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THIS DOCUMENT IS BEING RE-RECORDED TO INSERT AND CORRECT CERTAIN SECTION NUMBER REFERENCES SET FORTH IN ARTICLES I, II AND III OF THE COTTAGES OF DANBERRY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS DATED FEBRUARY 6, 2009 AND RECORDED AS INSTRUMENT 20090206000039480 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA AND UPON RECORDATION OF THIS DOCUMENT, THIS DOCUMENT SHALL SUPERSEDE THE PRIOR RECORDED DOCUMENT IN ITS ENTIRETY.

**THE COTTAGES OF DANBERRY
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 Cottage Home Property
- B -- Legal Description of Danberry Village

THE COTTAGES OF DANBERRY
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS THE COTTAGES OF DANBERRY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 7th day of April, 2009 by and between DANIEL SENIOR LIVING OF INVERNESS II, LLC, an Alabama limited liability company, and DANIEL SENIOR LIVING OF INVERNESS I, LLC, an Alabama limited liability company.

RECITALS:

Cottage Home Developer, as hereinafter defined, is the owner of the Cottage Home Property, as hereinafter defined, and desires to own, develop, improve, lease and sell the Cottage Home Property for detached single-family residential housing purposes and related uses which are intended and shall be operated for occupancy by persons 55 years of age or older, subject to the easements, covenants, conditions, restrictions, requirements and obligations set forth in this Declaration, which easements, covenants, conditions, restrictions, requirements and obligations are intended to protect the value and desirability of the Cottage Home Property and to create a flexible and reasonable method for the development, administration and maintenance of the Cottage Home Property.

Danberry Village Developer, as hereinafter defined, is the owner of Danberry Village, as hereinafter defined, and desires to grant to the Owners, Occupants and Guests of the Cottage Home Property, as such terms are hereinafter defined, certain rights to use and enjoy certain portions of Danberry Village subject to and in common with Danberry Village Developer, its successors and assigns and all Danberry Village Residents, as hereinafter defined.

Cottage Home Developer has agreed to (a) construct and install, at its sole cost and expense, the Access Roads, as hereinafter defined, and the Utility Lines, as hereinafter defined, (b) grant to Danberry Village Developer a permanent, perpetual and non-exclusive right to connect to and use the Utility Lines constructed within the Access Roads and (c) grant to Danberry Village Developer, its agents, employees and invitees and all Danberry Village Residents a permanent, perpetual and non-exclusive pedestrian and vehicular access easement over and upon the Access Roads.

Danberry Village Developer has agreed to (a) construct, at its sole cost and expense, for the benefit of Danberry Village and the Cottage Home Property, the Lakeside Clubhouse, as such term is hereinafter defined, and (b) grant to Cottage Home Developer and all Owners, Occupants and Guests of the Cottage Home Property a permanent, perpetual and non-exclusive right, in common with Danberry Village Developer, its agents, employees, and invitees and all Danberry Village Residents, to use and enjoy the Lakeside Clubhouse, subject to the terms and provisions of this Declaration.

Danberry Village Developer has agreed to perform all of the Danberry Village Developer Obligations, as hereinafter defined. In consideration of Danberry Village Developer performing its obligations hereunder, all Owners of all Lots, as hereinafter defined, within the Cottage Home Property shall be obligated to pay to Danberry Village Developer Regular Assessments and Special Assessments, and monthly or special fees, if any, as hereinafter defined.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, (a) Danberry Village Developer enters into this Declaration for the purposes of (i) granting to Cottage Home Developer and all Owners, Occupants and Guests of all Lots within the Cottage Home Property the easement rights in and to certain portions of Danberry Village as hereinafter provided and (ii) agreeing to perform all of the Danberry Village Developer Obligations hereinafter set forth and (b) Cottage Home Developer does hereby declare that all of the Cottage Home Property and any Additional Property, as hereinafter defined, which may be added to the terms and provisions of this Declaration, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to all of the easements, covenants, conditions, restrictions, charges, liens and regulations set forth in this Declaration, 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 Cottage Home Property and any Additional Property, if any, added to the terms and provisions of this Declaration, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I DEFINITIONS

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

1.01 **Access Roads.** The term "Access Roads" shall mean and refer collectively to the private roadway system to be constructed by Cottage Home Developer within the Cottage Home Property, as shown on the Subdivision Plat, which Access Roads shall be constructed by Cottage Home Developer in accordance with the terms and provisions of Section 3.01 below. The Access Roads shall, as long as the same are private roadways, constitute part of the Common Areas.

1.02 **Act.** The term "Act" shall mean and refer to The Fair Housing Act (42 U.S.C. 3601-3619), and all amendments thereto, including, specifically, the Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109 Stat, 787), as the same may be amended from time to time.

1.03 **Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to, contiguous with or in close proximity with the Cottage Home Property (but which does not presently comprise any part of the Cottage Home Property) which Cottage Home 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.

1.04 **Affiliates**. The term "Affiliates" shall mean and refer to (a) any Person which, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with the specified Person, (b) any Person who is an officer of, partner in, member or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, general or limited partner, member, manager or trustee, or with respect by which the specified Person serves in a similar capacity and (c) any Person who, directly or indirectly through one or more intermediaries, is a beneficial owner of more than five percent (5%) of any class of voting security or any interest in the specified Person or of which the specified Person is directly or indirectly through one or more subsidiaries the owner of more than five percent (5%) of any class of voting security or other interests therein.

1.05 **Assessment**. The term "Assessment" shall mean, collectively, the Regular Assessments (as defined in Section 7.03 below), Special Assessments (as defined in Section 7.04 below), and Individual Assessments (as defined in Section 7.05 below).

1.06 **Casualty**. The term "Casualty" shall mean and refer to any fire, flood, tornado, tropical storm, hurricane, acts of God or any other casualty.

1.07 **City**. The term "City" means the City of Hoover, Alabama, a municipal corporation.

1.08 **Common Area Maintenance and Service Responsibilities**. The term "Common Area Maintenance and Service Responsibilities" shall have the meaning set forth in Section 6.01 below.

1.09 **Common Areas**. The term "Common Areas" shall mean and refer to (a) for so long as the Access Roads remain private roadways, the Access Roads and all street, traffic, directional and informational signage, street lights and other lighting, storm water drainage facilities, walkways, sidewalks, gates, walls, fences, controlled access gates or devices, landscaping and landscaped areas and other improvements thereon, (b) all areas shown on the Subdivision Plat which are designated as "Common Areas" on the Subdivision Plat, (c) all of the Utility Lines lying within the Access Roads (to the extent the same are not owned or maintained by any public or private utility providers or any Governmental Authorities) and all storm water drains, sewers, drainage and/or watershed protection areas or detention or retention ponds, basins or other areas which serve any portion of the Cottage Home Property regardless of whether the same are located within or outside of the Cottage Home Property (other than such areas located solely within the boundary lines of any Lot or which are maintained by any Governmental Authority), (d) all perimeter fencing, if any, for the Cottage Home Property erected by Cottage Home Developer pursuant to Section 3.10 below or the Lake Heather Agreement and (e) all easements or access ways, walkways and trails, parks, nature trails, gardens and all other recreational facilities and areas and any other areas or improvements on or within the Cottage Home Property which are designated as Common Areas by Cottage Home Developer 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.

1.10 **Community Building.** The term “Community Building” shall mean and refer to that certain building to be constructed by Danberry Village Developer within Danberry Village for use by all Danberry Village Residents and their guests and invitees and all other Persons to whom Danberry Village Developer may grant the privilege of using the same and, subject to the provisions of Section 3.04 hereof and such rules, regulations and requirements as may from time to time be adopted by Danberry Village Developer with respect to the use thereof by any of the Owners, Occupants and Guests of the Cottage Home Property.

1.11 **Cottage Home Developer.** The term “Cottage Home Developer” shall mean and refer to Daniel Senior Living of Inverness II, LLC, an Alabama limited liability company, and its successors and assigns.

1.12 **Cottage Home Landscaping Responsibilities.** The term “Cottage Home Landscaping Responsibilities” shall have the meaning set forth in Section 6.02 below.

1.13 **Cottage Home Property.** The term “Cottage Home Property” shall mean and refer to that certain real property owned by Cottage Home Developer situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and made a part hereof, together with all Additional Property, if any, added to the terms of this Declaration pursuant to the provisions of Section 2.02 below.

1.14 **Danberry Village.** The term “Danberry Village” shall mean and refer to that certain real property owned by Danberry Village Developer situated in Shelby County, Alabama which is more particularly described in Exhibit B attached hereto and incorporated herein by reference, together with all buildings, structure and other improvements thereto made and owned by Danberry Village Developer. Danberry Village includes (a) the real property upon which the Community Building will be constructed and (b) the Lakeside Clubhouse. Except for the easement and use rights created by this Declaration which allow the Owners, Occupants and Guests of the Cottage Home Property to use certain portions of Danberry Village, no portion of Danberry Village is subject to or encumbered by the Declaration.

1.15 **Danberry Village Developer.** The term “Danberry Village Developer” shall mean the owner of Danberry Village and all successors and assigns thereof. As of the date of this Declaration, Daniel Senior Living of Inverness I, LLC, an Alabama limited liability company, is the owner of Danberry Village.

1.16 **Danberry Village Developer Obligations.** The term “Danberry Village Developer Obligations” shall mean, collectively, the Common Area Maintenance and Service Responsibilities, the Cottage Home Landscaping Responsibilities and, to the extent an Occupant elects to exercise the license granted by Cottage Home Developer as hereinafter provided to use an Inverness Sports Plus Membership, the payment of the monthly Inverness Sports Plus Membership Dues for such Occupant.

1.17 **Danberry Village Residents.** The term “Danberry Village Residents” means any natural person who occupies, resides or lives in Danberry Village and the respective family members and guests of any person who occupies, resides or lives in Danberry Village.

1.18 **Declaration**. The term "Declaration" shall mean and refer to this The Cottages of Danberry Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.19 **Dwelling**. The term "Dwelling", with an initial capital letter, shall mean and refer to any home or residence constructed for use as a single-family detached residential housing unit within the Cottage Home Property.

1.20 **Force Majeure**. The term "Force Majeure" shall mean and refer to any delays which are occasioned by or result from acts of God, any Casualty, inclement weather, labor and material shortages, labor strikes, work stoppages, war, civil unrest, riots, governmental requirements, the failure of any Governmental Authority to timely issue any applicable permits or grant approvals, any revisions required by any Governmental Authority to any plans, drawings, specifications or other documents, instruments or agreements submitted to any Governmental Authority for review or approval and any other causes beyond the reasonable control of any of the parties hereto or any of their respective successors and assigns.

1.21 **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 Cottage Home Property or any Improvements thereto.

1.22 **Guests**. The term "Guests" shall mean and refer to any natural persons entering onto any portion of the Cottage Home Property at the request or invitation of any Owner or Occupant. Guests shall include, without limitation, any and all relatives and all agents, employees, servants or independent contractors of any Owners or Occupants. All actions or omissions of any Guests of an Owner or Occupant are and shall be deemed the actions and omissions of the Owner or such Lot.

1.23 **Improvement**. The term "Improvement", with an initial capital letter, shall mean and refer to all Dwellings and any other building, structure or device constructed, erected, maintained or placed upon any part of the Cottage Home Property which in any way affects the exterior appearance of any Lot or any other portion of the Cottage Home Property. Improvements shall include, by way of illustration and not limitation, buildings, fences, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools and pool enclosures, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot. "Improvements" shall also mean any exterior alterations or additions to any existing Dwelling or other structure situated on a Lot and any grading, excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.24 **Inverness Sports Plus Membership**. The term "Inverness Sports Plus Membership" means any of the "Sports Plus" memberships which Cottage Home Developer has purchased from Inverness Country Club which are designated for use by any Occupant of the Cottage Home Property by Cottage Home Developer as provided in Section 3.11 below.

1.25 **Inverness Sports Plus Membership Dues.** The term “Inverness Sports Plus Membership Dues” means the monthly dues payable by Danberry Village Developer as part of the Danberry Village Developer Obligations with respect to the Inverness Sports Plus Memberships (but specifically excluding all charges for incidental charges made by Occupants for dining, golf, pool and other services), which monthly dues are subject to change at any time and from time to time.

1.26 **Lake Heather Agreement.** The term “Lake Heather Agreement” shall mean and refer to that certain Agreement and Declaration of Restrictive Covenants dated as of May 1, 2008 between Cottage Home Developer and Lake Heather Homeowner’s Association, Inc. which has been recorded as Instrument 20080501000179670 in the Probate Office, as amended by First Amendment thereto dated as of September 25, 2008 and recorded as Instrument 20081006000394050 in the Probate Office and any and all subsequent amendments thereto.

1.27 **Lakeside Clubhouse.** The term “Lakeside Clubhouse” shall mean the community clubhouse constructed by Danberry Village Developer on that portion of Danberry Village which is situated inside the gates of the Cottage Home Property. The Lakeside Clubhouse is **not** part of the Cottage Home Property.

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

1.29 **Lot.** The term “Lot” shall mean and refer to any lots reflected on the Subdivision Plat for any portion of the Cottage Home Property upon which it is intended that a Dwelling be constructed thereon. Each lot indicated on the Subdivision Plat (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. In the event any Lot is resubdivided or combined pursuant to the provisions of Section 2.05 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.30 **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 which shall have been duly and properly recorded in the Probate Office.

1.31 **Mortgagee.** The term “Mortgagee”, with an initial capital letter, shall mean and refer to the holder of any Mortgage.

1.32 **Occupant.** The term “Occupant” shall mean and include any natural person who occupies, resides or lives in a Dwelling, whether such natural person constitutes the Owner of such Dwelling or the Guest of an Owner or Occupant and shall include all tenants, agents, servants, employees, independent contractors, invitees and any other natural persons who occupy, reside or live in any Dwelling. All actions or omissions of any Occupant are and shall be deemed the actions and omissions of the Owner of such Lot.

1.33 **Owner.** The term “Owner”, with an initial capital letter, shall mean and refer to the record owner, including Cottage Home Developer, 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.

1.34 **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.

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

1.36 **Subdivision Plat**. The term "Subdivision Plat" shall mean and refer to the subdivision plat for the Cottage Home Property entitled "Final Plat of The Cottages of Danberry" which has been recorded in Map Book 40, Pages 122A and 122B in the Probate Office, together with any and all amendments thereto and any other plats recorded in the Probate Office reflecting any portion of the Cottage Home Property.

1.37 **Utility Lines**. The term "Utility Lines" shall mean and refer to any and all underground master television or cable systems, security systems, irrigation systems and all other underground utility services, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, cable television, internet, fiber optic and other similar communication facilities and systems, water and sanitary sewer services, storm drains and sewers drainage systems, lines, pipes, wiring, conduit, equipment, machinery and other apparatus and appurtenances.

ARTICLE II PROPERTY SUBJECT TO THE DECLARATION

2.01 **General Declaration**. Cottage Home Developer hereby declares that the Cottage Home Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Cottage Home Property, any part thereof and each Lot, Dwelling and all of the Common Areas owned by Cottage Home Developer 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 Cottage Home Property and each Lot thereof and shall be binding upon and inure to the benefit of Cottage Home Developer, Danberry Village Developer and all Owners, Occupants and Guests of the Cottage Home Property and each Lot and Dwelling thereof. Except for those portions of Danberry Village which, pursuant to Article III below, are subject to the easements and other rights granted by Danberry Village Developer to Cottage Home Developer and all Owners, Occupants and Guests of the Cottage Home Property, this Declaration shall apply only to the Cottage Home Property but this Declaration shall **not** apply to Danberry Village or to any other real property owned by Cottage Home Developer or Danberry

Village Developer unless the same is subjected specifically by written instrument to this Declaration.

2.02 Additional Property. Cottage Home Developer reserves the right, in its sole and absolute discretion (but only with the consent of Danberry Village Developer as hereinafter provided), at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any Additional Property is specifically submitted to the terms and provisions of this Declaration by Cottage Home Developer, then such Additional Property shall constitute part of the Cottage Home Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Cottage Home 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) 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, (d) state such other or different covenants, conditions and restrictions as Cottage Home Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property and (e) must be consented to in writing by Danberry Village Developer, which consent may be given or withheld in the sole and absolute discretion of Danberry Village Developer. In no event shall Cottage Home 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 Cottage Home Developer situated adjacent to or in close proximity with the Cottage Home Property. Notwithstanding anything provided in this Declaration to the contrary, the rights reserved by Cottage Home 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 Cottage Home Property, the Additional Property or any portion thereof, unless Cottage Home Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02 of this Declaration.

2.03 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 Cottage Home Property and (c) to create a privity of contract and estate between and among Cottage Home Developer, Danberry Village Developer and the Owners and their respective heirs, executors, personal representatives, successors and assigns.

2.04 Development of Property.

(a) Cottage Home Developer shall have the right, but not the obligation, to make improvements and changes to all Common Areas owned by Cottage Home Developer and to all Lots owned by Cottage Home Developer, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas owned by Cottage Home Developer, (ii) changing the location of the boundaries of any Lots owned by Cottage Home Developer or the boundaries of any of the Common Areas owned by Cottage Home Developer,

(iii) changing the boundaries of any portion of the Cottage Home Property owned by Cottage Home Developer, including any Additional Property owned by Cottage Home Developer, (iv) the installation and maintenance of water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas owned by Cottage Home Developer, (v) converting and changing any Lots or any portion thereof owned by Cottage Home Developer into Common Areas, streets, roadways, paths, parks or other uses, (vi) removing or exempting any portion of the Cottage Home Property and any Lots or Common Areas owned by Cottage Home Developer from the terms and provisions of this Declaration and (vii) adding additional property as Common Areas subject to the terms and provisions of this Declaration. The exercise by Cottage Home Developer of any of the rights set forth in this Section 2.04(a) may be exercised solely by Cottage Home Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained; provided, however, that the exercise by Cottage Home Developer of any of the rights reserved in this Section 2.04(a) must be consented to in writing by Danberry Village Developer, which consent may be given or without by Danberry Village Developer in its sole and absolute discretion. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Cottage Home Developer or Affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Cottage Home Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Cottage Home 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.

(b) Subject to the easements granted by Danberry Village Developer to Cottage Home Developer and the Owners, Occupants and Guests of all Lots pursuant to the terms and provisions of Article III below, Danberry Village Developer shall have the right, but not the obligation, to make any improvements to any portion of Danberry Village without any requirement that the same be reviewed or approved by Cottage Home Developer or any Owner, Occupant or Mortgagee or otherwise be made subject to or in accordance with any of the terms, covenants, conditions or restrictions set forth in this Declaration.

(c) Danberry Village Developer reserves the right (but without any obligation to do so), at any time and from time to time, to designate additional real property owned by Danberry Village Developer as Common Areas which will be subject to the terms and provisions of the Declaration.

(d) Pursuant to the Lake Heather Agreement, certain portions of the Common Areas which constitute part of Common Area C-1, as shown on the Subdivision Plat, must be conveyed to the Lake Heather Homeowners' Association, Inc. Each Owner, by acceptance of a deed to any Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot, shall be deemed to have consented to and approved of Developer's conveyance of any of the Common Areas as may be required by the Lake Heather Agreement and the taking of any other action by Developer necessary or required to satisfy terms and provisions of the Lake Heather Agreement.

2.05 Subdivision. Cottage Home 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 Cottage Home Developer may deem necessary with regard to the Cottage Home Property, including, without limitation, the locations and dimensions of all

Lots and Common Areas owned by Cottage Home Developer, and the locations and dimensions of any public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins within the Cottage Home Property. Any such subdivision plats and any amendments thereto shall be binding on the portions of the Cottage Home Property indicated thereon as if such subdivision plats were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Cottage Home Developer pursuant to this Section 2.05 may be exercised by Cottage Home Developer without any requirement that the consent or approval of any Owners, Occupants 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 Cottage Home Property owned by Cottage Home Developer, (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 Cottage Home Property or the change in the legal description of, or what constitutes part of, the real property described in said Exhibits, or (c) change what real property constitutes the Cottage Home Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the exercise by Cottage Home Developer of any of the rights reserved in this Section 2.05 must be approved by Danberry Village Developer, in its sole and absolute discretion, if such action would alter, amend, change or add Common Areas to the Cottage Home Property or increase, enlarge or create additional Danberry Village Developer Obligations, and (ii) none of the terms and provisions of this Declaration shall be deemed to limit, restrict or prohibit Danberry Village Developer from subdividing and resubdividing from time to time any portion of Danberry Village.

ARTICLE III
ACCESS ROADS, UTILITY LINES,
EASEMENTS AND USE PRIVILEGES

3.01 Construction of Access Roads and Utility Lines.

(a) Cottage Home Developer covenants and agrees, at its sole cost and expense, to construct and install the Access Roads in accordance with all current construction standards and requirements of the City for the construction of public roadways and shall complete construction of the same on or before March 31, 2009, subject to extensions thereof resulting from any matters of Force Majeure. Following completion of construction of the Access Roads, Cottage Home Developer may elect, in its sole and absolute discretion, to transfer and convey to Danberry Village Developer by quitclaim deed all right, title and interest of Cottage Home Developer in the Access Roads, subject to the easements and other rights granted and reserved by Cottage Home Developer pursuant to this Declaration.

(b) Cottage Home Developer covenants and agrees, at its sole cost and expense, to construct and install in and upon the Access Roads on the Cottage Home Property the Utility Lines in such size and quantity as may be necessary to provide utility services to the Lakeside Clubhouse. All Utility Lines to be constructed by Cottage Home Developer in and upon the Access Roads shall be constructed and maintained below ground. Cottage Home Developer covenants and agrees that the construction and installation of the Utility Lines to serve

the Lakeside Clubhouse shall be completed on or before March 31, 2009, subject to extensions thereof resulting from any matters of Force Majeure. Cottage Home Developer does hereby grant to Danberry Village Developer, its successors and assigns, a permanent, perpetual and non-exclusive easement and right to connect to and utilize all of the Utility Lines constructed by Cottage Home Developer on or within the Access Roads in order to provide any utility services to the Lakeside Clubhouse.

(c) Notwithstanding anything provided in this Section 3.01 to the contrary, Cottage Home Developer reserves the right (but without any obligation to do so) to undertake any of the following actions without any consent or approval by any Owners, Occupants or Mortgagees: (i) construct, install, alter, improve, repair and replace any other improvements on or within any portion of the Access Roads or the rights-of-way for the same, including, without limitation, controlled access gates or devices as provided in Section 3.07 below, traffic signage, street lighting, sidewalks, walkways and any other similar improvements, (ii) alter and change the boundaries and locations of the Access Roads and the Utility Lines constructed and installed by Cottage Home Developer within the Access Roads and (iii) otherwise alter, improve, repair and otherwise replace any improvements constructed by Cottage Home Developer on or within the Access Roads; provided, however, that no changes to the Access Roads or Utility Lines will be made which could materially impair access or utility service to the Lakeside Clubhouse without the prior written consent of Danberry Village Developer, which consent may be withheld in the sole and absolute discretion of Danberry Village Developer.

3.02 Grant of Easement to Lakeside Clubhouse.

(a) Subject to the remaining terms and provisions of this Section 3.02, Danberry Village Developer does hereby grant to Cottage Home Developer and all Owners, Occupants and Guests of the Cottage Homes Property the non-exclusive easement to use and enjoy the Lakeside Clubhouse, in common with Danberry Village Developer, its agents, employees, invitees and all Danberry Village Residents. Notwithstanding anything provided in this Section 3.02(a) above to the contrary, the foregoing easement and use rights (i) shall be exercised and used subject to any and all rules and regulations established from time to time by Danberry Village Developer pursuant to Section 12.01 below, (ii) shall be limited to Cottage Home Developer, its agents, employees and invitees, and the Owners, Occupants and Guests of the Cottage Home Property, (iii) may be suspended or permanently revoked by Danberry Village Developer as to any Owner, Occupant or Guest who (1) individually or as a result of the acts or omissions of the Guests of such Owner or Occupant violates any of the rules and regulations applicable to the use and enjoyment of the Lakeside Clubhouse or (2) fails to timely pay all Assessments and any other charges or fees due and payable by such Owner or Occupant to Danberry Village Developer and (iv) shall be subject to any fees which may be charged from time to time by Danberry Village Developer for the special use of the Lakeside Clubhouse.

(b) Notwithstanding anything provided to the contrary in this Section 3.02, any Owner, Occupant or Guest who damages or destroys any portion of the Lakeside Clubhouse or any of its furniture, furnishings or appurtenances shall be obligated to pay to Danberry Village Developer on demand all costs and expenses paid or incurred by Danberry Village Developer to repair or restore any damage to the Lakeside Clubhouse or any of the furniture, furnishings or appurtenances thereto.

(c) Subject to the provisions of Sections 3.02(a) and 3.02(b) above, the easements and rights granted pursuant to this Section 3.02 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot. The easements granted pursuant to this Section 3.02 may not be severed, transferred, assigned or otherwise alienated by any Owner, Occupant or Guest separate or apart from a Lot.

3.03 Grant and Reservation of Easements with Respect to Common Areas.

(a) Subject to the rights reserved herein by Cottage Home Developer and the remaining terms and provisions of this Declaration, Cottage Home Developer does hereby grant to (i) Danberry Village Developer, its agents, employees, invitees and its successors and assigns, (ii) all Danberry Village Residents, and (iii) each Owner, Occupant and Guest, the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas, in common with Cottage Home Developer and its successors and assigns and any other Persons having any rights or interests therein. Subject to the terms and provisions of Sections 3.03(b) 3.03(c) and 3.07 below, the easement and rights granted pursuant to this Section 3.03(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and to the real property which constitutes Danberry Village. The easement and rights granted pursuant to this Section 3.03(a) may not be severed, transferred, assigned or otherwise alienated by (1) any Owner or Occupant separate or apart from a Lot or (2) Danberry Village Developer, its agents, employees and invitees or any of the Danberry Village Residents except in connection with the transfer or conveyance of any portion of Danberry Village.

(b) Notwithstanding anything provided in this Declaration to the contrary, Cottage Home Developer does hereby establish and reserve for itself and its successors and assigns the permanent, perpetual and non-exclusive right and easement to use and enjoy all of the Common Areas in common with Danberry Village Developer, all Danberry Village Residents and all Owners, Occupants and Guests and any other Persons having any rights or interests therein. Furthermore, Cottage Home Developer reserves the right and privilege to grant to other Persons the right to use and enjoy any of the Common Areas on such terms and conditions as Cottage Home Developer may, in its sole and absolute discretion, determine to be applicable or appropriate.

(c) The rights, privileges and easements granted to all Owners, Occupants and Guests pursuant to this Section 3.03 to use and enjoy the Common Areas shall be subject to the following limitations and restrictions: (i) the use and enjoyment of the Common Areas shall be subject to the terms and provisions of Section 3.07 below and any and all rules and regulations adopted from time to time by Danberry Village Developer pursuant to Section 12.01 below and (ii) may be suspended or permanently revoked by either Cottage Home Developer or Danberry Village Developer with respect to any (1) Owner or Occupant who (x) individually or as a result of the acts or omissions of the Guests or Occupants of any Owner's Lot or Dwelling violates any of the rules and regulations applicable to the use and enjoyment of the Common Areas or (y) fails to timely pay all Assessments (and any other charges) due and payable by such Owner or Occupant to Danberry Village Developer pursuant to the terms and provisions of this Declaration and (2) Danberry Village Resident who violates any of the rules and regulations applicable to the use and enjoyment of the Common Areas.

(d) Notwithstanding anything provided herein to the contrary, Cottage Home Developer reserves the right, in its sole and absolute discretion, to transfer and convey any or all of the Common Areas to Danberry Village Developer, in which event, upon the assumption by Danberry Village Developer of all of the obligations of Cottage Home Developer hereunder, Cottage Home Developer shall thereafter be released from any further obligation or liability under this Declaration with respect to such Common Areas.

3.04 Grant of Easements to Owners and Occupants with Respect to Community Building. Subject to the limitations, restrictions, terms and provisions set forth in this Section 3.04, Danberry Village Developer does hereby grant to each Occupant the non-exclusive privilege to (a) enter upon all roads and walkways with Danberry Village and (b) use and enjoy all common/social areas of the Community Building such as the library, card room, den/social room, exercise and fitness facilities, therapy facilities, swimming pool, if any, beauty and barber shop, country store, ATM or branch bank facility and other retail areas, if any, within the Community Building in common with Danberry Village Developer, its successors and assigns, and the Danberry Village Residents and any other parties who have rights to use the Community Building, as determined by Danberry Village Developer from time to time. In addition, subject to such rules and regulations which Danberry Village Developer may from time to time adopt and the payment of any fees or charges levied from time to time by Danberry Village Developer (which fees and charges will be in addition to the Assessments), the Occupants of the Cottage Home Property may also utilize any food service and dining facilities within the Community Building and any other services which may be provided from time to time by Danberry Village Developer for the benefit of the Danberry Village Residents. Notwithstanding anything provided herein to the contrary, access to and the use and enjoyment of the Community Building (i) shall be subject to any and all rules and regulations established from time to time by Danberry Village Developer pursuant to Section 12.01 below, (ii) may be limited by Danberry Village Developer to Occupants and Guests and (iii) may be suspended or permanently revoked by Danberry Village Developer for any Occupant or the Guest of any Occupant who (1) individually or as a result of the acts or omissions of such Occupant or the Guests of that Occupant violates any of the rules and regulations applicable to the use and enjoyment of the Community Building or (2) fails to timely pay all Assessments (and any other charges or fees) due and payable by such Owner or Occupant. Danberry Village Developer reserves the right, in its sole and absolute discretion, to construct, operate and maintain controlled access gates or devices which limit or restrict vehicular and pedestrian access to Danberry Village, subject to the easement rights granted herein to each Occupant of any of the Cottage Home Property.

3.05 Reservation of General Access Easement. Cottage Home Developer does hereby establish and reserve for itself, and its agents, employees, representatives, invitees, successors and assigns and does hereby grant to Danberry Village Developer and its agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the Danberry Village Developer Obligations and otherwise taking any and all action required or permitted to be taken by Danberry Village Developer pursuant to any of the terms or provisions of this Declaration, including, specifically, undertaking any of the action permitted by Danberry Village Developer pursuant to Sections 6.01(b) and 6.02 below.

3.06 Grant of Easements to Governmental Authorities. Subject to the provisions of Section 3.07 below, Cottage Home 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 Access Roads for the purposes of performing their respective duties and activities relating to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any and all other official functions or duties to be performed by any of the Governmental Authorities as shall be required or appropriate from time to time.

3.07 Establishment of Controlled Access Easements.

(a) Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot to such Owner, for such Owner and such Owner's Occupants and Guests, (i) waives all rights for uncontrolled and unlimited access, ingress to and egress from such Owner's Lot and acknowledges and agrees that access and ingress to and egress from the Cottage Home Property may be controlled, restricted and limited to exclude the general public therefrom, (ii) acknowledges and agrees that access, ingress to and egress from such Owner's Lot shall be limited to the Access Roads, (iii) acknowledges and agrees that Cottage Home Developer shall have the right (but not the obligation) to operate controlled access gates or devices on or within any of the Access Roads pursuant to the terms and provisions of Section 3.07(b) below and (iv) acknowledges and agrees that Cottage Home Developer and its successors and assigns shall have the right to dedicate all or any portions of the Access Roads as public roadways pursuant to the terms and provisions of Section 3.07(c) below.

(b) Cottage Home Developer does hereby establish and reserve for itself and its successors and assigns the right and privilege to construct, operate and maintain controlled access gates or devices on or within any of the Access Roads controlling, limiting and restricting vehicular and pedestrian access to and from any portion of the Cottage Home Property.

(c) Notwithstanding anything provided in this Declaration to the contrary, Cottage Home Developer does hereby establish and reserve the right, in the sole and absolute discretion of Cottage Home Developer, at any and from time to time, to dedicate any of the Access Roads as public roadways or public rights-of-way to any Governmental Authority designated by Cottage Home Developer without requirement that the approval or consent of any Owner, Occupant, Mortgagee or any other Person (including any of the Danberry Village Residents) be obtained. Cottage Home Developer does hereby reserve, the right, in its sole and exclusive discretion, to execute any and all agreements, documents, instruments and subdivision plats pursuant to which any portions of the Access Roads are submitted for dedication as public roadways. Each Owner, by acceptance of any deed to a Lot, each Mortgagee, by the acceptance of any Mortgage on any Lot, and Danberry Village Developer and each Danberry Village Resident shall be deemed to, and each hereby does, irrevocably appoint Cottage Home Developer and its successors and assigns as such Person's respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication any portions of the Access Roads to any Governmental Authority as public roadways or public rights-of-way for and in the name of any such Owner and Mortgagee, Danberry Village

Developer and each Danberry Village Resident in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner, Mortgagee, Danberry Village Developer and each Danberry Village Resident and shall be binding on all Owners, Mortgagees, Danberry Village Developer and each Danberry Village Resident and their respective heirs, executors, administrators, personal representatives, successors and assigns. To the extent Cottage Home Developer transfers and assigns its rights in and to the Access Roads to Danberry Village Developer or any other third party, then such transferor or assignee shall have the same rights reserved herein by Cottage Home Developer.

(d) Notwithstanding anything provided in this Declaration to the contrary, the placement or maintenance of a controlled access gate or device, fence, wall or any other improvements which may limit or restrict access to the Cottage Home Property is not intended to obligate Cottage Home Developer, Danberry Village Developer or any third party to provide any form of security within the Cottage Home Property and each Owner, for himself or herself and any Occupants of such Owner's Lot or Dwelling and their respective Guests, heirs, executors, personal representatives, administrators, successors and assigns, do hereby irrevocably and unconditionally waive, release and forever discharge Cottage Home Developer, Danberry Village Developer and any other Person to whom Cottage Home Developer has transferred or assigned the Access Roads and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of any loss, damage or injury to person or property, including death, resulting from any entry, whether lawful or unlawful, onto the Cottage Home Property or any of the Lots or Dwellings by any third party (including any other Owners and Occupants) or arising out of the acts or omission of any third party (including all other Owners and Occupants).

(e) All vehicular traffic on or within the Access Roads shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. Cottage Home Developer, its successors and assigns, is authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for the Access Roads and, subject to the provisions of Sections 10.01 and 10.02 below, the right to deny, limit or prohibit vehicular access via any of the Access Roads. Cottage Home Developer, its successors and assigns, shall also be entitled to enforce any such rules and regulations by establishing such enforcement procedures as it deems necessary or appropriate, including hiring security or traffic patrols which have the right to levy fines for the violation of any such traffic rules and regulations. All vehicles of any kind and nature which are operated on any of the Access Roads shall be operated in a careful, prudent, safe and quiet manner with due consideration for the rights of all other Owners and Occupants of the Cottage Home Property as well as all other owners, occupants and guests of any portion of the Cottage Home Property.

3.08 Reservation of Easement for Utilities. Cottage Home Developer does hereby establish and reserve for itself and its successors and assigns a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of all Lots

which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating underground Utility Lines thereon as may be necessary or otherwise reasonably required in order to provide any utility service to any portion of the Cottage Home Property, the Lakeside Clubhouse or any other real property adjacent thereto or in close proximity therewith. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.08 to the contrary, (a) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.08 shall not unreasonably interfere with the use or occupancy of any Dwelling, (b) Cottage Home Developer and its successors and assigns 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 and established pursuant to this Section 3.08 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 and reserved herein and (c) the establishment and reservation of easements pursuant to this Section 3.08 shall not create any obligation, responsibility or liability of Cottage Home Developer or any of its successors or assigns to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.08.

3.09 Reservation of Environmental Easement. Cottage Home Developer does hereby establish and reserve for itself, its agents, employees, successors and assigns, and does hereby grant to Danberry Village Developer, its agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities. The easements and rights 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 any Governmental Authorities, including, without limitation, any applicable watershed, soil erosion, storm water discharge or environmental rules, regulations or procedures affecting the Cottage Home Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by either Cottage Home Developer or Danberry Village Developer of the rights reserved in this Section 3.09 shall not unreasonably interfere with the use or occupancy of any Dwelling.

3.10 Reservation of Easement for Perimeter Wall or Fence. Cottage Home Developer does hereby establish and reserve for itself and its agents, employees, successors and assigns and does hereby grant to Danberry Village Developer, its agents, employees, 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 Cottage Home Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Cottage Home Property; provided, however, that (a) neither Cottage Home Developer nor Danberry Village Developer shall have any obligation to construct any such perimeter wall, fence, mound or berm and (b) to the extent

either Cottage Home Developer or Danberry Village Developer desires to exercise the easement rights reserved or granted in this Section 3.10, then each of Cottage Home Developer and Danberry Village Developer 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 of them on any portion of the Cottage Home Property pursuant to this Section 3.10.

3.11 Inverness Sports Plus Membership.

(a) As of the date of this Declaration, the initial (first) Occupants of each Dwelling within the Cottage Home Property will be extended the revocable license to utilize, as a licensee, an Inverness Sports Plus Membership. The Inverness Sports Plus Membership is owned by Cottage Home Developer and no membership rights or interests shall accrue to any Owner or Occupant by virtue of any Owner or Occupant electing to utilize the Inverness Sports Plus Membership. Each Occupant shall, subject to the remaining terms and provisions of this Section 3.11, be allowed to elect to participate in and utilize the privileges associated with the Inverness Sports Plus Membership. To the extent any Occupant elects to participate in and utilize the Inverness Sports Plus Membership, then the then applicable Inverness Sports Plus Membership Dues shall be added to and constitute part of the Danberry Village Developer Obligations payable by that respective Occupant. Occupants who do not elect to participate in the Inverness Sports Plus Membership program will not be billed for Inverness Sports Plus Membership Dues.

(b) If an Occupant elects to participate in the Inverness Sports Plus Membership program, all incidental costs, including, without limitation, food and beverage services cost and expenses, pool services, golf charges and any other costs or expenses incurred by an Occupant at Inverness Country Club shall be payable by such Occupant directly to the then owner of Inverness Country Club. The Danberry Village Developer Obligations to be billed to an Occupant shall only include the Inverness Sports Plus Membership Dues; each Occupant shall be solely responsible for paying directly to Inverness Country Club all other costs and expenses incurred at Inverness Country Club by such Occupant or any of such Occupant's Guests.

(c) The use of the Inverness Sports Plus Membership is subject to an Owner's compliance with all of the rules and regulations of Inverness Country Club regarding the use of such Membership and all rules, regulations of Cottage Home Developer and Danberry Village Developer. In the event any Occupant violates the terms and provisions of any of the rules and regulations of Inverness Country Club (including failure to pay any charges billed directly by Inverness Country Club to such Occupant) or should any Owner (or Occupant of such Owner's Dwelling) violate any of the terms and provisions of this Declaration (including, without limitation, the failure to pay Assessments when due), then any licenses and privileges granted to an Occupant to utilize the Inverness Sports Plus Membership may be terminated by any one of Inverness Country Club, Cottage Home Developer or Danberry Village Developer upon written notice to such Occupant and thereafter such Occupant shall have no further right or interest to utilize the Inverness Sports Plus Membership.

(d) The license to utilize the Inverness Sports Plus Membership may not be transferred or assigned by any Owner or Occupant to any third party. Upon the sale of an Occupant's Dwelling within the Cottage Home Property, the license to utilize the Inverness

Sports Plus Membership shall automatically cease and terminate as to such Occupant. To the extent allowed by Inverness Country Club, Cottage Home Developer (and Danberry Village Developer) desire to grant future licenses to all subsequent Occupants of any Lot and Dwelling within the Cottage Home Property so long as there exist Inverness Sports Plus Memberships which are then available to be licensed to such subsequent Occupants and such subsequent Occupants satisfy all requirements of Cottage Homes Developer (and Danberry Village Developer) and Inverness Country Club for use of such Inverness Sports Plus Membership.

(e) Notwithstanding anything provided herein to the contrary, each Occupant acknowledges and agrees that an Occupant may elect, at any time, to cancel and terminate the license to use an Inverness Sports Plus Membership by providing at least ninety (90) days prior written notice to Danberry Village Developer; provided, however, that only thirty (30) days prior written notice is required in order to terminate such license upon the occurrence of the death or disability of such Occupant or the sale of the Lot and Dwelling of any Occupant. In addition to the foregoing, Danberry Village Developer may elect to terminate the Inverness Sports Plus Membership at any time.

(f) To the extent (i) any Occupant does not elect to activate the Inverness Sports Plus Membership when the same is made available to such Occupant by Cottage Home Developer (or Danberry Village Developer), (ii) Inverness Country Club elects to terminate all Inverness Sports Plus Memberships or (iii) the license to utilize the Inverness Sports Plus Membership is cancelled and terminated by virtue of (1) a violation by any Occupant of any of the rules and regulations of Inverness Country Club, (2) the failure to pay Assessments under this Declaration or (3) the election of Danberry Village Developer to cancel and terminate all Inverness Sports Plus Memberships, then, in any of the foregoing events, the license created herein to utilize the Inverness Sports Plus Membership will terminate, be deemed null and void and of no further force or effect and neither Cottage Home Developer nor Danberry Village Developer shall have any further liability or responsibility to provide additional or alternative programs, licenses or use rights similar to the use rights and facilities afforded to any Occupant by virtue of the Inverness Sports Plus Membership.

(g) Each Owner and Occupant does hereby acknowledge and agree that neither Cottage Home Developer, Danberry Village Developer nor any of their respective Affiliates or subsidiaries own or have any rights to control the actions of Inverness Country Club and that Inverness Country Club is solely responsible for operating, maintaining and providing all services with respect to the Inverness Country Club. Neither Cottage Home Developer, Danberry Village Developer nor any of their respective Affiliates or subsidiaries make any representations or warranties of any kind regarding the continued operations of Inverness Country Club, the state or condition of repair of any of the facilities at Inverness Country Club, whether Inverness Country Club will remain in business, whether Inverness Country Club will change any of its policies concerning the use of the Inverness Sports Plus Memberships, whether membership fees, expenses, charges and dues will remain at the same amount as currently being charged by Inverness Country Club or as to any matters involving the financial affairs or operations of Inverness Country Club. To the extent Inverness Country Club ceases to do business or the Inverness Country Club Membership is revoked, terminated or otherwise rescinded, neither Cottage Home Developer, Danberry Village Developer nor any of their

respective Affiliates or subsidiaries shall have any responsibility or liability to any Owner or Occupant as a result thereof.

ARTICLE IV ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

4.01 Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE COTTAGE HOME PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE COTTAGE HOME PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE COTTAGE HOME PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT BY ANY OWNER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY COTTAGE HOME DEVELOPER. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, IMPROVEMENTS, ANTENNAE, SATELLITE DISHES, SIDEWALKS, DRIVEWAYS, PARKING AREAS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS AND POOL ENCLOSURES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES OR ANY OTHER STRUCTURES, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY COTTAGE HOME DEVELOPER.

(b) Prior to the commencement of any Improvements on a Lot, the Owner thereof shall submit to Cottage Home Developer plans and specifications and related data for all such Improvements, which shall include (i) an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on such Lot, the location of all driveways, walkways, terraces and patios, and the relationship of the same to any setback requirements applicable to such Lot; (ii) exterior elevation drawings of the front, back and sides of the proposed Improvement; (iii) written specifications including, if requested by Cottage Home Developer, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of such Improvements; (iv) a lighting plan, if any, for such Improvements and (v) a landscaping plan.

(c) Cottage Home Developer shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. Cottage Home Developer 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, objection on the ground of incompatibility of any such proposed Improvements with the scheme of development proposed for the Cottage Home Property, objection based on possible increases in costs to be incurred by Danberry Village Developer in performing any of the Danberry Village Developer Obligations as a result of such proposed Improvements or any other matter which, in the sole and absolute judgment of Cottage Home Developer, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Cottage Home Property. Cottage Home Developer 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 Cottage Home Developer for Improvements to one particular Lot shall not be deemed an approval or otherwise obligate Cottage Home Developer to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within such Owner's Dwelling that do not affect the exterior appearance of such Dwelling without the necessity or requirement that the approval or consent of Cottage Home Developer be obtained.

(d) Cottage Home Developer 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.

(e) In the event any plans and specifications approved by Cottage Home Developer in accordance with the terms and conditions of this Section 4.01 are subsequently modified, altered, amended, or changed in any respect, then such modifications, alterations, amendments or changes to such plans and specifications must also be approved by Cottage Home Developer in the manner set forth above in this Section 4.01.

(f) If construction of the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year from the date of approval by Cottage Home Developer of the plans and specifications for such 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 Improvements to Cottage Home Developer for approval in the same manner specified above.

4.02 Subsurface Conditions. The approval of plans and specifications by Cottage Home Developer for any Improvements on a Lot shall not be construed in any respect as a representation or warranty by Cottage Home Developer to the Owner submitting such plans or to any of the heirs, executors, personal representatives, 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.

4.03 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Cottage Home Developer, Danberry Village Developer nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner, Occupant or any Guests thereof on account of (a) any defects in any plans and specifications submitted, reviewed or approved by Cottage Home Developer or Danberry Village Developer, (b) any defects, structural or otherwise, in any Improvements constructed on any Lot, (c) the construction or performance of any work relating to any plans, drawings or specifications approved by Cottage Home Developer or Danberry Village Developer, (d) bodily injuries (including death) and property damage suffered, paid or incurred by any Owner, Occupant or their respective Guests caused by, arising as a result of or in any way related to any defect, structural or otherwise, in any Improvements constructed with the Cottage Home Property 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 (e) any 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 or occupancy of any Lot or any Improvements situated thereon.

4.04 **Enforcement and Remedies.** In the event any of the provisions of this Article IV are breached or are not otherwise being complied with in all respects by any Owner or Occupant or any of their respective Guests, then, following five (5) days written notice of such breach or noncompliance, Cottage Home Developer shall have the right, at its 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 Cottage Home Developer for such Improvements and/or (b) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by Cottage Home Developer in enforcing any of the provisions of this Article IV 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 Cottage Home Developer in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article IV, shall be paid by such Owner to Cottage Home Developer on demand, shall constitute an Individual Assessment to such Owner pursuant to Section 7.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 7.06 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of Cottage Home Developer set forth herein shall not be deemed exclusive of any other rights and remedies which Cottage Home Developer may exercise at law or in equity or any of the enforcement rights specified in this Declaration.

4.05 **Compliance Certification.** Cottage Home Developer shall, upon request and at such reasonable charges as may from time to time be adopted by Cottage Home Developer, furnish to an Owner a certificate in writing setting forth whether all necessary approvals have been obtained and whether any Improvement have been constructed in accordance with the provisions of this Declaration.

ARTICLE V USE AND PROPERTY RESTRICTIONS

5.01 **Use Restrictions.** Except as otherwise provided to the contrary in this Section 5.01, each Lot shall be used for detached single-family residential purposes only; provided, however, that any portion of the Cottage Home Property may be used for Common Areas to the extent approved by Cottage Home Developer. No trade or business may be carried on in or from any Lot or Dwelling; provided, however, that the use of any portion of a Dwelling as an office by an Occupant shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as (a) the lease is for not less than the entire Dwelling, (b) the lease is for a term of at least six (6) months and (c) all Occupants of such Dwelling comply with the requirements of Section 5.11 below and all other provisions of this Declaration. Notwithstanding anything provided in this Declaration to the contrary, no sheds, detached structures, tennis courts, greenhouses, playhouses, guest or servant's quarters or other outbuildings shall be constructed, installed, located, placed, operated or maintained on any Lot without the prior written approval of Cottage Home Developer.

5.02 **Plan Approval.** No Improvements of any nature whatsoever shall be constructed on any Lot unless such Improvements have been approved by Cottage Home Developer in the manner set forth in Article IV above.

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

5.04 **Minimum Building Setbacks.** Minimum building setback lines for all Dwellings shall be as follows: (a) front building setback: 12 feet; (b) rear building setback: 5 feet; and (c) side building setbacks: 5 feet. All setbacks are measured from the property lines of each Lot.

5.05 **Height Limitations.** No Dwelling shall exceed 36 feet in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway to the highest point of the roof.

5.06 **Minimum Living Space.** Minimum Living Space requirements for all Dwellings shall be no less than 1,600 square feet of Living Space for a single-story Dwelling and 2,000 square feet of Living Space for a one and one-half or two story Dwelling.

5.07 **Landscaping, Gardens, Outdoor Property and Decorations.**

(a) The initial landscaping for each Lot shall be approved by Cottage Home Developer in accordance with the terms and provisions of Article IV above. Any other landscaping which any Owner or Occupant desires to construct, install, place or maintain on or within any Lot must be approved by Cottage Home Developer, which approval may be granted by Cottage Home Developer in its sole and absolute discretion. In the event Cottage Home Developer authorizes any Owner or Occupant to install, construct, place or otherwise maintain additional landscaping on the Lot of such Owner or Occupant, then the Owner and Occupant of such Lot shall be solely responsible for maintaining the same and such additional landscaping

shall **not** constitute part of the Cottage Home Landscaping Responsibilities of Danberry Village Developer. Furthermore, each Owner and Occupant does hereby waive, release and forever discharge Cottage Home Developer, Danberry Village Developer and their respective agents, employees and independent contractors, from and against any and all damage, loss, liability, claim or expense suffered, paid or incurred by any Owner or Occupant as a result of any damage to or destruction of any additional landscaping installed on any Lot by any Owner or Occupant. The provisions of this Section 5.07(a) shall also be applicable to any vegetable, herb or similar gardens or plants which Owner or Occupant desires to plant or maintain within such Owner's or Occupant's Lot. Any such vegetable, herb or similar gardens or plants shall be located only in such areas on a Lot as may be approved by Cottage Home Developer and shall **not** constitute part of the Cottage Home Landscaping Responsibilities of Danberry Village Developer.

(b) No rocks, rock walls or other substances shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit access to the same. No bird baths, fountains, reflectors, flag poles, statutes, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed on or within the front or side yards of any Lot or which would be visible from any roadways within the Cottage Home Property unless approved in writing by Cottage Home Developer.

(c) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations, etc.) may be placed on a Lot or on the exterior of a Dwelling not more than 30 days prior to each holiday and shall be promptly removed from each Lot and the exterior of a Dwelling no later than 20 days following the date of such holiday.

5.08 Exterior Materials and Finishes. All exterior building material finishes and exterior colors for any Dwelling must be approved by Cottage Home Developer. No concrete, concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.). Metal flashing, valleys, vents and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

5.09 Exterior Painting and Roofing.

(a) The exterior colors of all Dwellings, including all painted surfaces for exterior doors, window shutters, cornices, eaves and gables, must be approved by Cottage Home Developer pursuant to Article IV above. No Owner or Occupant may repaint any of the exterior portions of any Dwelling or any other Improvements on a Lot without the express prior written consent of Cottage Home Developer.

(b) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling. All plumbing and heating vents, stacks and other

projections of any nature on the roof shall (i) be painted a similar color as the roof shingles used for such Dwelling and (ii) to the extent practicable, not be visible from any roadways within the Cottage Home Property. No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

5.10 **Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting, accent lighting and utility (e.g., flood) lighting, must be approved by Cottage Home Developer.

5.11 **Restriction on Ages of Occupants.**

(a) Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that all Dwellings situated on any of the Lots are intended and shall be operated for occupancy by persons who are 55 years of age or older, although younger persons are not restricted from occupying a Lot along with a person 55 years of age or older so long as such co-occupancy is in compliance with all of the terms and provisions of this Section 5.11. Furthermore, certain exceptions may be made to the provisions of this Section 5.11 in accordance with the terms and provisions of Section 5.11(d) below. The provisions of this Section 5.11 are intended to be consistent with, and are set forth in order to comply with, the Act regarding discrimination based on familial status. Notwithstanding anything provided herein to the contrary, Cottage Home Developer shall have the right, in its sole and absolute discretion, to amend this Section 5.11 without the consent or approval of any Owners, Occupants or Mortgagees to the extent necessary to comply with the Act, any rules and regulations adopted by any Governmental Authority with respect thereto and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this Section 5.11.

(b) Except as may otherwise be permitted pursuant to Section 5.11(d) below, each Occupied Unit, as herein defined, must be "occupied by at least one person 55 years of age or older", as herein defined. As used herein, the term "Occupied Unit" means (i) any Dwelling that is actually occupied by one or more persons; or (ii) a temporarily vacant Dwelling if the primary Occupant has resided in the Dwelling during the past year and intends to return to residing in such Dwelling on a periodic basis. For the purposes hereof, the term "occupied by at least one person 55 years of age or older" means that (1) at least one Occupant of the Dwelling is 55 years of age or older or (2) if the Dwelling is temporarily vacant, at least one of the Occupants immediately prior to the date on which the Dwelling was temporarily vacated was 55 years of age or older.

(c) Nothing contained in this Section 5.11 is intended to restrict the ownership of or transfer of title to any Lot; provided, however, that no Owner may occupy the Dwelling on any Lot unless the requirements of this Section 5.11 are satisfied. Furthermore, no Owner shall permit the occupancy of any Dwelling on such Owner's Lot in violation of the requirements of this Section 5.11. Each Owner shall be responsible for (i) including a statement that the Dwelling on such Owner's Lot is intended and shall be operated for occupancy by persons 55 years of age or older in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Lot, which agreements or contracts shall be in writing and signed by the tenant or purchaser of such Owner's Lot and (ii) clearly disclosing the restrictions of this Section 5.11 to any prospective tenant, purchaser or other potential Occupant of the

Dwelling on such Owner's Lot. Every lease of a Dwelling shall provide that failure to comply with the requirements and restrictions of this Section 5.11 shall constitute a default under the applicable lease. If required by Cottage Home Developer, each Owner will provide to Cottage Home Developer executed copies of all leases of such Owner's Dwelling which must contain all disclosures and requirements of this Section 5.11. Furthermore, each Owner acknowledges and agrees that any failure to comply with the terms and provisions of this Section 5.11 shall constitute a default by such Owner and a breach by such Owner of such Owner's obligations under this Declaration which will allow Cottage Home Developer to take any and all legal action necessary or required in order to enforce such Owner's compliance with all of the terms and provisions of this Section 5.11.

(d) Any Owner may make a written request to Cottage Home Developer for an exception to the requirements of this Section 5.11 with respect to the Dwelling situated on such Owner's Lot. Cottage Home Developer may, in its sole and absolute discretion (but without obligation to do so), grant exceptions to the requirements of this Section 5.11 so long as the requirements for exemption from the Act will continue to be met following the granting of such exceptions. Cottage Home Developer shall be the sole and exclusive judge as to whether an exception should be granted.

(e) In the event of any change in occupancy of any Dwelling as a result of a transfer of title, the execution of a new lease or sublease, a birth or death, change in marital status, vacancy, change in location of residence or otherwise, the Owner of such Lot shall immediately notify Cottage Home Developer in writing and provide to Cottage Home Developer the names and addresses of all current Occupants of such Owner's Dwelling and such other information as Cottage Home Developer may reasonably require to verify the age of each Occupant of the Dwelling situated on such Owner's Lot. In the event any Owner fails to notify Cottage Home Developer of any such change in occupancy of any Dwelling or fails to provide to Cottage Home Developer any and all required information within ten (10) days after a change in occupancy occurs, such action or inaction shall be deemed to be a default by the Owner of such Dwelling, in which event Cottage Home Developer shall have the right to take any and all action authorized by law in order to enforce the terms and provisions of this Section 5.11.

(f) In order to verify that each Dwelling is satisfying the requirements of this Section 5.11, Cottage Home Developer shall maintain age records on all Occupants of any of the Dwellings situated on any of the Lots. In connection therewith, each Owner and Occupant shall be obligated and required to provide to Cottage Home Developer any and all information requested by Cottage Home Developer concerning the age of each Occupant of any Dwelling, including, without limitation, verifiable information and documentation concerning the ages of all Occupants through any one or more of the following (as may be required by Cottage Home Developer and copies of which may be made and maintained by Cottage Home Developer): (i) driver's licenses, (ii) birth certificates, (iii) passports, (iv) immigration cards, (v) military identification, (vi) any other state, local, national or international official document containing a birth date of comparable reliability or (vii) a certification in a lease, application, purchase/sales contract affidavit or other document signed by any Occupant of a Dwelling who is at least 18 years of age or older certifying under oath that at least one Occupant in the Dwelling is at least 55 years of age or older. Each Owner covenants and agrees to provide, and to cause all Occupants of the Dwelling of such Owner to provide, to Cottage Home Developer any and all

information as may be required from time to time concerning the ages of all Occupants within a Dwelling. In the event any Owner or Occupant fails to provide to Cottage Home Developer any and all required information within ten (10) days after a change in occupancy occurs, such action or inaction shall be deemed to be a default by the Owner of such Dwelling, in which event Cottage Home Developer shall have the right to take any and all action authorized by law in order to enforce the terms and provisions of this Section 5.11.

(g) Cottage Home Developer shall have the right, power and authority to enforce the terms and provisions of this Section 5.11 by exercising all rights and remedies available to Cottage Home Developer at law or in equity, and Cottage Home Developer shall be entitled to take any and all action which it deems necessary or appropriate to monitor compliance and otherwise enforce the terms and provisions of this Section 5.11 in order to preserve the eligibility of the Cottage Homes Property for exemption from the Act. Such actions may include, without limitation, exercising any and all of the rights set forth in this Section 5.11 and taking any action necessary to evict the Occupants of any Lot who are not in compliance with the requirements and restrictions of this Section 5.11. **EACH OWNER HEREBY APPOINTS COTTAGE HOME DEVELOPER AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF SUCH OWNER'S LOT AS NECESSARY TO ENFORCE COMPLIANCE WITH THE TERMS AND PROVISIONS OF THIS SECTION 5.11.**

(h) Each Owner, by acceptance of a deed to any Lot, agrees to indemnify, defend and hold Cottage Home Developer harmless from and against any and all claims, losses, damages, actions, cause of action, liabilities and expenses, including reasonable attorneys' fees and expenses and expenses of other associated professionals which may be suffered, paid or incurred by Cottage Home Developer as a result of the failure of any Owner to comply with all of the terms and provisions of this Section 5.11 or in any and all actions taken by Cottage Home Developer to enforce the terms and provisions of this Section 5.11 with respect to any Occupants of any of the Lots or Dwellings of such Owner.

5.12 Off-Street Parking and Garages.

(a) Each Lot shall provide for off-street parking for at least two (2) automobiles. All Lots shall have enclosed garages (which must be equipped with garage doors). All driveways and sidewalks shall be poured concrete. Garage doors shall be constructed of such materials as are approved by Cottage Home Developer. No detached garages are permitted.

(b) Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of Cottage Home Developer. All automobiles owned or used by the Owner or Occupants of any Dwelling shall be parked in such garages and garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein. Non-operable vehicles shall not be stored in any garages if the same would result in any vehicles being parked outside and not in a garage.

(c) In no event shall any automobiles or other vehicles, machinery or equipment be parked or left unattended on or within (i) any areas of a Lot which are not paved

driveways or enclosed garages or (ii) any Common Areas, including specifically, the Access Roads or any other roads within the Cottage Home Property or any other areas which constitute Common Areas. Vehicles shall be parked only on driveways on a Lot or within garages on a Lot. No vehicles, machinery or equipment shall be (1) repaired or restored outside an enclosed structure (e.g., a garage) on any Lot or (2) placed on any types of blocks or other types of fixtures or personal property which are located outside of an enclosed garage.

(d) No portion of any Lot may be utilized to provide access, ingress to or egress from any property outside the boundaries of the Cottage Home Property without the express prior written consent of Cottage Home Developer, which consent may be withheld by Cottage Home Developer in its sole and absolute discretion.

5.13 **Fences.**

(a) Except for fences which either Cottage Home Developer or Danberry Village Developer may elect to erect as perimeter fencing pursuant to the Lake Heather Agreement or Section 3.10 above, no fences of any kind or material shall be permitted within the Cottage Home Property except as approved by Cottage Home Developer; provided, however, that fences which satisfy the terms and requirements of Sections 5.13(b) through Section 5.13(h) below shall be permitted so long as the plans and specifications for the same are approved by Cottage Home Developer pursuant to the provisions of Section 4.01 above.

(b) Privacy wall screening will be allowed at the edge of patios or interior gardens subject to compliance with the remaining terms and provisions of this Section 5.13. Cottage Home Developer may from time to time adopt (and change) plans, drawings and specifications of typical areas within Lots which are approved for privacy wall screenings.

(c) Any fences or privacy wall screening approved by Cottage Home Developer shall not exceed four (4) feet in height unless otherwise approved by Cottage Home Developer.

(d) Aluminum picket, brick, painted or mortar washed brick, and cast stone are approved materials for all fencing/walls.

(e) Any areas enclosed by privacy wall screening or fences must contain an opening (or gate access) of at least three (3) feet in width in order to provide access to Danberry Village Developer to perform the Danberry Village Landscaping Obligations for such Lot.

(f) The location of all fencing within any Lot must be specifically approved in writing by Cottage Home Developer. Each Owner shall minimize the extension of fencing into the back or side yards of such Owner's Lot so as to allow proper use and maintenance of any drainage systems or drainage easements which are applicable to such Lot or any other Lots within the Cottage Home Property.

(g) Cottage Home Developer may approve modifications or exceptions to the foregoing or may impose stricter requirements depending on the Lot layout (topography) and design of the Dwelling to be constructed on such Lot.

(h) Notwithstanding anything provided in this Declaration to the contrary, in the event Cottage Home Developer approves the construction or installation of any fences on any Lot, then the Owner of such Lot shall be solely responsible for maintaining the same in good condition and repair at all times and the maintenance thereof shall **not** constitute part of the Cottage Home Landscaping Responsibilities of Danberry Village Developer. The grounds of any Lot located inside of such fence (but excluding any fences) shall be maintained by Danberry Village Developer as part of the Cottage Home Landscaping Responsibilities.

5.14 **Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. Cottage Home Developer may adopt guidelines for the specific types of windows, including, without limitation, the materials to be used, for any and all exterior windows on any Dwelling.

(b) Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling if visible from any roadways within the Cottage Home Property. Except for one (1) single-glass (*i.e.*, storm) door which, with Cottage Home Developer's approval, may be maintained on the front door of a Dwelling, no aluminum or metal doors with glass fronts shall be allowed on the front of any Dwelling. All exterior doors on any Dwelling must be approved by Cottage Home Developer as to style, materials used, color, size and types of door hardware to be utilized. Burglar bars on windows and doors shall not be permitted.

5.15 **Mailboxes.** Only one (1) mailbox with a separate, but attached, newspaper slot shall be allowed on any Lot. All mailboxes shall be of the type, design, color and location as may be established or approved by Cottage Home Developer. Mailboxes shall contain only the house number of the Lot as approved by Cottage Home Developer, but no further inscription, lettering, numbering, paintings, ornaments or artistry shall be allowed. In lieu of mailboxes, Cottage Home Developer may, with the consent and approval of Danberry Village Developer, provide within any of the Common Areas a kiosk or a community mail center in the Community Building.

5.16 **HVAC Equipment.** No window mounted heating or air conditioning units or window fans shall be permitted.

5.17 **Satellite Dishes and Antennae.** No satellite dishes shall be allowed on any Lot or Dwelling; provided, however, that one (1) satellite dish no more than one (1) meter in diameter may be installed as a free-standing satellite dish (which shall **not** be attached to any Dwelling or fence) so long as (a) the same is not visible from any roadways within the Cottage Home Property and (b) the location of such satellite dish is approved by Cottage Home Developer. No radio antenna, radio receiver or other similar device or aerial, including citizen's band (*i.e.*, "CB") radios and other short-wave radios antennae or aerials, shall be attached to or installed on any Lot or Dwelling unless the same is (i) contained entirely within the interior of a building or other structure, (ii) not visible from any roadways within the Cottage Home Property or any adjacent Lot or Dwelling and (iii) approved by Cottage Home Developer. No radio or television

signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from or be received by any Lot or Dwelling which may interfere with the (1) emergency response system for the Cottage Home Property and Danberry Village or (2) reception of radio or television signals within the Cottage Home Property or any other real property situated in close proximity to the Cottage Home Property.

5.18 Outdoor Furniture, Clotheslines and Crafts.

(a) Unless otherwise specifically approved by Cottage Home Developer, any yard (exterior) furniture placed, kept, installed, maintained or located in or on any Lot shall, to the greatest extent practicable, be located so that the same will not be visible from any roadways within the Cottage Home Property. No interior furniture or furnishings (*i.e.*, sofas, appliances, etc.) shall be allowed outside any Dwelling. Any yard (exterior) furniture which Cottage Home Developer has authorized on a Lot must be maintained in good condition and repair at all times by the Owner of such Lot.

(b) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only in the rear or side yard of a Dwelling and shall not be visible from any roadways within the Cottage Home Property. No playground equipment, basketball, volleyball and/or soccer goals, trampolines or similar outdoor sports, recreational or other types of fitness equipment will be permitted on any Lot.

(c) Bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front yards of any Lot nor shall any of the foregoing items be attached to the front of any Dwelling. All bird feeders, wood carvings, plaques and other types of homecrafts shall be located only in the rear or side yard of a Dwelling and shall not be visible from any roadways within the Cottage Home Property.

(d) Arbors, gazebos, greenhouses and other structures will be allowed in the rear or side yard of a Lot so long as the style, size, location, materials, paint color and all other aspects thereof have been approved in writing by Cottage Home Developer.

5.19 Pets and Animals. No animals, reptiles, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner or Occupant upon or within any Lot or Dwelling; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot or within a Dwelling so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs, dog pens and other confined areas and spaces) shall be located at the rear of a Dwelling, shall not be visible from any roadways within the Cottage Home Property or from any adjoining Lot or Dwelling and shall be constructed of materials and of a size and in a location approved by Cottage Home Developer. Dogs and cats shall not be allowed to roam unattended within the Cottage Home Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot, which are screened with appropriate landscaping approved by Cottage Home Developer, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot of any other Owner, within any of the Common Areas,

or on any other portion of the Cottage Home Property or Danberry Village and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to Danberry Village Developer for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant.

5.20 Trash, Rubbish and Nuisances.

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Cottage Home Property or any of the Common Areas nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots within the Cottage Home Property or any other real property in close proximity to the Cottage Home Property. Noxious or offensive activities shall not be carried on in or from any Lot or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use 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 Cottage Home Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, 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 Dwelling. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on such Owner's or Occupant's Lot, on any other portion of the Common Areas or on any portion of Danberry Village shall be liable to either Cottage Home Developer or Danberry Village Developer for all costs incurred by either of them to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept inside the Dwelling's garage or at the rear of the Dwelling and shall be screened from view from all roadways within the Cottage Home Property and all adjacent Lots and Dwellings by appropriate landscaping or fencing. No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot.

5.21 Recreational Vehicles and Machinery and Equipment.

(a) Subject to the provisions of Section 5.21(c) below, mobile homes, motor homes, travel trailers, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts (whether electric, battery, solar or powered by any other means), all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any type or nature, boats and any other type of watercraft, including boat trailers, and any other similar types 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 which must be attached to a Dwelling, with roofing and doors. Any such enclosed structure must be approved by Cottage Home Developer. The Common Areas shall not be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

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

(c) Golf carts (and other electric or alternative fuel-powered vehicles approved by Cottage Home Developer) may be operated within the Cottage Home Property so long as (i) such operation is in compliance with all applicable laws, statutes, ordinances, rules, regulations and requirements of all applicable Governmental Authorities and (ii) all golf carts (and other approved vehicles) are parked (or stored) when not being operated in a location which is not visible from any of the streets or roadways within the Cottage Home Property.

5.22 **Signage.** Except for signage erected, placed or maintained by either Cottage Home Developer or Danberry Village Developer within the Cottage Home Property or any signage erected, placed or maintained on or within the Common Areas, no signs or advertising posters of any kind, including, without limitation, "for sale" or "for lease" signs, political/campaign signs and posters, home improvement signs, garage sale signs or any other types of signs, or any banners, flags or advertising posters, shall be maintained or permitted within any windows of any Dwelling or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Cottage Home Property or the Common Areas.

5.23 **Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse 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) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened with landscaping from view from all roadways within the Cottage Home Property and all adjacent Lots and have been approved by Cottage Home Developer, (b) temporary structures for social functions as may be permitted by the rules and regulations of Cottage Home Developer and (c) construction trailers and/or sales offices of Cottage Home Developer and Danberry Village Developer.

5.24 **Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of Cottage Home Developer; provided, however, that the provisions of this Section 5.24 shall not be applicable to the subdivision, resubdivision or combination of any Lots or other real property owned by Cottage Home Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs; provided, however, that the provisions of this Section 5.24 shall not be applicable to Cottage Home Developer and any Lots or Dwellings owned by Cottage Home Developer or in which Cottage Home Developer has any interest.

5.25 **Above or Below 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. No private water wells may be drilled or maintained on any Lot and no septic tanks or similar sewage facilities may be installed or maintained on any Lot without the prior written consent of Cottage Home

Developer. To the extent available, each Lot shall utilize public sewage systems for the discharge of sewage from such Lot.

5.26 Swimming Pools and Enclosures. Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, fountains and similar water features may be constructed, installed and maintained on a Lot but only to the extent that Cottage Home Developer has approved the same in writing and the same are constructed in accordance with all restrictions and requirements imposed by Cottage Home Developer with respect thereto. Above-ground pools, ponds, hot tubs, saunas, whirlpools, lap pools, fountains and other similar water features shall not be permitted. No enclosures which enclose swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, fountains and similar water features shall be allowed unless specifically approved in writing by Cottage Home Developer. All such swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, fountains and other water features must also satisfy all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities, subject, in each instance, to the prior written approval by Cottage Home Developer of any Improvements to be constructed on any Lot.

5.27 Construction of Improvements.

(a) During the construction of any Improvements on a Lot, (i) such Lot 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 the Cottage Home Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside of the Cottage Home Property at least weekly. Used construction materials may not be burned on site. In no event, shall any used construction materials be buried on or beneath any Lot or on any other portion of the Cottage Home Property, any of the Common Areas of any of the real property comprising the Cottage Home Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within the Cottage Home Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all 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 the Cottage Home Property.

(b) During the construction of any Improvements to the Lot, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas (including, specifically, the Access Roads, (ii) utilize off- street parking only, (iii) enter the Lot on which such Improvements are being constructed only from the driveway from such Lot and (iv) not damage trees or other vegetation on such Lot or on or within any other portions of the Cottage Home Property. 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 Cottage Home Property, including, specifically, the Access Roads. 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) All Dwellings and any other Improvements to be constructed on a Lot shall comply with all applicable laws, ordinances, rules, regulations and zoning and building code requirements of the applicable Governmental Authorities.

(d) All additions, renovations and alterations to any existing Improvements must be approved in writing by Cottage Home Developer or its successors and assigns.

5.28 Soil Erosion and Drainage. Each Owner shall provide and maintain on his or her Lot adequate soil erosion measures and drainage facilities to accommodate any storm water runoff resulting from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also insure that his or her 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 runoff requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements and rulings on any Governmental Authorities. Each Owner shall be solely responsible for providing adequate storm water drainage improvements and facilities on such Owner's Lot which shall 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 adjoining Lots and Common Areas. Each Owner, by acceptance of a deed to his or her Lot, shall and does hereby indemnify, defend and agree to hold Cottage Home Developer, Danberry Village Developer and their respective agents, employees, officers, directors, shareholders, members, managers and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and expenses, and any other amounts suffered, paid or incurred by Cottage Home Developer, Danberry Village Developer and any of their respective agents, employees, officers, directors, shareholders and members, managers and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, Guests, agents, employees or invitees) of any of the terms and provisions of this Section 5.28.

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

5.30 Additional Regulations. In addition to the restrictions set forth in this Declaration, Cottage Home Developer shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend such rules and regulations as Cottage Home Developer determines to be in the best interests of all Owners and Occupants, which rules and regulations shall be binding on all Owners and Occupants.

5.31 Variances. Cottage Home Developer, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article IV above and this Article V with respect to any Lot or Dwelling. Any variance request submitted to Cottage Home Developer shall be in writing and, upon approval of the same by Cottage Home Developer, shall be evidenced by a written variance executed by Cottage Home Developer.

5.32 **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 aspects by any Owner or Occupant or any of their respective Guests following five (5) days written notice of such breach or noncompliance, then Cottage Home Developer shall have the right, at its option, to (a) enjoin such violation or noncompliance and/or (b) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by Cottage Home Developer in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees and expenses, 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 Cottage Home Developer in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article V, shall constitute an Individual Assessment to such Owner pursuant to Section 7.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 7.06 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of Cottage Home Developer set forth herein shall not be deemed exclusive of any other rights and remedies which Cottage Home Developer may exercise at law or in equity or any of the enforcement rights specified in this Declaration.

ARTICLE VI SERVICE AND MAINTENANCE RESPONSIBILITIES

6.01 **Common Area Maintenance and Service Responsibilities of Danberry Village Developer.**

(a) Contemporaneously herewith, Cottage Home Developer has transferred and assigned to Danberry Village Developer and Danberry Village Developer has accepted and assumed all of the rights and obligations of Cottage Home Developer under the Lake Heather Agreement. Subject to the remaining terms and provisions of this Section 6.01, the provisions of Sections 8.01 and 8.03 below, and the timely and prompt payment by all Owners of all Regular Assessments and Special Assessments, if any, payable by such Owners to Danberry Village Developer, Danberry Village Developer covenants and agrees to (i) maintain all of the Common Areas in good condition and repair, (ii) provide 24-hour monitoring services for the emergency response system to be installed within each Dwelling, (iii) provide certain scheduled transportation services to the Occupants (which transportation schedule and services are subject to change from time to time, as determined by Danberry Village Developer in its sole discretion) and (iv) perform all of the obligations of Cottage Home Developer under or with respect to the Lake Heather Agreement (collectively, the "Common Areas Maintenance and Service Responsibilities"). Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that (1) any maintenance, cleaning, repair or replacement obligations incurred by Danberry Village Developer with respect to any of the Common Areas which are caused by any Owner, Occupant or their respective Guests, shall be paid for solely by such Owner, (2) any maintenance, repair or replacement obligations incurred by Danberry Village Developer or any costs and expenses paid or incurred by Danberry Village Developer under the Lake Heather Agreement which result from the violation by any Owner, Occupant or their respective Guests of any of the terms and provisions of the Lake Heather

Agreement shall be paid for solely by such Owner, (3) Danberry Village Developer shall have no obligation of any nature with respect to the maintenance, repair, upkeep or replacement of any portion of the emergency response system situated inside of any Dwelling or any wiring for the same, whether located inside, outside, above or underneath any Dwelling, (4) the Owner or Occupant of each Lot or Dwelling shall be responsible for all costs of any transportation services requested by any Occupant which are either not within the scheduled transportation times published from time to time by Danberry Village Developer or relate to transportation to areas or places which are not normally and customarily provided to all other Occupants of the Cottage Home Property and (5) Danberry Village Developer's obligation to perform any of the Common Area Maintenance and Service Responsibilities shall be subject to any delays occasioned or caused by any matters of Force Majeure.

(b) Each Owner, for such Owner and all Occupants of such Owner's Lot or Dwelling, does hereby covenant and agree (i) to provide to Danberry Village Developer a key to the Dwelling of such Owner or Occupant, which key may be utilized by Danberry Village Developer solely in connection with the 24-hour monitoring services provided via the emergency response system to be installed within each Dwelling (or, in lieu thereof, each Owner, for such Owner and all Occupants of such Owner's Lot or Dwelling, does hereby acknowledge and agree that Danberry Village Developer may, in Danberry Village Developer's sole and absolute discretion, utilize a master key for all Dwellings within the Cottage Home Property in order to provide the foregoing limited access by Danberry Village Developer to such Owner's Dwelling) and (ii) in the event any Owner or Occupant changes any of the locks, installs additional locks (including dead-bolt locks) or other means which limit or restrict access to such Owner's Dwelling, then the ability of Danberry Village Developer to provide any assistance via the emergency response system will be denied and Danberry Village Developer shall have no further right or obligation to undertake any monitoring services with respect to such Owner's Dwelling. **Notwithstanding anything provided herein to the contrary, each Owner, for such Owner and all Occupants of such Owner's Lot or Dwelling, does hereby acknowledge and agree that neither Cottage Home Developer nor Danberry Village Developer shall have any liability of any nature whatsoever with respect to (1) any failure or defects in the emergency response system installed in such Owner's Dwelling, (2) any responsibility to maintain or repair any portion or any components of the emergency response system situated on or within the Lot or Dwelling of any Owner, (3) the inability of Danberry Village Developer to respond to any call on such emergency response system due to any barriers, locks or other devices installed by any Owner or Occupant within a Dwelling which limit, restrict or inhibit Danberry Village Developer's access to such Dwelling, (4) any delays encountered by Danberry Village Developer as a result of matters of Force Majeure or (5) any Casualty, including, without limitation, power outages, surges or lightning strikes, which result in or cause any malfunctions in the emergency response system. Neither Cottage Home Developer nor Danberry Village Developer warrants or represents that any responses to any calls to Danberry Village Developer issued by any Owner or Occupant will occur within any particular period of time and each Owner, for such Owner and all Occupants of such Owner's Dwelling, does hereby waive and release Cottage Home Developer and Danberry Village Developer from and against any and all liability of any nature with respect to Danberry Village Developer's failure to respond to any call on the emergency response system within any specific period of time.**

6.02 Cottage Home Landscaping Responsibilities.

(a) Subject to the terms and provisions of Section 6.02(b) below and the timely and prompt payment by all Owners of Regular Assessments and Special Assessments, if any, payable by such Owners to Danberry Village Developer, Danberry Village Developer covenants and agrees to provide the following (collectively, the "Cottage Home Landscaping Responsibilities") with respect to all Lots and Dwellings within the Cottage Home Property: (i) routine landscaping maintenance on each Lot such as cutting grass and lawns, (ii) periodic lawn fertilizing and weed control, (iii) raking leaves and the removal of grass clippings and leaves from all Lots, (iv) trimming shrubbery and (v) replacing all dead shrubbery on any Lot (subject, however, in each case, to the provisions of Section 5.07(a) above);

(b) Notwithstanding anything provided in Section 6.02(a) above to the contrary, Danberry Village Developer shall have no obligation of any nature to perform any of the Cottage Home Landscaping Responsibilities to the extent (i) of any damage to or destruction of any portion of any Lot or Dwelling caused by or resulting from any Casualty or by virtue of any condemnation, eminent domain proceeding or other taking (in which event the Owner of such Lot shall be solely responsible for all such maintenance and repair obligations resulting therefrom as more particularly provided in Sections 8.02 and 8.04 below, respectively), (ii) any maintenance, cleaning, repair or replacement obligations for which Danberry Village Developer is responsible hereunder which is caused by the willful or negligent act or omission of any Owner, Occupant or their respective Guests shall be performed solely by the Owner of such Lot and (iii) Danberry Village Developer determines, in its reasonable discretion, that any Cottage Home Landscaping Responsibilities for any particular Lot are increased as a result of any additional landscaping or other Improvements made to such Lot by the Owner thereof, in which event Danberry Village Developer shall, at its option, have the right to either (1) undertake such additional maintenance, cleaning, repair or replacement obligations and bill to such Owner any such additional costs or expenses paid or incurred by Danberry Village Developer which Danberry Village Developer, in its discretion, determines to be applicable to such Lot or improvements, which additional costs and expenses shall constitute Individual Assessments hereunder or (2) elect not to undertake any such maintenance, cleaning, repair or replacement obligations, in which event the Owner of such Lot or Dwelling shall cause all such maintenance, cleaning, repair and replacement obligations to be performed in a good and workmanlike manner.

6.03 Responsibilities of Owners. Except as expressly provided in Section 6.02(a) above, the Owner of each Lot shall be solely responsible for and provide on a routine basis all necessary maintenance and repair of all portions of such Owner's Lot and Dwelling and any and all other Improvements situated thereon including, without limitation, (a) all interior and exterior portions of any Dwelling, including repainting and reroofing such Dwelling, (b) any additional landscaping installed, erected, placed or planted on any Lot by any Owner or Occupant pursuant to the provisions of Section 5.07(a) above, (c) any fences erected or placed on any Lot by any Owner or Occupant pursuant to the provisions of Section 5.13 above, (d) all doors, windows and window glass, doorknobs, locks, driveways, walkways, sidewalks, patios, exterior lighting and light fixtures and all utility lines, pipes, conduit, equipment and other apparatus located on, under or within such Owner's Lot or Dwelling, (e) any and all other portions of such Owner's Lot and Dwelling which are not specifically being maintained by Danberry Village Developer pursuant

to the terms and provisions of Section 6.02 above, (f) any damage to or destruction of any Lot or Dwelling resulting from any 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 any private purchase in lieu thereof, (g) all other portions of such Owner's Lot which such Owner (and not Danberry Village Developer) is obligated to maintain pursuant to the terms and provisions of Sections 6.02 and 6.03 above and (h) all portions of such Owner's Lot to the extent a Dwelling has not been completed thereon (as such completion is evidenced by the issuance of a certificate of occupancy for such Dwelling by the appropriate Governmental Authority).

6.04 Owner's Failure to Maintain. In the event that Danberry Village Developer determines that (a) 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 such Owner is responsible hereunder including, without limitation, any maintenance obligations of any Owner set forth in Sections 6.01, 6.02 and 6.03 above, or (b) any maintenance, cleaning, repair or replacement for which Danberry Village Developer is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective Guests, then, Danberry Village Developer, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of Danberry Village Developer'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 fourteen (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 fourteen (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, Danberry Village Developer may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 7.06 below.

ARTICLE VII ASSESSMENTS

7.01 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 (a) to Danberry Village Developer, Regular Assessments, as established and to be collected as provided in Section 7.03 below, (b) to Danberry Village Developer, Special Assessments, to be established and collected as provided in Section 7.04 below, and (c) to Danberry Village Developer or to Cottage Home Developer, as applicable, Individual Assessments which are established or assessed pursuant to Section 7.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 7.06(a) below, and all court costs and attorneys' fees and expenses incurred by either Cottage Home Developer or Danberry Village Developer to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot and all Improvements thereto for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the

manner provided in Section 7.06(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he or she is the Owner of a Lot and his or her grantee shall take title to such Lot and all Improvements thereto subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to either Cottage Home Developer or Danberry Village Developer which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 7.06(a) below, court costs and attorneys' fees incurred with respect thereto by either Cottage Home Developer or Danberry Village Developer 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. The Owner of a Lot shall be liable for all Assessments notwithstanding any lease or other arrangement between an Owner and the Occupant of any Owner's Lot to the contrary. Assessments shall commence as to each Lot as provided in Section 7.02 below and be paid in such manner and on such dates as provided in this Article VII. 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 or any of the Common Areas or any other cause or reason of any nature.

7.02 Uniform Rate, Commencement and Use of Assessments.

(a) Subject to the provisions of Section 7.03(c) below, both Regular Assessments and Special Assessments, as described in Sections 7.03 and 7.04 below, shall be assessed against each Lot at a uniform rate, with the Owner of each Lot (other than Danberry Village Developer or any Affiliates thereof) being required to pay the same amount of such Regular Assessments and Special Assessments.

(b) Both Regular Assessments and Special Assessments, as described in Sections 7.03 and 7.04 below, shall commence as to each Lot on the day on which a Dwelling has been completed on that Lot (as evidenced by the issuance of a certificate of occupancy for such Dwelling by the appropriate Governmental Authority), subject to proration for the remainder of the then calendar year or calendar month in which such Dwelling was completed. Both Regular Assessments and Special Assessments, if any, for any Lots within any Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the day on which a Dwelling has been completed on such Lot (as evidenced by the issuance of a certificate of occupancy for such Dwelling by the appropriate Governmental Authority), subject to proration for the remainder of the then calendar year or calendar month in which a Dwelling was completed on such Lot.

(c) Individual Assessments may be levied at any time following the conveyance of a Lot to any Owner other than Cottage Home Developer or any Affiliates thereof.

(d) Regular Assessments, including any reserves established by Danberry Village Developer from Regular Assessments, shall be utilized by Danberry Village Developer in performing and/or paying the Danberry Village Developer Obligations as well as for any

legal, accounting, engineering, architectural, property management and other professional fees and expenses which may be incurred by Cottage Home Developer, Danberry Village Developer and any of their respective Affiliates (collectively, the "Affiliated Parties") in connection with the performance of any of their respective obligations under this Declaration or in connection with any claims made by any Owners, Occupants or Guests against any of the Affiliated Parties arising out of or in connection with the development of the Cottage Home Property or the construction of any Dwellings therein.

7.03 Regular Assessments.

(a) Subject to the provisions of Section 7.02 above relating to the proration of Regular Assessments and the provisions of Section 7.03(c) below, each Owner of a Lot within the Cottage Home Property (other than Cottage Home Developer and Danberry Village Developer) covenants and agrees to pay to Danberry Village Developer, as a partial deferment of the costs incurred or to be incurred by Danberry Village Developer in performing and/or paying the Danberry Village Developer Obligations and in providing to the Owners and Occupants the rights and privileges granted pursuant to this Declaration, regular assessments (collectively, the "Regular Assessments") in an amount to be determined from time to time by Danberry Village Developer.

(b) Regular Assessments shall be due and payable in advance on the first day of each month and, if not paid by the 10th day of each month, shall thereafter bear interest at the Applicable Rate, as hereinafter defined.

(c) The Regular Assessments payable with respect to each Lot shall commence as provided in Section 7.02(b) above and shall be assessed against and to all Lots at a uniform and equal rate; provided, however, that if the Owner or Occupant of any Lot elects not to utilize the license to use an Inverness Sports Plus Membership as provided in Section 3.11(a) above, then such Owner's Regular Assessments shall not include Inverness Sports Plus Membership Dues.

7.04 Special Assessments. In addition to the Regular Assessments authorized in Section 7.03 above and the Special Assessments authorized in Sections 8.01(b) and 8.03(a)(i) hereof, Danberry Village Developer may levy in any year Special Assessments for any extraordinary costs incurred by Danberry Village Developer in performing any of the Danberry Village Developer Obligations; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Sections 8.01(b) and 8.03(b) hereof) must be approved by a majority of all of the Owners (including Cottage Home Developer and Danberry Village Developer to the extent of any Lots owned by either of them). As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 7.04 or Sections 8.01(b) and 8.03(b) hereof. Danberry Village Developer may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in Danberry Village Developer'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 7.02 hereof. **No vote or approval of the Owners is required for any Special Assessments levied by Danberry Village Developer pursuant to Sections 8.01(b) and 8.03(a)(i) below.**

7.05 Individual Assessments. Each of Cottage Home Developer and Danberry Village Developer may, in their sole discretion, at any time and from time to time, levy and assess as individual assessments against the Owner of any Lot (collectively, "Individual Assessments") the following: (a) any costs or expenses incurred by either Cottage Home Developer or Danberry Village Developer as a result of the failure of such Owner, or the Occupant or Guests of an Owner or Occupant, to at all times observe and perform their respective duties and obligations under this Declaration and (b) any costs and expenses incurred by either Cottage Home Developer or Danberry Village Developer pursuant to Sections 4.04 and 5.32, 6.01, 6.02, 6.03 and 6.04 above or under Article X below. No consent or approval of any Owner shall be required for the levy of an Individual Assessment.

7.06 Effect of Non-Payment; Remedies.

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to either Cottage Home Developer or Danberry Village Developer, as applicable, all Assessments provided for herein. In the event any Assessments or any portions thereof are not paid in full by the due date specified in such billing statement or invoice (which due date shall be at least 10 days from the statement billing date or invoice date), then (i) the Owner of such Lot or Dwelling shall be deemed in default hereunder, (ii) any unpaid Regular Assessments for the remainder of the then applicable calendar year shall be accelerated and shall be due and payable in full and (iii) the unpaid portion of the Assessments 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 due date of such Assessments (as specified in such billing statement or invoice) until the same have been paid in full. In the event either Cottage Home Developer or Danberry Village Developer 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 either Cottage Home Developer or Danberry Village Developer. The lien and equitable charge upon each Lot and all Improvements thereto for Assessments shall also include interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by either Cottage Home Developer or Danberry Village Developer in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days from the due date of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, either Cottage Home Developer or Danberry Village Developer, as applicable, may undertake any or all of the following remedies:

(i) Either Cottage Home Developer or Danberry Village Developer, as applicable, 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 interest at the Applicable Rate, together with attorneys' fees, court costs and all other expenses paid and incurred by either Cottage Home Developer or Danberry Village Developer in collecting such unpaid Assessments; and/or

(ii) Either Cottage Home Developer or Danberry Village Developer, as applicable, may enforce the lien created pursuant to Sections 7.01 and 7.06(c) hereof in the manner hereinafter provided; and/or

(iii) Danberry Village Developer may suspend or permanently terminate any of the Danberry Village Developer Obligations to be provided to such Owner or Occupant or the right and privilege of such Owner or Occupant and their respective Guests to use any portion of the Community Building or any of the Common Areas.

(c) There is hereby created a continuing lien on each Lot and all Improvements thereto, with power of sale, which secures the payment to either Cottage Home Developer or Danberry Village Developer, as applicable, of any and all Assessments levied against or upon such Lot, interest at the Applicable Rate and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by either Cottage Home Developer or Danberry Village Developer in collecting any Assessments. If any portion of any Assessments remains unpaid for more than thirty (30) days from the due date of such Assessments, then either Cottage Home Developer or Danberry Village Developer, as applicable, 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 five (5) days after the giving of such demand or, even without giving demand, either Cottage Home Developer or Danberry Village Developer, as applicable, may file a claim of lien and perfect its lien against the Lot and all Improvements thereto of such delinquent Owner, which claim shall be executed by either Cottage Home Developer or Danberry Village Developer, as applicable, 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 and any Improvements thereto upon which the lien claim is made;

(iii) The total amount claimed to be due including interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(iv) A statement that the claim of lien is made pursuant to this Declaration and is claimed against such Lot and all Improvements thereto in an amount equal to that stated therein.

The lien provided for herein shall be in favor of either Cottage Home Developer or Danberry Village Developer, as applicable, and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. Each of Cottage Home Developer and Danberry Village Developer 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 each of Cottage Home Developer and Danberry Village Developer and their respective agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in each of Cottage Home Developer and Danberry Village Developer and their respective 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.

7.07 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot and any Improvements thereto 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 either Cottage Home Developer or Danberry Village Developer pursuant to Section 7.06(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 and any Improvements thereto, 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 either Cottage Home Developer or Danberry Village Developer pursuant to Section 7.06(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot and any Improvements thereto from and after the date of such foreclosure sale and (c) be bound by all of the terms and provisions of this Declaration, including, specifically, the restrictions on the ages of Occupants set forth in Section 5.11 above and the right of first offer set forth in Article XI below. The foregoing shall not relieve any Owner whose Lot and any Improvements thereto has been foreclosed from the personal obligation to pay all Assessments and other charges levied, assessed or incurred by either Cottage Home Developer or Danberry Village Developer and each of Cottage Home Developer and Danberry Village Developer 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.

7.08 Certificates. Each of Cottage Home Developer and Danberry Village Developer shall, upon request and at such reasonable charges as may from time to time be adopted by each of Cottage Home Developer and Danberry Village Developer, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE VIII
CASUALTY, CONDEMNATION, INSURANCE AND TAXES

8.01 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas by any Casualty, then, subject to the terms and provisions of this Article VIII, Danberry Village Developer shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such Casualty.

(b) Notwithstanding anything provided to the contrary in Section 8.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such Casualty 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 Danberry Village Developer 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 Casualty and (ii) levied against each Owner equally as provided in Section 7.02 above. Any and all insurance proceeds received by Danberry Village Developer on account of any damage to or destruction of any of the Common Areas or any sums paid to Danberry Village Developer under or by virtue of such Special Assessments shall be disbursed and utilized by Danberry Village Developer for the payment of the costs of such repair or restoration. 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.

8.02 Damage or Destruction to Lots or Improvements. If, as a result of any Casualty, any portion of any Lot or any Improvements thereto are damaged or destroyed, then (a) the provisions of Section 6.02 above with regard to the Danberry Village Developer Obligations shall not be applicable and Danberry Village Developer shall have no obligation to repair or restore any Lot or any Improvements thereto damaged or destroyed by any Casualty and (b) the Owner of such damaged Lot shall promptly repair and otherwise restore such Lot and all Improvements thereto to the condition to which the same existed immediately prior to such Casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Articles IV and V 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 Casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

8.03 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 and remain the Cottage Home Property of Danberry Village Developer and no Owner or Mortgagee shall be entitled to any portion of such award.

(b) To the extent any Common Areas subject to any such taking can either be restored or replaced, then, to the extent practicable, Danberry Village Developer shall promptly repair, replace and restore those portions of the Common Areas subject to such taking. If the award received by Danberry Village Developer for such any such taking 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 Danberry Village Developer 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 of repair, restoration or reconstruction of any of the Common Areas and (ii) levied against each Owner equally as provided in Section 7.02 above.

(c) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands cannot be purchased by Danberry Village Developer in order to repair, replace or restore the Common Areas so taken or if Danberry Village Developer shall determine, in its sole discretion, that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the entire award from such taking shall be retained by and for the benefit of Danberry Village Developer and no Owner or Mortgagee shall be entitled to any portion of such award.

(d) 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 Danberry Village Developer 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 Danberry Village Developer may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

8.04 Condemnation of Lots. In the event that all or any portion of a Lot is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article IV 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 or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

8.05 **Owner Insurance.**

(a) Each Owner shall at all times obtain and maintain the following types of insurance with respect to his or her Lot and all Improvements situated thereon:

(i) Broad form fire and extended coverage insurance coverage (or homeowners' insurance coverage) in an amount equal to the full replacement cost of all Improvements situated on such Owner's Lot; and

(ii) General liability insurance coverage (or public liability coverage included as part of the homeowners' insurance coverage maintained by such Owner) in an amount not less than \$100,000 combined single limit for bodily injury, death and property damage.

(b) Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot, does hereby irrevocably waive and release Cottage Home Developer, Danberry Village Developer and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, from and against any and all liabilities or responsibilities or any other claims by, through or under such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) the broad form fire and extended coverage insurance (or homeowner's insurance coverage) specified above, even if such loss or damage has been caused by the fault of negligence of Cottage Home Developer, Danberry Village Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

(c) Each Owner shall be solely responsible for filing any and all claims for payment of any insurance benefits arising as a result of any Casualty to such Owner's Lot and any Improvements thereto and paying any and all deductible amounts required to be paid under such insurance policies.

8.06 **Indemnity.** Each Owner hereby irrevocably and unconditionally waives and releases any and all claims against Cottage Home Developer and Danberry Village Developer for damages to personal property occurring in, on, about or upon the Common Areas and does hereby indemnify, agree to defend and hold Cottage Home Developer and Danberry Village Developer harmless from and against all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) of any nature arising out of or in connection with any injury or damage to personal property occurring in, on or about such Owner's Lot or any of the Common Areas caused by or resulting from any negligent act or omission or any willful act or omission of any Owner or any Occupant or Guest thereof.

8.07 **Taxes.** Real estate ad valorem taxes, if any, assessed against any of the Common Areas shall be paid by Danberry Village Developer and shall be included as part of the Regular Assessments payable by the Owner of each Lot within the Cottage Home Property. Each Owner shall be solely responsible for the payment of any and all ad valorem real estate taxes and assessments and any other assessments of any nature levied by any of the Governmental Authorities against the Lot, the Dwelling and any other Improvements situated on such Owner's Lot.

ARTICLE IX TERM AND AMENDMENTS

9.01 **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Cottage Home 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 both Danberry Village Developer and eighty percent (80%) of all Owners 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.

9.02 **Amendments.**

(a) Until such time as Cottage Home Developer or any Affiliates of Cottage Home Developer no longer own any Lots within the Cottage Home Property, Cottage Home Developer shall have the sole and exclusive right (but only with the prior written consent and approval of Danberry Village Developer) to amend this Declaration at any time and from time to time without any obligation or requirement to obtain the consent or approval of any Owner, Occupant or Mortgagee to such amendment; provided, however, that (i) all amendments made to this Declaration pursuant to this Section 9.02(a) must be approved in writing by Danberry Village Developer and (ii) in the event any amendment proposed by Cottage Home Developer materially and adversely alters or changes the rights of any Owner to the use of his or her Lot or Dwelling, as determined solely by Cottage Home Developer, in its reasonable discretion, then such amendment shall be valid only upon the written consent of (1) both Cottage Home Developer and Danberry Village Developer and (2) fifty-one percent (51%) of all Owners (including Cottage Home Developer, Danberry Village Developer and their respective Affiliates, to the extent any of them own any Lots in which event Cottage Home Developer, Danberry Village Developer and their respective Affiliates shall have the voting rights attributable to any Lots owned by any of them).

(b) From and after the date on which neither Cottage Home Developer nor any Affiliates thereof own any Lots within the Cottage Home Property, then any amendments to this Declaration shall be proposed and adopted only upon the written consent of both (i) Danberry Village Developer and (ii) the Owners of at least eighty percent (80%) of all of the Lots.

(c) Any and all amendments which have been approved in accordance with the terms and provisions of this Section 9.02 shall be executed by all parties whose consent to the same is required and shall be effective upon recording of the same in the Probate Office.

ARTICLE X ENFORCEMENT

10.01 **Authority and Enforcement.** In addition to the provisions of Sections 4.04 and 5.32 above, in the event any Owner, Occupant or any of their respective Guests violates any of the provisions of this Declaration or any other rules and regulations adopted by either Cottage Home Developer or Danberry Village Developer from time to time, then each of Cottage Home Developer and Danberry Village Developer shall have the power and right, at its option, to (a) enjoin such violation or noncompliance, (b) impose monetary fines which shall constitute an Individual Assessment, (c) suspend or permanently terminate providing any of the Danberry Village Developer Obligations to such Owner or any Occupants of the Dwelling of such Owner or the right and privilege of such Owner or Occupant and their respective Guests to use the Community Building or any of the Common Areas or (d) exercise any other rights and remedies set forth herein, and each of Cottage Home Developer and Danberry Village Developer shall have the power to impose all or any combination of any of the foregoing sanctions. Any suspension or termination of rights or privileges with respect to providing any of the Danberry Village Developer Obligations or the use of the Community Building or any of the Common Areas may be for the duration of the infraction as well as for any additional time (including a permanent suspension of rights) after the cure of such infraction as Danberry Village Developer may, in its sole discretion, determine.

10.02 **Procedure.** In the event any of the terms or provisions of this Declaration or any rules and regulations adopted from time to time by either Cottage Home Developer or Danberry Village Developer are violated by any Owner or Occupant or any of their respective Guests, neither Cottage Home Developer nor Danberry Village Developer shall impose a fine or suspend or terminate any rights pursuant to Section 10.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

- (a) The alleged violation;
- (b) The action required to abate such violation;
- (c) That, within five (5) days following the giving of such written demand by Danberry Village Developer, such Owner shall have the right to appear before Cottage Home Developer or Danberry Village Developer (or its respective designated representatives), as applicable, to contest and appeal such alleged violation or the action required to abate such violation: and
- (d) If such Owner fails to appeal such alleged violation as provided in Section 10.02(c) above or if an appeal is made but is denied, then such Owner shall be obligated, within five (5) days following the date of such appeal, to cure such alleged violation in accordance with the terms of such demand.

The foregoing procedure shall only be applicable to the enforcement rights specified in Section 10.01 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.

10.03 **Arbitration.** In addition to the rights and remedies set forth in this Article X, each Owner acknowledges and agrees that any controversy or claim arising under this Declaration or the breach thereof (other than the obligation to pay Assessments in accordance with the terms and provisions of Article VII above, in which event the rights and remedies set forth in Article VII above shall at all time control) shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with the costs and expenses of the prevailing party in such arbitration proceeding, including, specifically, attorneys' fees and expenses, being assessed to the non-prevailing party. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each Owner, by acceptance of a deed to a Lot, shall be deemed to acknowledge and agree, for such Owner and any Occupants of any Dwelling situated on such Owner's Lot, that this Declaration and the performance by each Owner, Cottage Home Developer and Danberry Village Developer of their respective duties and obligations contemplated herein, which include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act (9 U.S.C. § 1, et seq.). The site of any arbitration will be Birmingham, Alabama. Each Owner, by acceptance of a deed to any Lot acknowledges and agrees that the foregoing provisions constitute an election by Owner, Cottage Home Developer and Danberry Village Developer to resolve all claims, disputes and controversies under this Declaration (other than the obligation to pay Assessments in accordance with the terms and provisions of Article VII above, in which event the rights and remedies set forth in Article VII above shall at all times control) by arbitration rather than judicial process. IT IS UNDERSTOOD THAT, EXCEPT AS SPECIFICALLY PROVIDED ABOVE REGARDING THE PAYMENT AND ENFORCEMENT OF ASSESSMENTS, COTTAGE HOME DEVELOPER, Danberry Village Developer AND EACH OWNER HAS VOLUNTARILY CHOSEN TO ARBITRATE THEIR DISPUTES IN LIEU OF RESOLVING DISPUTES BY A JURY TRIAL OR A TRIAL IN COURT. The parties understand that the rules applicable to arbitrations and the rights of parties in arbitration differ from the rules and rights applicable in any court. Any award rendered by the arbitrator or arbitrators shall be final.

10.04 **Non-Exclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article X are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which either Cottage Home Developer or Danberry Village Developer would have the right to exercise at law or in equity.

10.05 **Attorneys' Fees and Arbitration Expenses.** To the extent either Cottage Home Developer or Danberry Village Developer undertakes any action necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration by any Owner or Occupant, then all costs and expenses incurred by either Cottage Home Developer or Danberry Village Developer, including, without limitation, attorneys' fees and expenses, fees and expenses of any associated professionals and court costs and all costs of any arbitration proceeding, in enforcing any of the terms, provisions, covenants or conditions of this Declaration shall be paid for by the Owner against whom such action was initiated. Furthermore, in the event any action is brought by any Owner against either Cottage Home Developer or Danberry Village Developer (whether such action be brought as an arbitration proceeding as required by the terms and provisions of Section 10.03 above or as a court proceeding (which would violate the terms and provisions of Section 10.03 above)), then, in either event, to the extent such Owner is unsuccessful in such

action against either Cottage Home Developer or Danberry Village Developer (as determined by a verdict in favor of Danberry Village Developer either in any such arbitration proceeding or in any court proceeding or the dismissal of such arbitration or court proceeding), then such Owner shall be obligated to pay to Cottage Home Developer or Danberry Village Developer, as applicable, any and all costs and expenses incurred by either Cottage Home Developer or Danberry Village Developer in such action, including, without limitation, attorneys' fees and expenses, fees and expenses of any associated professionals and court costs and costs of any arbitration proceeding.

ARTICLE XI RIGHT OF FIRST OFFER

11.01 Right of First Offer.

(a) If, following the purchase of any Lot, the Owner thereof desires to sell, transfer, convey or exchange such Lot (including any Improvements, if any, located thereon), then such Owner (the "Selling Owner") shall first give written notice (the "Offer Notice") of such intention to Cottage Home Developer. The Offer Notice shall state the minimum price and the other major economic terms upon which the Selling Owner would be willing to sell such Owner's Lot. Cottage Home Developer shall, within 72 hours following its receipt of the Offer Notice, have the right (the "Right of First Offer"), in its sole and absolute discretion (but without any obligation to do so), to elect to purchase from the Selling Owner the Lot and all Improvements thereon described in the Offer Notice on the terms set forth in the Offer Notice (subject to the terms and provisions of this Article XI) by providing written notice thereof to the Selling Owner.

(b) Cottage Home Developer shall have the right to transfer and assign or otherwise designate any party, including Affiliates of Cottage Home Developer, to exercise the Right of First Offer with respect to any Offer Notice accepted by Cottage Home Developer. The person or entity who is assigned the right by Cottage Home Developer to exercise the Right of First Offer or any designee of Cottage Home Developer is hereinafter referred to as the "Purchaser". If Cottage Home Developer transfers or assigns to any third party its rights to exercise the Right of First Offer or designates any third party to be the Purchaser, then Cottage Home Developer shall be released from and shall have no further obligations with respect to the exercise of the Right of First Offer by such Purchaser in connection with the then applicable Offer Notice. If a Purchaser timely exercises the Right of First Offer, then, on the 60th day following the giving of the Offer Notice by such Selling Owner to Cottage Home Developer (i) the Selling Owner shall transfer and convey such Owner's Lot to Purchaser (or any of its successors and assigns or designees) on the terms and conditions set forth in the Offer Notice and (ii) such Purchaser shall contemporaneously therewith pay to the Selling Owner the consideration for such Selling Owner's Lot as set forth in such Offer Notice; provided, however, that (1) the purchase price to be paid by Purchaser to the Selling Owner shall be reduced by the amount of commission, if any, which the Selling Owner has agreed to pay to any real estate agent or broker in connection with the proposal of such Selling Owner's Lot and (2) in no event shall Purchaser be obligated to pay any real estate sales commission relating to the purchase and sale of the Selling Owner's Lot.

(c) If Cottage Home Developer (or any Purchaser) fails to notify the Selling Owner in writing of its election to exercise the Right of First Offer within 72 hours following its receipt of the Offer Notice, then (i) Cottage Home Developer (or any Purchaser) shall, subject to the provisions of Section 11.01(d) below, be deemed to have waived the Right of First Offer to purchase such Selling Owner's Lot on the terms set forth in the Offer Notice, (ii) the Selling Owner shall, for a period of six (6) months following the giving of the Offer Notice, be entitled to sell, transfer and convey the Selling Owner's Lot to any third party for a purchase price and upon such terms which are no more favorable to any proposed purchaser than those set forth in the Offer Notice and (iii) on or before the closing of the sale of the Lot (and Improvements) of such Selling Owner (subject to such Selling Owner's compliance with all of the terms and provisions of this Article XI), Cottage Home Developer (or any Purchaser, as applicable) agrees to execute and deliver to such Selling Owner any and all releases or other instruments reasonably requested by such Selling Owner to evidence the waiver of the then applicable Right of First Offer by Cottage Home Developer (or any Purchaser, as applicable) with respect to such Selling Owner's Lot; provided, however, that the terms and provisions of this Article XI shall continue in full force and effect and shall be binding upon any successors and assigns of the Selling Owner, including any transferor or grantee who acquired the Selling Owner's Lot.

(d) If the Right of First Offer has been waived or, pursuant to Section 11.01(c) above, deemed waived and the Selling Owner either (i) fails to consummate the sale of such Selling Owner's Lot within six (6) months following the giving of the Offer Notice to Cottage Home Developer or (ii) desires to sell the Selling Owner's Lot at a sales price or on terms which are more favorable to a proposed purchaser than those set forth in the most recent Offer Notice provided to Cottage Home Developer, then, in either such event, the Selling Owner shall re-offer the Lot of such Selling Owner to Cottage Home Developer pursuant to a new Offer Notice which shall be subject to all of the terms and provisions of this Article XI. Any sale of the Lot and any Improvements thereto shall be made subject to all of the terms and provisions of this Declaration, including, without limitation, the provisions of Section 5.11 above. Any Person who purchases a Lot and any Improvements thereon following the waiver or deemed waiver of the Right of First Offer shall be deemed to have purchased such Lot and any Improvements thereon subject to all of the terms and provisions of this Article XI, including, without limitation, the Right of First Offer reserved unto Cottage Home Developer in the event such purchaser desires to subsequently sell, transfer, convey or exchange such Lot and Improvements.

11.02 Enforcement of Right of First Offer. The Right of First Offer, if properly exercised by Purchaser, shall be a binding agreement by the Selling Owner to sell and convey to such Purchaser and a binding agreement by such Purchaser to purchase and acquire from the Selling Owner the Selling Owner's Lot on the terms and conditions set forth in the Offer Notice, as modified herein, which agreement shall be subject to enforcement by specific performance by both the Selling Owner and such Purchaser.

11.03 Covenant Running with Land. The Right of First Offer reserved herein by Cottage Home Developer shall be and is a covenant running with the land which shall be binding on the Owner of each Lot and such Owner's heirs, executors, successors and assigns.

11.04 Assignment of Rights. Each Owner, by acceptance of a deed to any Lot within the Cottage Home Property, acknowledges and agrees that Cottage Home Developer may assign

all of its rights under this Article XI to Danberry Village Developer at any time after the date of this Declaration, which assignment shall be evidenced by a written instrument recorded in the Probate Office. From and after the date that any such written assignment is recorded in the Probate Office, any and all references in this Article XI to Cottage Home Developer shall mean and refer to Danberry Village Developer and all notices pursuant to Section 11.01 above shall be sent to Danberry Village Developer.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.01 **Rules and Regulations.** Danberry Village Developer shall have the right, in its sole and absolute discretion, to adopt, enact, amend and modify rules and regulations from time to time concerning the use of any of the Common Areas and any portions of Danberry Village (including, without limitation, the Lakeside Clubhouse and the Community Building) which may include, without limitation, rules and regulations concerning the hours and days of use of the Community Building and the Lakeside Clubhouse, charges for the use of the Community Building and Lakeside Clubhouse, pet policies for the Cottage Home Property and Danberry Village (including, without limitation, the Community Building and the Lakeside Clubhouse) and any other matters which Danberry Village Developer, in its sole discretion, determines to be necessary or advisable for the general upkeep of the Cottage Home Property, and Danberry Village and the general well-being of all Occupants of the Cottage Home Property. Any such rules and regulations shall be binding on all Owners and Occupants and their respective Guests.

12.02 **Severability.** If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then 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.

12.03 **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.

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

12.05 **Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective Guests, heirs, executors, administrators, personal representatives, successors and assigns, and shall inure to the benefit of Cottage Home Developer, Danberry Village Developer, all of the other Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

12.06 **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 Governmental Authority, this Declaration, or any rules and regulations adopted from time to time by Cottage Home Developer, then the provisions of the Code of Alabama, any laws, regulations or ordinances of any Governmental Authority, this Declaration and any rules and regulations adopted by Cottage Home Developer, 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.

12.07 **No Reverter.** Subject to the terms and provisions of Article XI above, 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 either Cottage Home Developer or Danberry Village Developer nor shall any provision be deemed to vest any reversionary interest in either Cottage Home Developer or Danberry Village Developer.

12.08 **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 Cottage Home Developer will best effect the intent of the general plan of development for the Cottage Home 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.

12.09 **Rights of Third Parties.** This Declaration shall be recorded for the benefit of Cottage Home Developer, Danberry Village Developer, 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 Cottage Home 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.

12.10 **No Trespass.** Whenever Cottage Home Developer, Danberry Village Developer 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, such entry thereon and the taking of any action thereon shall not be deemed a trespass.

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

12.12 **Standards for Review.** Whenever in this Declaration either Cottage Home Developer or Danberry Village Developer 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 such party.

12.13 **Oral Statements.** Oral statements or representations by either Cottage Home Developer or Danberry Village Developer or any of their respective employees, agents, representatives, successors or assigns thereof shall not be binding on either Cottage Home Developer or Danberry Village Developer.

12.14 **Notices.** Each Owner shall be obligated to furnish to Cottage Home Developer and Danberry Village Developer, in writing, the address, if other than the street address of 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 the street address of the Lot shall have been designated in writing, then all notices and demands shall be mailed or delivered to the street address of the Lot of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to Cottage Home Developer and Danberry Village Developer 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 Cottage Home Developer and Danberry Village Developer (or if no address has been furnished, then to the street address of the Lot of such Owner), in which case notice shall be deemed given upon deposit of the same in the United States mail, (b) delivered to the Lot of such Owner in which event notice shall be deemed given upon either deposit of such notice in the mailbox for such Lot or when attached to the front door of the Dwelling of such Lot, (c) deposited with a nationally recognized overnight courier delivery service for next business day delivery, which notice shall be deemed to have been given on the next business day following deposit of the same with such overnight courier delivery service, (d) sent by facsimile transmission to a facsimile number provided in writing by such Owner to Cottage Home Developer and Danberry Village Developer, which notice shall be deemed to have been given upon transmission of such facsimile notice or (e) sent by internet to an electronic mailbox address provided in writing by such Owner to Cottage Home Developer and Danberry Village Developer, which notice shall be deemed to have been given upon transmission of such electronic mail by Cottage Home Developer and Danberry Village Developer. All notices to Cottage Home Developer and Danberry Village Developer shall be delivered or sent to the following addresses:

If to Cottage Home Developer:

Daniel Senior Living of Inverness II, LLC
3660 Grandview Parkway, Suite 100
Birmingham, Alabama 35243

If to Danberry Village Developer:

Daniel Senior Living of Inverness I, LLC
3660 Grandview Parkway, Suite 100
Birmingham, Alabama 35243

or to such other addresses as either Cottage Home Developer or Danberry Village Developer may from time to time specify in a notice to the Owners.


12.15 **Assignment**. In addition to the rights reserved by Cottage Home Developer pursuant to Section 11.04 above to transfer and assign its rights and obligations under this Declaration to Danberry Village Developer, each of Cottage Home Developer and Danberry Village Developer shall have the right, in their sole and absolute discretion, to assign any and all of their respective rights, powers, reservations, easements and duties contained herein to any Person who shall thereupon have the same rights, powers, reservations, easements and duties as Cottage Home Developer and Danberry Village Developer, respectively, hereunder. Furthermore, the transfer and sale of Danberry Village shall automatically transfer and assign to the grantee thereof all of the Danberry Village Developer Obligations hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Cottage Home Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Cottage Home Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Cottage Home Developer has transferred to any such third party. Upon the transfer and assignment (or deemed transfer and assignment) of any rights, powers, reservations, easements and duties contained herein to any Person by either Cottage Home Developer or Danberry Village Developer, the assignor shall and forever will be fully and completely released and discharged from any future obligations arising after the date of such assignment and the assignee thereof shall assume all obligations of its assignor hereunder.

12.16 **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 either Cottage Home Developer or Danberry Village Developer for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

12.17 **No Waiver**. All rights, remedies and privileges granted to Cottage Home Developer and Danberry Village Developer 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 Cottage Home Developer or Danberry Village Developer from pursuing such other and/or additional rights, remedies or privileges as may be available to Cottage Home Developer or Danberry Village Developer at law or in equity. The failure by either Cottage Home Developer or Danberry Village Developer at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.


12.18 **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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Shelby Cnty Judge of Probate, AL
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IN WITNESS WHEREOF, Cottage Home Developer and Danberry Village Developer have caused this Declaration to be duly executed as of the day and year first above written.

DANIEL SENIOR LIVING OF INVERNESS II, LLC, an Alabama limited liability company


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Shelby Cnty Judge of Probate, AL
04/17/2009 08:50:55AM FILED/CERT

By: DANIEL MANAGEMENT CORPORATION, an Alabama corporation, Its Manager

By: J. Randolph Dely
Its: Vice PRESIDENT

DANIEL SENIOR LIVING OF INVERNESS I, LLC, an Alabama limited liability company

By: DANIEL MANAGEMENT CORPORATION, an Alabama corporation, Its Manager

By: J. Randolph Dely
Its: Vice PRESIDENT



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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
:
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that J. Randolph Dabney, whose name as Vice President of Daniel Management Corporation, an Alabama corporation, as Manager of DANIEL SENIOR LIVING OF INVERNESS II, 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 for and as the act of said corporation, in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal, this the 7th day of April, 2009.

Chris C. Tortorici

Notary Public

My Commission Expires: March 3, 2012

[NOTARIAL SEAL]

STATE OF ALABAMA)
:
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that J. Randolph Dabney, whose name as Vice President of Daniel Management Corporation, an Alabama corporation, as Manager of DANIEL SENIOR LIVING OF INVERNESS I, 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 for and as the act of said corporation, in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal, this the 7th day of April, 2009.

Chris C. Tortorici

Notary Public

My Commission Expires: March 3, 2012

[NOTARIAL SEAL]

CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE is made and entered into as of the 7th day of April, 2009 by **SOUTHERN STATES BANK**, an Alabama banking corporation (collectively, "Mortgagee").

RECITALS:

Mortgagee is the holder of that certain Mortgage, Assignment of Rents and Security Agreement dated May 1, 2008 and recorded as Instrument No. 20080501000179730 in the Office of the Judge of Probate of Jefferson County, Alabama, as amended by First Amendment thereto dated as of July 11, 2008 and recorded as Instrument No. 20080714000282330 in the aforesaid Probate Office (collectively, the "Mortgage"), executed by Daniel Senior Living of Inverness II, LLC, an Alabama limited liability company ("Mortgagor"). The Mortgage encumbers all of the Cottage Home Property, as defined and described in the Declaration (as defined below).

Mortgagee desires to consent to the execution and delivery by Mortgagor and Daniel Senior Living of Inverness I, LLC, an Alabama limited liability company, of The Cottages of Danberry Declaration of Covenants, Conditions and Restrictions dated as of April 7, 2009 (the "Declaration") and to also agree that, following the foreclosure of the Mortgage, the rights and interests of all of the parties to the Declaration shall not be affected thereby. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby covenant and agree as follows:

1. Mortgagee does hereby consent to the execution of the Declaration by Mortgagor.
2. Mortgagee does hereby agree that, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in the Cottage Home Property (collectively, a "Foreclosure Action"), then (a) the Declaration and all of the rights and privileges under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Declaration and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Mortgagor under the Declaration and Mortgagee shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Declaration and their respective successors and assigns to confirm

that all of the terms and provisions of the Declaration shall continue in full force and effect following any such Foreclosure Action.

IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee as of the day and year first above written.

SOUTHERN STATES BANK, an
Alabama state banking corporation

By: [Signature]
Its: Vice President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Joe Fountain, whose name as Vice President of SOUTHERN STATES BANK, an Alabama state banking 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 banking corporation.

Given under my hand and official seal this the 7 day of April,
2009.

[Signature]
Notary Public
My Commission Expires: 3/31/2010

[NOTARIAL SEAL]



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Shelby Cnty Judge of Probate, AL
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EXHIBIT A

Legal Description of Cottage Homes Property

Lots 1-48, all Common Areas and Danberry Lane, a private roadway, as shown on and according to the Final Plat of The Cottages of Danberry, as recorded in Map Book 40, Pages 122A and 122B, in the Office of the Judge of Probate of Shelby County, Alabama.



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CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE is made and entered into as of the 7th day of April, 2009 by THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA, a body corporate of the State of Alabama (the "TRS") and THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA, a body corporate of the State of Alabama (the "ERS" and, together with the TRS, being hereinafter collectively referred to as the "Mortgagee").

RECITALS:

Mortgagee is the holder of that certain Mortgage and Security Agreement dated as of May 1, 2008 ("Mortgage") executed by Daniel Senior Living of Inverness I, LLC, an Alabama limited liability company ("Mortgagor"), recorded as Instrument 20080501000179700 in the Office of the Judge of Probate of Shelby County, Alabama. The Mortgage encumbers all of Danberry Village, as defined and described in the Declaration (as defined below).

Mortgagee desires to consent to the execution and delivery by Mortgagor and Daniel Senior Living of Inverness II, LLC, an Alabama limited liability company, of the The Cottages of Danberry Declaration of Covenants, Conditions and Restrictions dated as of April 7, 2009 (the "Declaration") and to also agree that, following the foreclosure of the Mortgage, the rights and interests of all of the parties to the Declaration shall not be affected thereby. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby covenant and agree as follows:

1. Mortgagee does hereby consent to the execution of the Declaration by the Mortgagor.

2. Mortgagee does hereby agree that, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in Danberry Village (collectively, a "Foreclosure Action"), then (a) the Declaration and all of the rights and privileges under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Declaration and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Mortgagor, as Danberry Village Developer under the Declaration, and Mortgagee (or its designated assignee) shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee, and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Declaration and their respective successors and assigns to confirm that all of the terms and provisions of the Declaration shall continue in full force and effect following any such Foreclosure Action.

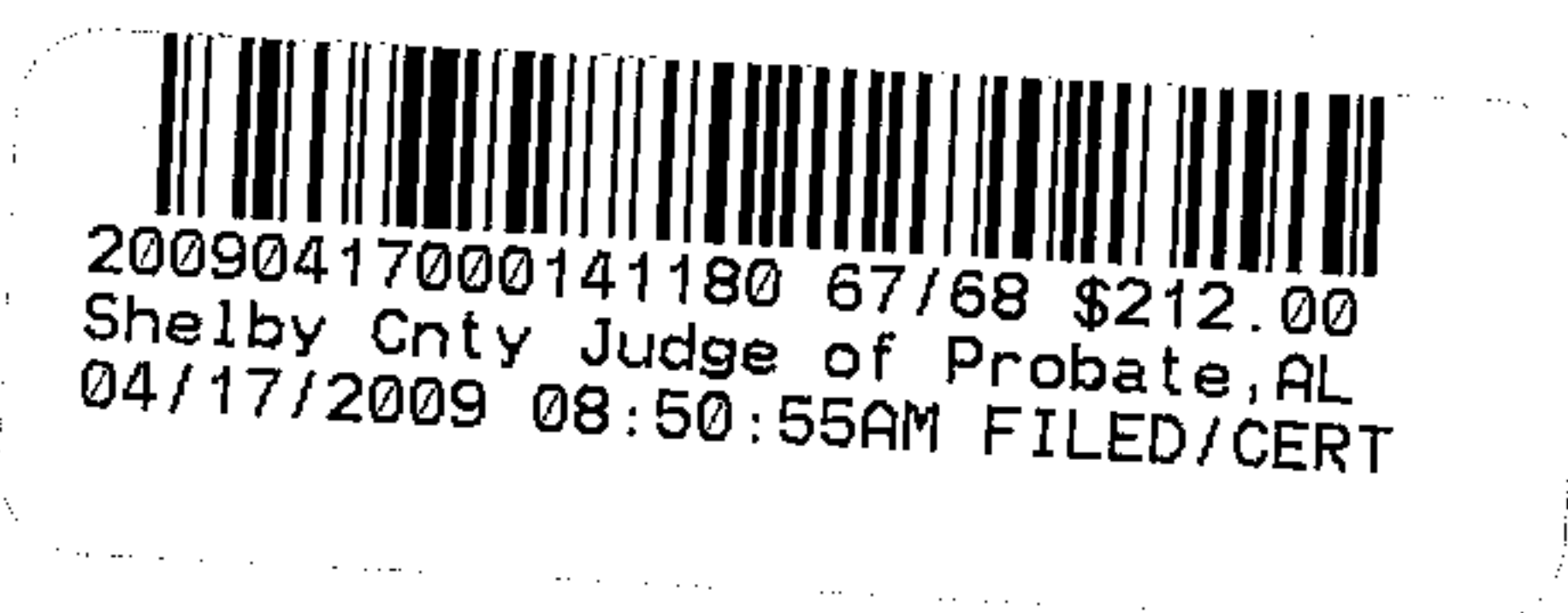
3. Notwithstanding the foregoing, if Mortgagee completes a Foreclosure Action: (a) pursuant to Section 12.15 of the Declaration, Mortgagee shall have the right to assign any and all of the rights, powers, duties and obligations of Mortgagee, as Danberry Village Developer under the

Declaration, to any person or entity and shall be fully and completely released and discharged from any future obligations arising under the Declaration after the date of such assignment including, without limitation, from all obligations to perform the Danberry Village Developer Obligations as described in the Declaration, (b) all obligations of the Mortgagee, as Danberry Village Developer under the Declaration, shall be satisfied solely out of the Mortgagee's right, title and interest in and to Danberry Village and the Mortgagee shall not be personally liable for any such obligation, and (c) nothing contained herein shall impose any obligation or liability upon the Mortgagee with respect to any obligation or liability of the Danberry Village Developer which existed prior to the date a Foreclosure Action is completed.

IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee as of the 7th day of April, 2009.

**THE TEACHERS' RETIREMENT SYSTEM
OF ALABAMA**

BY: [Signature]
Its: CEO



**THE EMPLOYEES' RETIREMENT SYSTEM
OF ALABAMA**

BY: [Signature]
Its: CEO

STATE OF ALABAMA)
 :
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David B. Bronner, whose name as CEO of The Teachers' Retirement System of Alabama, a body corporate of the State of Alabama, and The Employees' Retirement System of Alabama, a body corporate of the State of Alabama, 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, (s)he, as such officer and with full authority, executed the same voluntarily, for and as the act of said entities.

Given under my hand and official seal this the 7 day of April, 2009.

[Signature]
Notary Public
My Commission Expires: 1/10/11

EXHIBIT B

Legal Description of Danberry Village

Lot 1, according to the Final Plat of Danberry Village, as recorded in Map Book 39, Page 139, in the Office of the Judge of Probate of Shelby County, Alabama.

and

Lot 49, according to the Final Plat of The Cottages of Danberry, as recorded in Map Book 40, Pages 122A and 122B, in the Office of the Judge of Probate of Shelby County, Alabama.



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Shelby Cnty Judge of Probate, AL
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