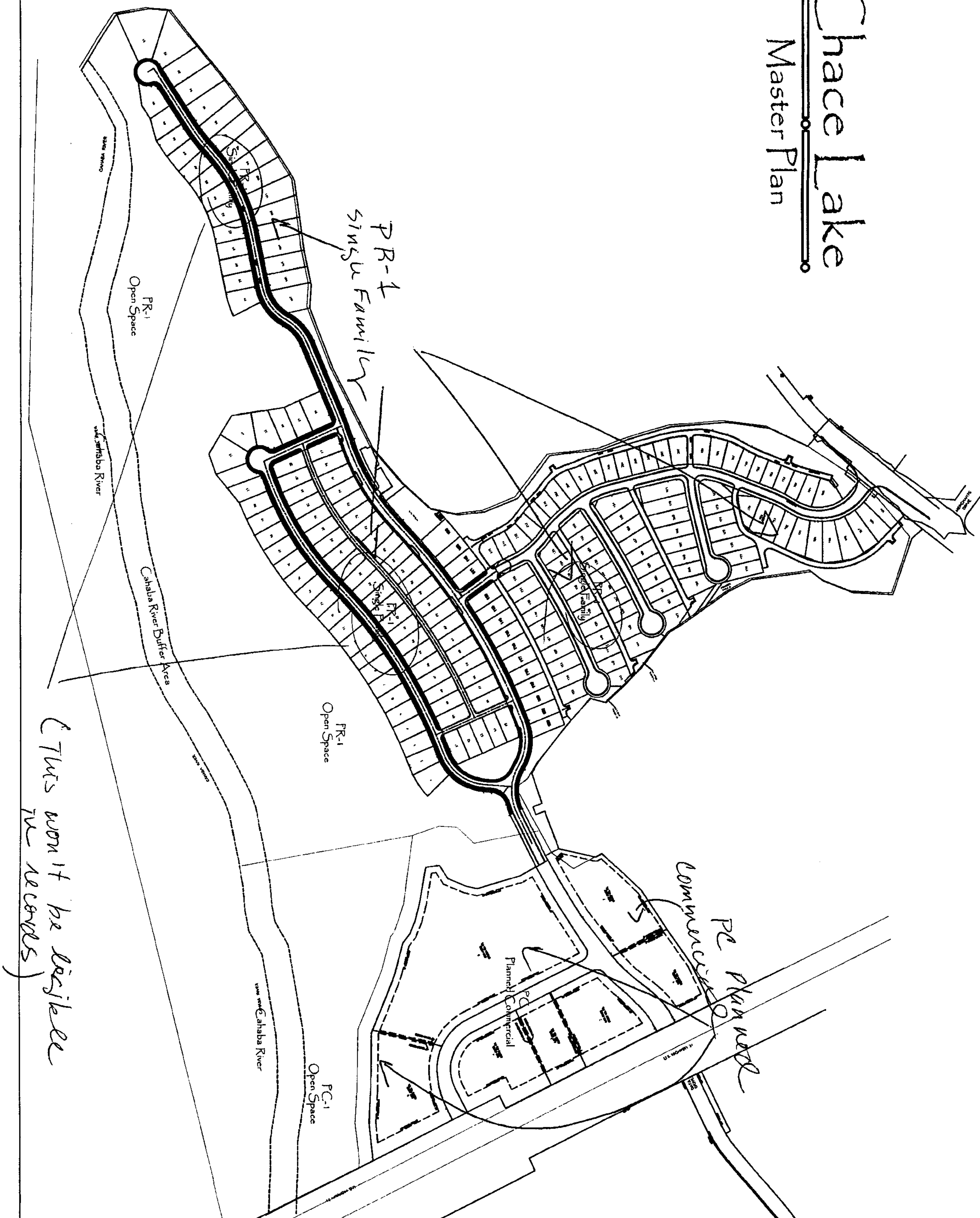


EXHIBIT B

CHACE LAKE COMMERCIAL RULES AND REGULATIONS

Developer and the Board of Directors of Chace Lake Commercial Association, Inc. have adopted these Rules and Regulations (the "Rules and Regulations") in order to maintain the aesthetics and lasting quality of the Property as well as to ensure the long-term viability and the value of all Buildings and other Improvements constructed within the Property. These Rules and Regulations, as the same may be amended from time to time by the Board, will be binding upon all Owners and Occupants of any Lots and Buildings within the Property.

These Rules and Regulations are referred to in, and constitute a part of, the Chace Lake Commercial Declaration of Covenants, Conditions and Restrictions (the "Declaration"). *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.* These Rules and Regulations are in addition to all of the terms and provisions set forth in the Declaration. In the event of any conflict or ambiguity between the terms and provisions set forth herein and those set forth in the Declaration, then, except as otherwise expressly provided herein to the contrary, the terms and provisions of the Declaration shall at all times control. These Rules and Regulations may be amended at any time and from time to time by the Board in the manner provided in Section 6.22 of the Declaration.

1.01 **Pesticides and Fertilization.** The Board may adopt rules and regulations regarding the types of pesticides and fertilizers which may be used whether the Property, including prohibiting or limiting the uses of certain pesticides and fertilizers along, around or near any wetlands, streams, creeks, ponds, lakes or rivers which flow through any portion of the Property.

1.02 **Off-Street Parking and Roadways.**

(a) Except as otherwise expressly provided in this Section 1.02, mobile homes, motor homes, trailers of any kind, campers, vans, motorized carts, all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar type of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot, which structure must be approved by the ARC. Notwithstanding the foregoing provisions of this Section 1.02(e), (i) bicycles are permitted and encouraged for transportation purposes (subject to the rules and regulations adopted from time to time by the Board) and (ii) the use and temporary parking of the following types of vehicles shall be allowed subject to the remaining terms and provisions of these Rules and Regulations and the Declaration: (1) automobiles, small pick-up trucks, bicycles and motorcycles by Owners, Occupants and their respective employees, tenants and invitees are allowed so long as such vehicles park in designated parking spaces and otherwise comply with the terms and provisions of the Declaration, (2) golf carts, delivery trucks, vans and other vehicles which are making deliveries to any Lot or Building or which are utilized in the maintenance or operation of any

Improvements on any Lot are allowed so long as such vehicles park in designated parking spaces and otherwise comply with the terms and provisions of the Declaration and (3) subject to the terms and provisions of Article VI of the Declaration, construction-related vehicles, equipment or machinery which are utilized in the construction of Improvements on any Lot are allowed so long as such vehicles park in designated parking spaces and otherwise comply with the terms and provisions of the Declaration. Neither the Common Areas nor any public or private streets within the Property shall be utilized for the parking or storage of mobile homes, motor homes, trailers of any kind, campers, vans, motorized carts, off-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles except as expressly authorized by the terms and provisions of this Section 1.02, recreational vehicles, machinery or equipment. Furthermore, any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot (unless such repair work is conducted within a solely wholly-enclosed structure on any such Lot) or within any portion of the Common Areas.

(b) No vehicles, garbage or trash cans or other personal property of any Owner shall be parked or allowed to remain in any of the public roadways or any private roads hereafter created within the Property which would or could interfere with vehicular or pedestrian access through such public roadways or private roads.

1.03 **Service and Storage Areas and Facilities.** No materials, supplies, equipment or machinery shall be stored on any Lot outside of a Building without the prior written approval of the ARC; provided, however, that (a) temporary storage of construction materials may be utilized during the construction of any Building or Improvements on a Lot so long as the same are removed upon completion of construction and (b) outside storage of materials, supplies, equipment or machinery may be allowed by the ARC if appropriate screening or other measures required by the ARC are installed by an Owner or Occupant. No storage buildings or facilities, including, without limitation, personal on-demand storage facilities and temporary or portable storage buildings are allowed on any Lot except during the initial construction of the first Building on a Lot (as authorized in item (a) of this Section 1.03). Each Building constructed on a Lot shall include a service area of adequate size and location to facilitate trash removal and for the loading and unloading of merchandise, materials and otherwise handling deliveries. All service areas shall be paved, be accessible to a public or private street within the Property, be located at the side or rear of the Building situated on such Lot, be enclosed on at least three (3) sides and be screened from view from any streets within or adjacent to the Property by either walls, fencing or landscaping as may be approved by the ARC.

1.04 **Trash, Rubbish, Music 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 Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Improvements which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Buildings within the Property. Each Owner and Occupant shall refrain from any act or use of a Lot or Building which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any

portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any of the Governmental Authorities. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Improvements or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same (although the Association shall be under no obligation to remove the same).

(b) All outdoor refuse collection areas for each Lot shall be located in the service area for such Lot or Building. No trash or refuse collection area shall be maintained within view of any public or private streets within or adjacent to the Property.

(c) No exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Improvements or other portion of the Property.

1.05 **Above Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot, except as approved by the ARC, which approval may be conditioned upon such above-ground tanks being screened from view from any public or private streets within or adjacent to the Property by either walls, fencing and/or landscaping. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Building. Only public sewage systems shall be utilized for the discharge of sewage from any Lot or any Improvements thereto.

1.06 **Animals and Pets.** No animals, reptiles, snakes, livestock, birds, poultry, dogs, cats or other pets of any kind shall be kept, raised or bred by any Owner upon any Lot or any other portion of the Property; provided, however, that (a) any animals which are trained in and are in fact assisting persons with disabilities shall be authorized and allowed within the Property and (b) the retail sale of birds, dogs, cats, rabbits, fish and other animals (to the extent approved by the Association) may be located inside of pet stores situated within the retail areas of the Property.

1.07 **Temporary Structures.** No temporary house or shelter or any trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, tree 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 from time to time by the Board or the rules and regulations of the Board, (b) construction trailers and sales offices of Developer and (c) construction trailers utilized during the construction of any Buildings. To the extent allowed by the terms and provisions of this Section 1.07, any construction trailers shall be located as inconspicuously as possible in locations approved by the ARC and shall be removed as soon as possible after completion of construction of all Improvements on such Lot.

1.08 **Additional Rules and Regulations.** In addition to the terms and provisions set forth in the Declaration and these Rules and Regulations, the Board may establish and enforce rules and regulations governing the use, improvement, maintenance and repair of all Lots, Buildings, 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 by Owners and Occupants.

In addition, the Board may adopt rules and regulations which establish bird sanctuaries, wildlife and wild flower areas within the Property and provide for the enforcement of the terms and provisions of this Declaration and establishing other rules and regulations limiting, restricting or prohibiting the application of fertilizers, pesticides and other chemicals within the Property. 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 vote of the members of the Association entitled to vote thereon at any regular or special meeting of the Association or any ballot vote held in accordance with the terms and provisions of the Bylaws.

1.09 Amendments. These Rules and Regulations are subject to change, modification, amendment, rescission and enlargement at any time and from time to time by action of the Board of Directors of the Association, without the consent or approval of the Owners, Occupants or Mortgagees of any Lot or Building. All Owners and Occupants shall be bound by and agree to comply with all additional Rules and Regulations adopted from time to time by the Board as well as any and all changes, modifications, amendments, rescissions and enlargements of these Rules and Regulations.

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Jefferson County, Alabama
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Fee - \$174.50

Total of Fees and Taxes--\$174.50
LYNN