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STATE OF ALABAMA )  
COUNTY OF SHELBY )

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**CHELSEA RIDGE ESTATES SECOND SECTOR PHASE I**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration") is made as of this 10<sup>th</sup> day of August 2023, by **CHELSEA RIDGE ESTATES, LLC**, an Alabama limited liability company, (the "Developer"), which declares that the real property hereinafter described is and shall be subdivided, developed, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (the "Declaration").

**WHEREAS**, Developer is the owner certain real property located in the Shelby County, Alabama, which Developer proposes to develop or has developed into approximately Twenty-nine (29) Lots for residential use with common areas principally consisting of Green Space ("Common Areas") as part of a residential community to be known as **CHELSEA RIDGE ESTATES 2ND SECTOR PHASE I** (the "Development"), which property is described on Exhibit "A" attached hereto (the "Property");

**WHEREAS**, the Developer desires to subject the Property, together with such additions thereto as may hereafter be made (the "Subject Property"), to this Declaration to provide for the development and use of the Subject Property to promote adherence to the Declaration by future owners of the Subject Property, and to promote efficient monitoring and enforcement of the Declaration;

**WHEREAS**, the Developer further desires to include in the Declaration additional easements, covenants and restrictions for the regulation and use of the Subject Property, including without limitations architectural requirements for the construction of improvements within the Subject Property, easements and restrictions relating to the use of the Subject Property, and covenants for the repair and maintenance of Common Areas within the Subject Property, in order to promote the appearance and value of the Subject Property and for the benefit of the owners of the Subject Property;

**WHEREAS**, the Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and of levying assessments against the owners of the Subject Property to enable the Association to perform such obligations;

**NOW, THEREFORE**, Developer does hereby declare that all of that certain real property situated in Shelby County, Alabama, which is more particularly described in the recorded plat of Chelsea Ridge Estates, 2<sup>nd</sup> Sector Phase I, as recorded in Map Book 57, Page 57, and the Amended Map of Chelsea Ridge Estates, 2<sup>nd</sup> Sector Phase I, as recorded in Map Book 58, Page 48, in the Probate Office of Shelby County, Alabama, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the above described real property.





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## ARTICLE I DEFINITIONS

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

**1.1 ARC.** The term or letters "ARC" shall mean the Architectural Review Committee appointed pursuant to Section 8.2 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

**1.2 Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 8.5 below for the purpose of reviewing and approving all exterior Improvements, landscaping and any other Improvements which may be made to any Lot.

**1.3 Assessment.** The term "Assessment" shall mean the Assessments to be assessed against the Owners of Lots pursuant to the authority vested in the Association under Article VII and Article VIII hereof, and such term shall include Common Area Assessments and individual Assessments where no distinction is required.

**1.4 Association.** The term "Association" shall mean Chelsea Ridge Estates Residential Association, Inc., an Alabama nonprofit corporation, that has been organized by filing the Certificate of Formation with the Secretary of State of Alabama.

**1.5 Board.** The term "**Board**" shall mean and refer to the Board of Directors of the Association and its duly elected successors as may be provided in the Certificate of Formation and Bylaws.

**1.6 Dwelling.** The term "**Dwelling**" shall refer to any Improvement on a Lot.

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

**1.8 Certificate of Compliance.** The term "Certificate of Compliance" shall mean and refer to the certificate issued by the Association pursuant to Section 8.6(j) hereof as prima facie evidence that a Dwelling or other Improvements are in compliance with this Declaration.

**1.9 Certificate of Formation.** The term "Certificate of Formation" shall mean and refer to the Certificate of Formation of the Association as recorded in the Office of the Secretary of State of Alabama, and all amendments thereto.

**1.10 Common Areas.** The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned or otherwise acquired by lease, easement, license or otherwise, by the Developer or the Association for the common use and enjoyment of the Owners, whether located within the Property, adjacent to the Property or in close proximity to the Property. The Common Areas shall include any of the following which may be designated as a Common Area by Developer or Association from time to time in accordance with the Declaration, including without limitation (a) signage, lighting, walkways, green spaces, gates, walls, fences, improvements, landscaping and landscaped or other areas, including all medians within any roadways, (b) all storm drains and sewers, drainage and/or watershed protection or detention ponds, basins, spillways, dams or other areas and facilities located within the





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Development (excluding such areas as are located solely within the boundaries of any Lot), (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas (other than those owned by the utilities provider and others located solely within the boundary of any Lot, and (d) all green spaces, detention areas, parks, nature trails, recreational facilities and areas. 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, and the use and management of such Common Areas shall be exclusively governed by the terms and conditions of this Declaration.

**1.11 Common Area Assessment.** The "Common Area Assessment" shall mean and refer to any and all assessments imposed by the Association to pay Common Area Expenses in accordance with the provisions of Article VII of this Declaration.

**1.12 Common Area Expenses.** The term "Common Area Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association in connection with the maintenance, repair, improvement, alteration, operation and management of the Common Areas and the Association, including, without limitation, those expenses described in Section 8.1(b) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

**1.13 Declaration.** The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for CHELSEA RIDGE ESTATES 2ND SECTOR PHASE 1, and all amendments thereto.

**1.14 Developer.** The term "Developer" shall mean CHELSEA RIDGE ESTATES, LLC, an Alabama limited liability company, its successors and assigns.

**1.15 Development.** The term "Development," with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property and Common Area submitted to the provisions of this Declaration, pursuant to Section 2.2 hereof together with Improvements thereon.

**1.16 Dwelling.** The term "Dwelling" with an initial capital letter shall mean and refer to the Improvement to be constructed on a Lot for use as single-family detached residential housing unit.

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

**1.18 Immediate Family.** The term "Immediate Family" shall include the lineal descendants of the applicable person and his or her spouse who are then residents of the applicable Dwelling.

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





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**1.20 Institutional Mortgagee.** The term "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association or credit union, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Probate Office of Shelby County, Alabama.

**1.21 Lot.** The Term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is re-subdivided or Lots are combined by Developer pursuant to the provisions hereof, the re-subdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

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

**1.23 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 Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

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

**1.25 Occupant.** The term "Occupant" shall mean and include any Owner or Tenant (including any member of their respective Immediate Families) and guests, agents, servants, employees or invitees of any Owner or Tenant and any other person who occupies or uses any Lot or Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

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

**1.27 Property.** The term "Property," with an initial capital letter, shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described on Exhibit "A" to this Declaration and incorporated herein by reference.

**1.28 Subdivision Plan.** The term "Subdivision Plan" shall mean and refer to the plan for the subdivision of the Property into Lots which said plan or plat of Chelsea Ridge Estates, 2<sup>nd</sup> Sector Phase I



having been filed for record in Map Book 57, Page 57, the Amended Map of Chelsea Ridge Estates, 2<sup>nd</sup> Sector Phase I, as recorded in Map Book 58, Page 48 in the Office of the Judge of Probate of Shelby County, Alabama, and shall include all amendments, additions and revisions thereto, as well as any plat recorded after the filing of this Declaration relating to the Property or the Additional Property.

**1.29 Tenant.** The term "Tenant" shall mean and refer to any person who is occupying a Dwelling under a lease with the Owner of the Dwelling pursuant to which the Owner has agreed to provide such person the exclusive right to use the Dwelling for a period of not less than one year.

## **ARTICLE II PROPERTY SUBJECT TO THE DECLARATION**

**2.1 General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, and all Common Areas and Improvements thereon shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area and Improvements thereof.

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

**2.3 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make Improvements and changes to all Common





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Areas and to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the locations of the boundaries of any Lots or Dwellings owned by Developer (iii) construction of roads and paths pursuant to the easements granted herein; (iv) installation and maintenance of water and any other utility systems and facilities within the Common Areas or easements therefor, and (v) installation of security, common mailboxes and trash and refuse facilities.

**2.4 Right of Developer to Modify Restrictions with Respect to Lots.** With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner hereinabove, modify the provisions of this Declaration as the same apply to any such Lot; provided, however, that this Declaration may not be modified or amended to exempt any Lot situated thereon from the payment of the Assessments except for such exemption as provided to the Developer or its successors or assigns, as set forth in Section 6.3 hereof.

**2.5 Subdivision Plat.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time and from time to time divide and re-divide, combine and re-subdivide any Lots owned by Developer.

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

### ARTICLE III

#### EASEMENTS

**3.1 Grant of Nonexclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors, assigns, and licensees, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot. The easements and rights granted pursuant to this Section 3.1 are expressly subject to the rights reserved by Developer in this Article III.

**3.2 Grant of Easement to Governmental Authorities.** Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon the Property within the Development for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail





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and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

### **3.3 Reservation of General Access Easement.**

(a) Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the respective duties of Developer, and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of Lot or Dwelling directly affected thereby.

(b) Developer does hereby establish and reserve, for itself, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Property, including the Lots and Common Areas, for the purpose of (i) constructing Improvements in and to any Lots, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing.

**3.4 Reservation of Easements With Respect to Common Areas.** In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot within the Development, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer shall not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, and any Lots owned by Developer subject to and in accordance with the terms of the Zoning. Developer further reserves the right, but shall not have any obligation, to donate the Common Areas and/or Green Spaces to a Conservatory or Conservation Easement, or to convey by quitclaim deed to the Association, or a Governmental Authority at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas.

**3.5 Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, natural gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, basins, dams, spillways and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The rights





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herein reserved by the Developer and the Association shall include, without limitation, the right to grant easements to the providers of utilities for the purposes herein established, and each of the Owners hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney in fact, for the purpose of executing such documents as may be necessary and appropriate in connection with the granting of such easements. Notwithstanding anything provided in this Section 3.5 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.5 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, and (ii) Developer 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 3.5 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.

**3.6 Reservation of Easements for Signs, Walks, and Trails.** Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon the Property, including the Lots, for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of paved and unpaved roads, walkways, pedestrian, golf cart paths and biking trails and paths, and traffic directional signs and related improvements. The Developer reserves the right to license the right to use any such roads, trails and Improvements to licensees who are not Owners or Occupants. Each Owner and Occupant, and their respective guests and invitees, shall have the non-exclusive right to use as Common Area any roads, trails and related improvements in common with each other, the Developer, the Association and any successors, assigns and licensees of Developer.

**3.7 Reservation of Maintenance Easement.** Developer does hereby establish and reserve for the Association, and its agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

**3.8 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Common Area for the purpose of taking any action necessary to effect compliance with the Special District Plan or any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, the right to establish wildlife and wildflower sanctuaries, and the right to take any other action which may be required in or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

**3.9 Grant and Reservation of Easement and Restrictions with Respect to any Common Areas or Green Spaces.**

(a) The Developer hereby grants to each Owner and Occupant, and their respective guests and invitees, the nonexclusive right and privilege to use and enjoy any Green Space as a Common Area for recreational purposes, in common with the Developer, its successors, assigns, and licensees, and





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all other Owners and Occupants, and their guests and invitees. The right granted pursuant to this Section 3.9(a) are and shall be permanent and perpetual, and are appurtenant to and shall pass and run with title to each Lot. The rights granted hereunder with respect to any Green Space are expressly subject to the rights reserved by the Developer to restrict the use of any Green Space under Section 3.9(b) below and the reservation of the Developer with respect to the use of any Green Space under Section 3.9(e) below.

(b) Each Owner, by acceptance of a deed or other instrument conveying any interest in a Lot, does hereby agree that the use and enjoyment of any Green Space shall be limited to the rights herein granted by the Developer in and to any Green Space. Developer does hereby reserve for itself and the Association, their respective successors and assigns, the right to promulgate and enforce in accordance with this Declaration rules and regulations regarding the use of any Green Space, and the method, time and location, and other matters reasonably related to the use of any Green Space, including without limitation, with respect to the following:

(c) Developer reserves for itself and the Association and their respective successors and assigns, the exclusive right to maintain, repair and restore any Green Space, as a Common Area in accordance with Section 3.4 hereof.

(d) Developer does hereby reserve for itself and the Association, their respective successors and assigns, the right to use any Green Space and the right, but not the obligation, to grant to other persons a nonexclusive right and license to use any Green Space; provided that the use of any Green Space by such persons shall be subject to the restrictions and limitations on the use of any Green Space as herein set forth and the rules and regulations promulgated by the Developer and the Association with respect to the use of any Green Space.

(e) In the event that an Owner or Occupant of a Lot or Dwelling violates any of the restrictions and limitations set forth in subparagraph (b) above, and such violation causes damage to any Green Space, such Owner shall be liable to the Association for the cost of curing the damage to such Green Space caused by such violation. In the event that any such violation causes personal injury to any person or to the property of any person, the Owner shall indemnify and hold the Association and/or the Developer and their respective directors, officers, employees, successors and assigns, harmless from and against any liability the Association may have to such person to the extent that insurance proceeds available to the Association, if any, are not sufficient to satisfy any such liability.

**3.10 Flowage Easement.** Drainage flow shall not be obstructed or diverted from drainage swales, storm sewers and/or utility easements as authorized in this Declaration. Developer or the Association may cut drainways for surface water wherever and whenever such action may appear to Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance. Except as provided herein, existing drainage shall not be altered in such a manner as to divert the flow of water onto any Lot or Common Area or into any retention pond. The provisions hereof shall not be construed to impose any obligation upon Developer or the Association to cut any such drainway. No permanent structure may be constructed or placed in such flowage easement area. Each Owner also agrees, by acceptance of a deed to a Lot to assume, as against Developer or the Association, all the risks and hazards of ownership or occupancy attendant to such Lots, including but not limited to its proximity to waterways.

### **3.11 Facilities and Services Open to the Public.**

(a) Certain facilities and areas within the Development may be open for public use and enjoyment. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, areas conducive to gathering and interaction, and roads. The Developer may designate such





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facilities and areas open to the public at the time the Developer makes them part of the Development, or the Board may so designate at any time thereafter.

(b) To the extent the easements granted and reserved in this Article III shall be used solely for non-commercial recreational purposes, the responsibility of Developer and the Association and their respective successors and assigns for liability for injury or damage to persons (including death) or property is intended to be limited by Section 35-15-1 et seq. of the Code of Alabama 1975 (the "Statute"). However, in the event the Statute is deemed inapplicable to the Developer and/or the Association and their respective successors and assigns, any person by his use of the easements granted hereunder or otherwise, shall be deemed to have constructively agreed that the Developer and/or the Association shall have no duty of care to keep the Common Areas and other easement premises safe for entry and use by such persons, or to give any warning of hazardous conditions, use of structures or activities on or about the Common Areas and other easement premises; and the Developer and the Association and their respective agents, employees, officers and directors and their respective successors and assigns shall have no liability for any injury to persons or property caused by any act or omission of Developer or the Association or any other person relating to or arising out of the use of the Common Areas and other easement premises by any person.

#### ARTICLE IV ASSOCIATION

**4.1 Membership.** Every Owner, including the Developer for so long as it is an Owner, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from, ownership of a Lot. Membership shall attach automatically upon acceptance of the delivery of the deed or other instrument of transfer of ownership for a Lot. An Owner's membership shall terminate automatically upon the delivery of the deed or other instrument of transfer of ownership for a Lot or upon such ownership interest for a Lot being divested in some other manner. The new Owner of a Lot shall promptly record such instrument in the Probate Office of Shelby County, Alabama, and a true copy shall be promptly delivered to the Association.

**4.2 Board.** The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as there is no Lot without a Dwelling constructed thereon within the Development, or the Developer elects to terminate its exclusive voting rights, whichever shall first occur. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

**4.3 Voting Rights.** Subject to the rights reserved to Developer in Section 4.2 hereof and the Certificate of Formation and Bylaws (which, among other things, provide that members of the Association shall have no right to vote so long as the Developer exercises its right to appoint the Board of Directors), each member shall be entitled to one (1) vote for each Lot in which the Owner holds the interest required for membership. When more than one Person holds such interest, all such Persons may be Members, and the vote for such Lot shall be exercised in the manner set forth in the Bylaws of the Association, but in no event shall more than one (1) vote be cast with respect to any one Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise provided in this Declaration, the Certificate of Formation or the Bylaws, the affirmative vote of the Owners who own at least three-fourths (3/4) of the Lots shall be required for any action to be taken by the Members. Voting may take place at a meeting held in accordance with the Bylaws. Voting may take place by proxies executed and delivered in the manner set forth in the Bylaws.





**4.4 Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama 1975 (as amended), this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama 1975 (as amended), this Declaration, the Certificate of Formation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (ii) subject to the provisions of this Section 4.4, the right to own and hold title to any of the Common Areas, and Improvements located within or without any Common Areas, as well as the right borrow money for the purpose of acquiring additional Common Areas for constructing, repairing, maintaining or improving the Common Areas, or any portion thereof, or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.4, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the Association and all Owners and Occupants, (iv) the right to grant and accept easements and other agreements for the use of property as Common Areas or otherwise, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided in Section 10.3 below, the dedication or transfer of title to any of the Common Areas must be approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association called by such purpose; and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Certificate of Formation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

**4.5 Agreements.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners and Occupants, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Area Expense. During the term of any such management agreement entered into by the Association with a third



party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Certificate of Formation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Area Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations of the Association and cost of such services shall be a Common Area Expense.

**4.6 Management by Developer or its Affiliates.** Developer or any affiliate thereof may be employed as the manager of the Association and the Development in accordance with Section 5.5 hereof for so long as Developer owns any Lot or Dwelling within the Development, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Development, and the cost of such services shall be a Common Area Expense. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section 4.6 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

**4.7 Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings, Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including, specifically, the use of any Green Space or any of the roads, trails and recreational facilities, if any, situated within the Common Areas), the establishment of bird sanctuaries, wildlife and wildflower areas, the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Development. Copies of such rules and regulations shall be provided to Owners and Occupants and shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled or modified by the Board or by the affirmative vote of the Owners of three-fourths (3/4) of the Lots at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, cancelled or modified unless such action is also approved by Developer for so long as Developer owns a Lot or Dwelling in the Development.

**4.8 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold harmless each and every officer, agent, representative and member of the Board of the Association and the Developer, and its officers, directors, shareholders, agents, employees, and representatives, from and against any and all expenses, including court costs and reasonable attorney's fees, suffered, paid or incurred by any such Indemnified Person in connection with any action, suit or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such Indemnified Person may be made a party by reason of being or having been an officer, director, shareholder, agent, representative or member of the Board of the Association or by reason or actions taken or not taken in connection with the rights and obligations imposed upon any of such persons under this Declaration. The officers, directors, shareholders, agents, employees, and members of the Board of the Association and the Developer, and its officers, directors, shareholders, agents, employees, shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, directors, shareholders, agents, employees, and members of the Board of the Association and the Developer, and its officers, directors, shareholders, agents, employees, representatives, shall have no personal liability with respect to any





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contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such person harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, director, shareholder, agent, employee, or member of the Board of each of the Association or the Developer, or any of their respective officers, directors, shareholders, agents, employees, may be entitled, including anything provided to the contrary contained in the Certificate of Formation or the Bylaws of the Association. The Association may maintain general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.8 and the costs of such insurance shall constitute a Common Area Expense.

## **ARTICLE V**

### **RESPONSIBILITIES OF THE ASSOCIATION AND OWNERS**

**5.1 Maintenance of Common Areas by Association.** Except as may be otherwise provided to the contrary in this Declaration, the Association shall, to the extent it has received sufficient sums from the Owners through Common Area Assessments, maintain and keep in good repair and condition all portions of the Common Areas, including without limitation, easements for the benefit of the Property as provided in Article V hereof, which responsibility shall include the maintenance, repair and replacement of (i) green spaces, roads and walks, trails, paths, walkways, biking or pedestrian paths, landscaped areas, wildlife and wildflower sanctuaries, parks, recreational areas and other improvements made by Developer or Association, if any, made a future date, (ii) utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a Governmental Authority, public or private utility, or other person, (iii) lawns, trees, shrubs, hedges, grass and other landscaping, and (iv) detention ponds and other water areas and facilities (either within or outside of the Development so long as the same are included within the Common Areas), including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner, Occupant or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling, or (3) resulting from theft, burglary or illegal entry into the Development, any Lot or Dwelling thereof. No diminution or abatement of Common Area Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

### **5.2 Responsibilities of Owners.**

(a) The maintenance and repair of all Lots, Dwellings, and all other Improvements situated thereon and all lawns, landscaping and grounds on or within a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his or its Lot and Dwellings, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finished on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling (including, without limitation,



painting or finishing) without first obtaining the prior written approval of the same from the ARC and the Association.

(b) Each Lot shall be landscaped in accordance with Plans and Specifications submitted to and approved by the ARC and the Association pursuant to Section 8.7 hereof. The maintenance obligations set forth in this Section 5.2(b) shall apply to all portions of a Lot and shall be binding on the Owner of each Lot or Dwelling at all times, either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Building Site shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be removed from any Building Site and properly disposed of outside of the Development.

(c) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair, or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees, or contractors, and the costs of such maintenance, cleaning, repair, or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 6.4 below.

## ARTICLE VI ASSESSMENTS

**6.1 Assessments and Creation of Lien.** Each Owner of a Lot, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association the following, which are collectively referred to herein as "Assessments": (a) the Annual Common Area Assessments ("Annual Assessments"), as established and to be collected as provided in Article VII below, and (b) special assessments, to be established and to be collected as provided in Section 6.5 and, (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions of this Declaration, including without limitation, Section 6.2 hereof. All Assessments, together with late charges and interest as provided in Section 6.4(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot and Dwellings thereon for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 6.4(c) below. Each Owner shall be personally liable for the payment of all





Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot and Dwellings thereon subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 6.4(a) below, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association or by this Declaration. 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, Dwelling, Common Area, or any other portion of the Development or any other cause or reason of any nature.

**6.2 Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The Individual Assessments provided for in this Section 6.2 shall be levied by the Board and the amount and due date of such Assessments shall be specified by the Board in a notice to such Owner. The provisions of this Section 6.2 shall apply, without limitation, to any individual Assessments levied pursuant to the provisions of this Declaration.

**6.3 Purpose.** The annual and special assessments provided for herein shall be used for the general purposes of promoting the safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto, all as may be more specifically authorized from time to time by the Board.

**6.4 Date of Commencement of Assessments.** The Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Common Area Assessments and any outstanding extraordinary Common Area Assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is conveyed. Annual and extraordinary Common Area Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or extraordinary Common Area Assessments on any Lots which it or its affiliates own in the Development. Any Builder who has purchased a Lot(s) from the Developer shall not be responsible for the payment of annual or extraordinary Common Area Assessments on such Lot(s) which Builder owns for a period of twelve (12) months from the date of purchase. Furthermore, for so long as Developer is the Owner of any Lot within the Development, Developer shall have the option to either pay annual Common Area Assessments on or Lots owned by Developer or fund any deficits which may exist between the total amount of annual Common Area Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Area Expenses for the Development. At such time as Developer no longer has any interest in any Lot within the Development, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Area Expenses.



**6.5 Special Assessments.** In addition to the Annual Assessments authorized in Article VII herein below and the special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 8.07 below. The Board may make such special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.03 above.

**6.6 Effect of Non-Payment; Remedies of the Association.**

(a) Subject to the provisions of Section 6.3 hereof with respect to the Developer, each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner of such Lot shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at a rate established from time to time by the Board not exceeding 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 thirtieth (30th) day from the due date until the same is paid in full; provided that if the Board has not established the Applicable Rate, the Applicable Rate during the interim prior to Board action shall be a rate at 4 points above the prime rate as published in the Wall Street Journal or comparable national daily publication. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge for Assessments upon each Lot and Dwellings as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

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

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 6.4(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 6.1 above in the manner hereinafter provided.



(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot and Dwelling all late charges and interest at the Applicable Rate assessed pursuant to Section 6.4(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand.

(d) If a defaulting Owner shall not pay the delinquency in assessments in full within ten (10) days after the giving of such demand, the Association may file a claim of lien with the Probate Office of Shelby County, Alabama, after delivery of written notice of its intention to file the lien at least thirty (30) days prior to the filing of the claim of lien. The notice shall be delivered by certified mail to the defaulting Owner. If the defaulting Owner fails to pay the delinquency within said thirty (30) day period, the Association may at any time prior to full payment file the claim of lien and perfect its lien against the Lot and Dwellings thereon of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Shelby County, Alabama:

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

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default) 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; or may otherwise be enforced to the extent that any laws in the State of Alabama require or permit a different procedure for the enforcement of liens for assessments by a homeowners' association. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot and Dwellings. Each Owner, by acceptance of a deed to any Lot and Dwelling shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all 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.



**6.7 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 Dwelling in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 6.4(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for 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 Institutional Mortgagee was recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 6.4(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot and Dwellings from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot and Dwellings have been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot and Dwellings.

**6.8 Certificates.** The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner or prospective Owner or Mortgagee of a Lot and Dwelling, or any other person with an interest in a Lot and Dwelling 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 VII COMMON AREA ASSESSMENTS**

### **7.1 Purpose of Assessments.**

(a) The Common Area Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto, and for the operation and management of the Association, all as may be more specifically authorized from time to time by the Board of the Association.

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

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

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





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

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage with respect to the Common Areas, and public liability coverage for events arising out of the use or condition of the Common Areas, and such other insurance coverage as the Board determines to be in the best interest of the Owners, including errors and omissions insurance, directors and officers liability insurance, fidelity bonds, and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association or for the Developer and its partners, agents and representatives;

(v) The expenses of maintaining, operating, repairing and replacing any portions of the Common Areas (including without limitation, the Access Road, Development Entrance Road, and other roads and trails) for which the Association is, or has elected to be responsible;

(vi) The expense of maintaining, operating, repairing and replacing any portion of the detention ponds for which the Association is responsible, or which the Board determines from time to time would be in the interest of the Association to maintain, operate, repair or replace as a Common Area;

(vii) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Development which the Board determines from time to time would be in the best interest of the Owners to so maintain, operate and/or repair as a Common Area;

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

(ix) Ad valorem real and personal property taxes assessed and levied upon the Association's interest in any of the Common Areas;

(x) The costs and expenses for conducting recreational, culture or other related programs for the benefit of Owners and Occupants;

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

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

## **7.2 Uniform Rate of Common Area Assessments.**

(a) Both annual and extraordinary Common Area Assessments, as described in Sections 7.3 and 7.4 below, shall be assessed against each Lot in the Development at a uniform rate with





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the Owner of each Lot being required to pay the same amount of such annual and extraordinary Common Area Assessment; provided, however, that the Board may create classes of Lots within the Property and annual and extraordinary Common Area Assessments shall be at a uniform rate as to each class as follows: (i) the Board shall allocate a percentage share of all annual Common Area Assessments as to each class of Lots within the Property and the Owner of each Lot shall pay his or her pro rata share of the annual Common Area Assessments allocated to his or her class of Lots and (ii) the Board may make extraordinary Common Area Assessments against one or more classes of Lots within the Property, or may allocate a percentage share of extraordinary Common Area Assessments as to each class of Lots within the Property, and the Owner of each Lot shall pay his or her pro rata share of the extraordinary Common Area Assessment allocated to his or her class of Lots.

### **7.3 Annual Common Area Assessments.**

(a) The Board shall establish the annual Common Area Assessment for the classes of Lots, if any, for each calendar year in the period commencing on date of filing this Declaration and continuing until and including December 31, 2023, based upon the Board's estimate of the amount required to fund the Common Area Expenses expected to be incurred by the Association during such periods. The Board shall not be required to base the Common Area Assessments on an actual budget of projected Common Area Expenses during such period but instead may base the Common Area Assessments on assessments made in comparable developments and such other factors as the Board deems reasonable. The foregoing shall not limit or restrict any extraordinary Common Area Assessments levied pursuant to Section 7.4 below (with the approval of the Owners as herein provided), or any individual Assessments levied in accordance with the provisions of Article VII above.

(b) Commencing with the calendar year which begins on January 1, 2023, (i.e., from January 1, 2023 through December 31, 2023, which period is hereinafter referred to as the "Base Year") and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Area Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association with respect to the Common Areas. The amount set forth in such budget shall constitute the aggregate amount of annual Common Area Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 7.2 above. A copy of the budget setting forth the amount of annual Common Area Assessments to be levied against each class of the Lots for the following year shall be delivered to each Owner. The provisions of Section 7.3(a) above shall not apply to the Base Year or any subsequent year thereafter.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Common Area Assessments which exceed (without regard to proration or adjustment as provided in Article VII above) the greater of either (i) fifteen percent (15%) of the annual Common Area Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in a nationally recognized consumer price index (the "Index") for January of the current year over the index for January of the Base Year (i.e., January 2023), then the budget and the amount of the annual Common Assessments shall be presented for approval by the vote of Owners of at least fifty percent (50%) of Lots who are voting in person or by proxy at such meetings. The percentage increase, if any, in the Index shall be determined by subtracting the Index for January in the Base Year from the Index for January in the current year and by dividing the difference by the Index for January in the Base Year. In the event the amount of the annual Common Area Assessments does not exceed the limitations set forth above or until such time as the Owners of at least fifty percent (50%) of the Lots have approved such increase in the amount of the annual Common Area Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Common Area Assessments.





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Notwithstanding anything herein to the contrary, the Common Area Assessments for the Base Year and prior years shall be determined in accordance with Section 7.3(b) and shall not be subject to the limitations on increases in the amount of annual Common Area Assessments provided in this Section 7.3(c).

(d) If any budget or the amount of annual Common Area Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association for Common Area Expenses, then the Board may call a meeting of the Owners for the purpose of approving extraordinary Common Area Assessments as provided in Section 7.4 hereof. If the actual amount of annual Common Area Assessments collected in any one year exceeds the actual costs incurred for Common Area Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Area Expenses.

**7.4 Extraordinary Assessments.** In addition to the annual Common Area Assessments authorized in Sections 7.2 through 7.3 hereof and the extraordinary Assessments authorized in Sections 10.1 and 10.3 below, the Board of the Association may levy in any year extraordinary Assessments for Common Area Expenses, or any extraordinary costs incurred by the Association; provided, however, that any such extraordinary Assessments (other than extraordinary Common Area Assessments levied pursuant to Sections 10.1, 10.3 and 10.4 hereof) shall be approved by the Owners of at least fifty percent (50%) of the Lots that will be subject to the extraordinary Assessment. The Board may make such extraordinary Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said extraordinary Assessments are levied and assessed. Extraordinary Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 7.2 above; provided that the percentage share for each class of Lots with respect to the extraordinary Common Area Assessment shall be the same as the percentage share of such class of Lots for the then current annual Common Area Assessment.

**7.5 Notice of Meeting and Quorum.** Written notice of any meeting of the Owners called for the purpose of taking any action authorized in this Article VII shall be sent not less than ten (10) days nor more than fifty (50) days in advance of such meetings to all Owners entitled to vote at the meeting. Only Owners subject to a proposed extraordinary Common Area Assessment shall be entitled to vote on such extraordinary Assessments. The presence in person or by proxy of Owners of fifty percent (50%) of the Lots entitled to vote at the meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but there shall be no specific requirement establishing a quorum at such subsequent meeting and the vote of the Owners holding at least fifty percent (50%) of the Lots who are voting in person or by proxy at any such special meeting shall be binding on all of the Owners. At such time as a quorum is obtained, the vote of the Owners holding at least fifty percent (50%) of the Lots who are voting in person or by proxy at such meeting shall be required to approve any matter in which Owners are entitled to vote hereunder.

## **ARTICLE VIII ARCHITECTURAL REVIEW COMMITTEE DEVELOPMENT AND ARCHITECTURAL STANDARDS**

**8.1 Committee Composition.** The ARC shall consist of not less than two (2) nor more than five (5) persons, each of whom shall be appointed or elected as provided in Section 8.2 below. Subject to the provisions of Section 8.2(a) below, the regular term of office for each member of the ARC shall be three (3) years, coinciding with the fiscal year of the Association, except in the case of the first ARC elected by the Owners whose members' terms shall be staggered as provided in Section 8.3 below. Each





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Owner, by acceptance of a deed to or other conveyance of a Lot, shall be deemed to ratify the provisions of Section 8.2 below.

## **8.2 Appointment and Removal of ARC Members.**

(a) Notwithstanding any of the provisions hereof, for so long as there are any Lots within the Property upon which a Dwelling has not been constructed thereon, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as there is no Lot without a Dwelling constructed thereon within the Property, or upon Developer's sooner written notice to the Owners that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 8.2(a) above, then the members of the ARC shall be elected or removed by the Owners of the Lots within the Property in accordance with the procedure set forth in subparagraph 8.3 below.

(c) In the event of death, resignation or removal of a member of the ARC, the vacancy shall be filled in accordance with subparagraph (a) or (b) above, whichever is applicable.

**8.3 Procedure for Election and Removal.** Subject to the provisions of Section 8.2(a) above, the procedure for the election and removal of the ARC by the Owners shall be as follows:

(a) Within 30 days after the provisions of Section 8.2(b) are in effect, the ARC shall nominate for election by the Owners to the ARC one person for a term of three years, one person for a term of two years and one person for a term of one year. The ARC shall then call a meeting of the Owners by delivery of written notice of the persons nominated and the date, time and place of the meeting, which meeting shall be held not less than 14 nor more than 30 days prior to the meeting. Owners may make additional nominations for election for each position on the ARC by delivery of written notice to the ARC at least one day prior to the meeting. At the meeting, the persons nominated for each respective term shall be voted on separately and the person receiving the largest number of votes cast at the meeting shall be elected to serve for the term specified and until his successor is elected and qualified. Prior to the expiration of each term, the ARC shall nominate a person for election for a three year term. The ARC shall then call a meeting of the Owners by delivery of written notice of the persons nominated and the date, time and place of the meeting not less than 14 nor more than 30 days prior to the meeting. Owners may make additional nominations for such position by delivery of written notice of such nomination to the ARC not less than one day prior to the meeting. At the meeting, the person receiving the largest number of votes cast at the meeting shall be elected to the ARC for a term of three years from the expiration of his predecessor's term, and until his successor is elected and qualified.

(b) Upon the presentation to the ARC of a written petition for the removal of a member of the ARC executed by the Owners of one-third (1/3) or more of the Lots, the ARC shall call a meeting of the Owners and shall deliver written notice of the purpose of the meeting and the date, time and place of the meeting. At the meeting, the member of the ARC named in the notice shall be subject to removal by the Owners, with or without cause, upon the affirmative vote of the Owners of at least fifty percent (50%) of the Lots in favor of such removal. Such removal shall be effective immediately and the vacancy created upon the removal shall be filled in the manner prescribed in Section 8.2(c) above.





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#### 8.4 Procedure and Meetings.

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

(b) The ARC shall have the right and power to appoint one or more committees of the ARC and to delegate to such committees various responsibilities of the ARC. The members of the committees of the ARC must be Owners but they need not be members of the ARC. Each committee established by the ARC and each member thereon shall serve at the pleasure of the ARC and the authority of each committee may be limited, expanded or revoked by action of the ARC. Each committee shall have the right from time to time to adopt and establish rules and regulations as may be necessary concerning the procedure and conduct of the business of the committee. All decisions of a committee of the ARC shall be subject to the approval of the ARC. Any Owner may appeal any decision of a committee to the ARC, and the decision of the ARC shall be final with respect to such appeals. The ARC shall have the right from time to time to establish rules and procedures for appeals from the committees; provided that in the absence of such rules and procedures, the procedures set forth in Section 8.6 shall be followed with respect to an appeal from a committee of the ARC.

**8.5 Architectural Standards.** The architectural standards may be established by the ARC with the approval of the Association. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

#### 8.6 Approval of Plans and Specifications.

(a) **In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the Development, no improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Dwelling by any Owner, which affect the exterior appearance of any Lot or Dwelling unless plans and specifications therefor have been submitted to and approved by the ARC or the Association in accordance with the terms and provisions of this Section 8.6.** Without limiting the foregoing, the construction and installation of any Dwellings and other Improvements, including without limitation, sidewalks, driveways, mailboxes, decks, patios, courtyards, swimming pools, playhouses, awnings, walls, fences, exterior 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 the ARC or the Association in accordance with the terms and provisions of this Section 8.6.





(b) Prior to the commencement of any Dwelling or other Improvements on any Lot, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which shall include the following (hereinafter collectively referred to as the "Plans and Specifications"):

(i) A survey reflecting the location of the Access Road and the proposed Building Site for the Dwelling;

(ii) Three (3) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on the Building Site on said Lot, the location of all driveways, walkways, decks, terraces, patios, other Improvements on or connecting to the Building Site, and the location of the barn and/or Pasture, if any, and the relationship of the same to the Building Site on the applicable Lot.

(iii) Three (3) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Dwellings and other Improvements to be constructed on the Lot.

(iv) Three (3) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwellings.

(v) Three (3) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot.

(vi) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 8.7 below.

(vii) Three (3) copies of an erosion control plan prepared and submitted in accordance with Section 8.8 below.

(viii) Such fee as may from time to time be imposed by the ARC for the review, approval and inspection of the Plans for such Improvements and the construction thereof pursuant to Section 9.6(c) below.

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

(c) Subject to the provisions of subparagraph (d) below, the ARC shall, in its sole discretion, determine whether the Plans and Specifications and other data submitted by any Owner for approval are complete and acceptable. The ARC shall establish a fee sufficient to cover the expense of ARC in reviewing plans and related data and to compensate any of their respective 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. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within any Dwellings or Improvements it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that ARC approval or consent be obtained.





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

(e) Upon completion of its review, the ARC shall return one copy of the Plans and Specifications to the Owner marked "approved," "approved as noted," "disapproved," or "incomplete." In the event the ARC fails to approve in writing any proposed Plans and Specifications within sixty (60) days after complete Plans and Specifications have been submitted, then the Plans and Specifications so submitted will be deemed to have been disapproved. In the event the ARC approves the Plans and Specifications with stipulations or conditions or disapproves the Plans and Specifications, the Owner may then submit the Plans and Specifications directly to the Association for its consideration. The approval, conditional approval or disapproval of such Plans and Specifications by the Association shall be final and binding on the Owner and the ARC. The Association shall note its approval, conditional approval or disapproval on copies of the Plans and Specifications and shall return its copies to the ARC for distribution and retention in accordance with subparagraph (c) above.

(f) Any revisions, modifications or changes in any Plans and Specifications previously approved by the ARC or the Association must be approved by the ARC or the Association in the same manner specified above, subject however to the provisions of Section 8.6(g) above.

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

(h) If (A) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without approval of the Plans and Specifications for the same by the ARC or the Association or (B) the ARC and/or the Association shall determine that any approved Plans and Specifications for any Improvements or the approved erosion control plan (see Section 8.8) and/or landscaping plans (see Section 8.7) for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC and/or the Association shall have the right to exercise any of the rights and remedies set forth in Section 8.14 below.



(i) The ARC and the Association, or any agent, employee or representative of either of them, may, at any reasonable time and from time to time enter upon and inspect any Lot or Dwelling or any Improvements being constructed thereon in order to determine whether the approved Plans and Specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC and the Association.

(j) **No Owner shall occupy any Dwelling unless and until the Association shall have issued to the Owner a Certificate of Compliance in accordance with the provisions of this Section 8.6(l) and Section 8.15 below.** Upon completion of the construction of any Dwelling, the Owner shall submit a written request to the Association for a Certificate of Compliance. Upon receipt of such request, the Association shall, within ten (10) business days, inspect the Dwelling to determine if the construction is in compliance with the Plans and Specifications approved by the ARC or the Association if required, and promptly upon making such determination, the Association shall either (i) issue to the Owner a Certificate of Compliance in accordance with Section 8.15 below if the Association finds the construction complies with such approved Plans and Specifications; or (ii) deliver to the Owner a written statement setting forth the reason(s) that a Certificate of Compliance will not be issued with respect to such Dwelling.

#### **8.7 Landscaping Approval.**

(a) In order to protect and to enhance the aesthetic appearance of the Property, no landscaping, grading, tree removal, excavation or fill work of any nature shall be implemented or installed by any Owner on any Lot unless and until landscaping plans therefor have been submitted to and approved by the ARC as provided in Section 8.6 hereof. The provisions of Section 8.6 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

**8.8 Erosion Control Plan.** Owner or the Owner's builder or contractor shall prepare an Erosion Control Plan to be implemented with respect to the construction of Improvements on any Lot. Any such Erosion Control Plan, to be approved by the ARC or the Association, must provide that gravel be placed in the driveway of the Lots during the construction period and that hay and silt fences be utilized during construction to minimize erosion. Such Erosion Control Plan must comply with all terms and conditions of the General Permit issued by the Alabama Department of Environmental Management and made available to Developer regarding storm water runoff from construction, excavation, land clearing and other land disturbance activities within the Property.

**8.9 Builder Regulation and Approval.** In order to minimize disruption in the Property and to maintain orderliness during construction of Dwellings and Improvements on Lots within the Property:

(a) The ARC and/or the Association shall have the right and authority from time to time to propose, adopt, alter, amend and revoke rules and regulations applicable to builders, general contractors and subcontractors who are engaged in the construction of Dwellings or Improvements on any Lot within the Property.

(b) The ARC and/or the Association shall have the right to approve an Owner's selection of a builder or contractor, whether a general contractor or subcontractor. No such builder, contractor, or subcontractor shall be approved if, in the opinion of the ARC and/or the Association, such builder, contractor or subcontractor (i) has a history of noncompliance with this Declaration or the rules and regulations adopted by the ARC and/or the Association with respect to builders and contractors in the Property, and such builder or contractor has failed to provide the ARC adequate assurance that it will



comply with the requirements of this Declaration and any rules and regulations promulgated thereunder; or (ii) such builder or contractor or subcontractor working thereunder has failed to provide evidence of public liability insurance reasonably acceptable to the ARC and the Association.

(c) The ARC or the Association may require as a condition to the approval of any builder or contractor, whether as a general contractor or subcontractor, to require such builder or contractor to post a bond or other reasonably satisfactory contract for indemnity to cover the cost of repair for any damage caused by such builder or contractor to the roads (including curbs and gutters) and storm water drainage systems.

#### **8.10 Subsurface Conditions.**

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

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

**8.11 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association,, nor any agent, employee, representative, member, shareholder, partner, officer or director of any of them, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any Plans and Specifications submitted, reviewed or approved in accordance with the provisions of this Article VIII, (b) any defects, structural or otherwise, in any work done according to such Plans and Specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article VIII, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the Plans and Specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or any Dwelling or Improvements situated thereon.





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**8.12 Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously, and, unless a longer period of time is approved by the ARC, construction of a Dwelling shall be completed within one (1) year of the commencement date of said construction.. Such completion shall be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities and a Certificate of Compliance issued by the Association.

**8.13 Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, contractors, successors and assigns, shall have the right and option to maintain such facilities and to carry on such activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots or the development of Lots, Dwellings, Common Areas and Green Spaces, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and Dwelling models, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 8.13 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

**8.14 Enforcement and Remedies.** In the event any of the provisions of this Article VIII or any rules and regulations promulgated by the ARC or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall have the right, at its option, to do any or all of the following: (a) deny a contractor access to the subject Lot until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC and the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction of Improvements on any Lot until any work in place which does not comply with the Plans and Specifications approved by the ARC and the Association for such Improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article VIII, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article VIII shall be paid by such Owner as an Individual Assessment under Section 6.2 hereof, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for in Section 6.1 hereof and shall be subject to foreclosure as provided therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein including any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration, including without limitation, Sections 9.35, 12.1, 12.2 and 12.3 below.

**8.15 Certificate of Compliance.** The Certificate of Compliance issued by the Association shall be in form suitable for recordation, identifying the subject Dwelling or Improvement and the Lot on which such Dwelling or Improvement is placed, and stating that the Plans and Specifications, the location of such Dwelling or Improvement and the use or uses to be conducted thereon have been approved as herein required, that such Dwelling or Improvement as constructed complies with the requirements of this Article VIII, and that there are no outstanding unpaid assessments against the Owner under this Declaration. Preparation and recording of such certificate shall be at the expense of such Owner. A Certificate of Compliance shall be prima facie evidence of the facts therein stated, and as to any purchaser or



encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Dwellings or Improvements on the Lot, and the use or uses described therein comply with all approvals of the ARC or the Association as required under this Article VIII, that all assessments which may constitute a lien on such Lot have been paid, and that the Lot and Improvements constructed thereon are in compliance with all other requirements of this Declaration as to which the ARC and the Association exercise any discretionary or interpretive powers.

## ARTICLE IX USE AND DEVELOPMENT RESTRICTIONS

**9.1 Use Restrictions.** Except as otherwise provided to the contrary in Section 8.13 above and in this Section 9.1, each Lot shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Dwelling. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use 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 the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least One (1) year and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association. Notwithstanding anything provided in this Section 9.1 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas, or single-family residential purposes, then such use must be approved in writing by the Association.

**9.2 ARC or Association Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot unless such Dwelling and/or Improvements have been approved by the ARC or the Association in the manner set forth in Article VIII above. No Dwelling shall be occupied by any person until the Owner shall have received a Certificate of Compliance from the Association pursuant to Section 8.6(l) and Section 8.15 of this Declaration.

**9.3 Underground Utilities.** The lot owner shall be solely responsible for the cost and expense of the installation of all utilities used on any lot up to the lot line. Furthermore, all electrical power transmission lines on any lot shall be required to be installed underground up to the lot line. The Developer shall not be responsible for the cost and expense of installing or maintaining any utilities, including underground electrical power, used on any lot up to the lot line. All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground to the extent practicable.

**9.4 Building Sites.** Prior to commencing any construction related activities on a Lot (including grading and clearing), the location of the Dwelling on the Building Site and the location of other Improvements in relation to the Building Site shall be set forth in the Plans and Specifications submitted to the ARC in accordance with Section 8.6(b) above. All eaves, steps, porches, terraces, decks and patios shall be deemed a part of the Dwelling for purposes of locating the Dwelling on the Building Site.

**9.5 Setbacks.** All single family residences or other authorized structures shall comply with the following setback requirements: Subject to the provisions set forth below, minimum building setback lines for all residences shall be established either (i) on the recorded subdivision plat for the subdivisions of which such lot is included. No Residence shall be built within the setback areas established in accordance with any of the procedures specified above. Prior to commencing any construction-related activities on any lot, the location of any residence to be constructed thereon shall be set forth on the site



development plan for such lot which must be approved by the Architectural Review Committee (the "ARC"). Notwithstanding anything provided above to the contrary, the ARC may require building setbacks which are greater than those specified above. The Developer nor the ARC may grant a variance in violation of the City of Chelsea's minimum setback requirements, without permission from the City of Chelsea.

**9.6 Floor Area Requirements.** All single family residences or other authorized structures shall comply with the following floor requirements:

No structure, including but not limited to single family residences, shall be constructed without the approval of the ARC. Minimum structure sizes as to heated living areas only excluding basements are as follows:

1400 Square feet for a one (1) level home

**9.7 Design Requirements.** The Dwellings to be constructed on a Lot for use as a residence by the Occupant and guests and invitees of the Occupant may be in a single structure or not more than two (2) interconnecting structures.

**9.8 Drainage.** The lot owner shall be responsible for the draining of all surface waters on the lot so as not to increase the natural drainage across neighboring lots. The lot owner shall also be responsible for draining and silt control during the construction and landscaping of its lot. Any lot that violates the Alabama Department of Environmental Management's ("ADEM"), or its successor's, requirements for stormwater runoff will be required to remedy the problem immediately. If the Developer brings any lot into compliance, the lot owner shall immediately reimburse developer for any and all costs incurred. If ADEM fines are imposed because of said violations, lot owner will pay all fines and attorneys' fees incurred. The lot owner acknowledges that development shall take place in complete compliance with the restrictions set forth in any NPDES General Permit issued to Developer for CHELSEA RIDGE ESTATES 2ND SECTOR PHASE 1. No site preparation or construction activities are to take place until a plan for storm water control and pollution prevention plans have been approved by Developer, its successors or assigns. In the event pollution prevention and storm water control measures are not implemented or are determined to be inadequate, the developer reserves the right to correct said defects and the lot owner shall be responsible to the developer for the costs of said correction.

**9.9 Lot Maintenance.** Each owner of any lot shall at all times keep and maintain said lot and improvements thereon in a clean, orderly, and attractive condition, maintaining and repairing the residence promptly as conditions may require. All trash, rubbish, garbage, grass, leaves, tree limbs, weeds, vines, and other waste materials shall be removed for proper disposal from a lot as soon as is practical, and prior to removal, the same shall be stored on the lot out of sight and in a neat and orderly manner so as not to interfere with the aesthetics, health or welfare of other homeowners. No such material shall be placed or stored on any street or public right of way. No open burning shall be permitted on any lot or any other part of CHELSEA RIDGE ESTATES 2nd Sector Phase I, except that outdoor fireplaces, grills and chimneys may be used provided they are so constructed and equipped with fire screens as to prevent the discharge of any ashes, embers, or other particulate matter, and in compliance with local, state and federal laws. If the owner of any lot fails to fulfill the obligations and covenants under this paragraph, then the Association may, in its discretion, take appropriate action and bill all costs associated with any such action to the lot owner.

**9.10 Expedited Procedure for Lawn Maintenance Violations.** In order to maintain the aesthetic of the Development to the standards expected of the Owners, for any violation of this Declaration



concerning lawn maintenance, the Association may pursue the following procedure in order to remedy said violation:

(a) The Association shall send, via certified mail, notice to the Owner setting out the lawn maintenance violation, including photographs, and the actions necessary to abate the violation;

(b) In the event that the Owner has not abated the violation within five (5) business days of Owner's receipt of the notice, the Association may immediately have the violation cured, and the Association will send a statement to the Owner for the actual cost of the work performed to abate the violation, plus Fifty Dollars (\$50.00), which amounts shall be deemed an Individual Assessment and given the same priorities and rights of an Individual Assessment.

**9.11 Windows and Yards.** All windows shall be wood framed, vinyl or encased. Metal windows of any kind will not be permitted. All front, back and side yards must be sodded, except in natural areas.

**9.12 Sight Easements.** No fence, wall, tree, shrub, or bush shall be erected or planted in such a way as to prevent any pedestrian or operator of a motor vehicle from having clear, open and safe scope of vision at any intersection, corner, or other adjoining of streets, or as to obstruct passage on public right of way. Height of shrubbery near intersections not to exceed thirty (30) inches.

**9.13 Landscaping.**

(a) The landscaping plan for each Lot in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 8.6 above. For purposes of Section 8.6, landscaping approval shall not be required for the planting or installing of flowers or small shrubs on the Building Site unless such violate the Architectural Standards or the terms or provisions of this Declaration. Each Owner shall, to the extent practicable, incorporate into the landscaping plan for his Building Site the natural plant life existing on the Lot and shall otherwise take such steps which would to the extent practicable preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels.

(b) The landscaping plan submitted to the ARC for the construction of a Dwelling shall include, without limitation, the following:

(i) adequate foundation, shrubbery and ground cover for landscaped areas within the Building Site with only pine straw, shredded bark or pine bark to be used for mulching shrub beds and natural areas;

(ii) irrigation system shall be installed in the landscaped areas within the Building Site;

(iii) no Building Site shall be sodded with grass unless approved by ARC; and

(c) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC,

(d) prior the issuance of a Certificate of Compliance for the Dwelling situated thereon.



(e) No Owner shall be allowed to divert or obstruct surface water from its drainage channels or otherwise divert or obstruct surface water so as to adversely impact adjoining or neighboring Lots or Dwellings. The determination of whether any such diversion or obstruction of surface water exists shall be made by the Association, whose determination shall be final, conclusive and binding on all Owners and Occupants.

(f) No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within any Lot, without ARC approval.

(g) No vegetable, herb or similar gardens or plants shall be planted or maintained in any area within any Lot, without ARC approval.

(h) Developer shall perform all of its obligations under this Declaration and adopt HOA By laws that require the use of Low Impact Development and Infrastructure in the SWPPP and landscape plans including, but not limited to:

- (1) Use of infiltration swales in greenspace and drainage areas on all developed lots
- (2) Require the planting of water-loving native trees in swales
- (3) Require dredging of silt and sediments from retention ponds anytime silt and sediments reaches six (6") inches.
- (4) Require that downspouts dump onto pervious surfaces.
- (5) Other reasonable measures as recommended to reduce the volume of water existing on each Lot

**9.14 Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility lights attached to a Dwelling, must be approved by the ARC.

**9.15 Fences.** It is the intention of the Developer that a uniform type of wood fencing is to be used on all lots where fencing is desired. No fences of any kind or material shall be permitted within the Property except as approved by the ARC. The type of materials utilized for, including the color thereof, and the location of all fences must be approved by the ARC prior to installation. Where any lot owner intends to install fencing and no adjoining lot owner has installed fencing or intends to install fencing at the same time, said lot owner shall install the fencing whereby the finished side of the fence is facing outward on all sides installed. Where fences are to be installed at the same time on adjoining lots, the owners of said lots shall install a common fenced area on the adjoining boundary line of said lots; lot owners to pay for costs and perform maintenance on lot owner's respective side of the fence.

**9.16 Driveways.** It is the intention of the Developer that all driveways, unless specifically excepted to by the Developer, be paved with a concrete material and that a uniform type of concrete material be used; the location of all driveways and the materials utilized for must be approved by the ARC prior to installation

**9.17 Clothes Lines.** No clothes lines are permitted.

**9.18 Garage Openings.** Garage door openings may face the street with ARC approval.





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**9.19 Above Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water, propane or any other substance shall be located on any Lot or Dwelling or within any of the Common Areas. No private waters wells may be drilled or maintained.

**9.20 Satellite Dishes.** Subject to approval of the ARC as to size, appearance, and location, miniature satellite dishes which are no more than 24 inches in diameter may be allowed on any Lot or Dwelling. Radio antenna, radio receiver or other similar device or aerial may be attached to or installed on any Lot or Dwelling with the approval of the ARC.

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

(a) No furniture shall be placed, kept, installed, maintained or located on any areas of a Lot other than the Building Site. Any furniture placed, kept, installed, maintained or located on a Building Site shall not be visible from any street.

(b) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed on a Building Site and shall, to the extent practicable, be located so that the same are not visible from any street.

(c) Free-standing playhouses and treehouses shall be permitted but only after ARC and Association approval of the same.

(d) Basketball goals shall be located in a location approved by the ARC and the Association. Basketball goal backboards should be of clear plexiglass or acrylic, and shall not be located in a location other than the Building Site unless specifically approved by the ARC and the Association.

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

**9.22 Pets.** No animals, livestock, birds, poultry or reptiles of any kind, shall be kept, raised or bred or be possessed by any Owner upon any Lot, Dwelling or other portion of CHELSEA RIDGE ESTATES 2nd Sector Phase I; provided, however, that not more than two (2) dogs or two (2) cats or a combination thereof not to exceed four pets. The limitation on the number of animals in the preceding sentence shall apply to unattended animals kept outside of the Dwelling. Any such pet shall be kept by any homeowner within the limitations of the lot and residence thereon, and no pet shall be permitted to leave said lot or residence without being controlled at all times by the owner. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the front or side yards of the Lots; rather, all such structures or areas shall be located only in the backyards, and shall not be visible from any street. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced areas on a Lot or Dwelling, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot of any other Owner or within any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Association shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Development, including the right to assess fines for violations of such rules and regulations.





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### **9.23 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 Property 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 Development. Each Owner shall be responsible for the removal of trash and rubbish from the Lot on a regular basis.

(b) Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot which could cause disorderly, unsightly or unkempt conditions, 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 or other portion of the Property.

(c) 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 at the rear of or inside a Dwelling and shall be screened from view from the street by appropriate landscaping or fencing approved by the ARC and the Association.

(d) Unless otherwise provided in this Declaration, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot.

### **9.24 Recreational Vehicles and Machinery and Equipment.**

(a) The Association shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

(b) Each Lot shall provide for adequate off-street parking (i.e., parking areas located solely within the Lot). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 9.28 above or in Dwellings with garages.

(c) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot 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 Property.

**9.25 Signage.** All signs, billboards or advertising structures of any kind are prohibited. Notwithstanding anything herein to the contrary, the Developer and the Association shall have the right but not the obligation to erect and maintain reasonable and appropriate signs in the Common Areas and the easement areas created under Article III hereof. No signs, billboards, posters or other advertising matter or displays of any kind shall be permitted anywhere in CHELSEA RIDGE ESTATES 2nd Sector Phase I except as provided herein. Unless otherwise permitted by Alabama law, signs and posters affixed to street





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signs are prohibited, and the Association shall bill all costs associated with the removal of posted signs and posters to the lot owner or person that posted them. The Developer or ARC may, at its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Developer and its approved builders shall be allowed to install their signage.

**9.26 Nuisances.** No substance, thing or material shall be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupant of surrounding property. No boat, boat trailer, house trailer, trailer, motor home, truck, commercial vehicle, motorcycle, golf cart, or any other similar item shall be stored in the open on any lot for a period of time in excess of twenty-four (24) hours.

**9.27 Mailboxes.** A common mailbox station may be required by the U.S. Postal Service. If individual mailboxes are permitted, all mailboxes and posts must be of a design specified and approved by the Developer or ARC.

**9.28 Temporary Structures.** Except for the construction and development activities of Developer or an approved builder, no temporary structure of any kind shall be used, or placed upon the lot, including, but not limited to trailers, campers, shacks, tents, barn, shed, stable, poultry house or yard, rabbit hut, tree house, or other outbuildings, or auxiliary structures, shall be permitted, constructed, installed, or allowed to remain on any Lot or Dwelling. Provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the ARC, (b) any detached structures or outbuildings such as pool houses that are on foundation, wired and plumbed and that are consistent with the neighborhood may be approved by the ARC, at its discretion, and (c) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all streets and adjacent Lots or Dwellings.

**9.29 Construction of Improvements.**

(a) During the construction of any Improvements or Dwelling, (i) all Lots shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, on the Building Site, and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Development at least weekly. Used construction materials may be burned on-site so long as such burning does not create a nuisance to other Owners or violate the laws, ordinance, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot or any other portion of the Property.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) utilize off-street parking to the extent available, and (ii) enter the Lot on which such Improvements are being constructed only from the driveway for such Lot.

(c) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roads within the Development. Upon completion of construction of any Improvements or any Dwelling, 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.

(d) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules,





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regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Plans and Specifications for the Dwelling, the landscaping plan for the Lot, the Erosion Control Plan, as well as any other applicable watershed protection or soil erosion requirements, and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot. **In the event that the Owner or any of his contractors or agents shall be in violation of the aforesaid requirement, the Association or the ARC shall have the right to exercise any of the remedies set forth in Section 9.35 below.**

**9.30 Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided and no Building Site may be relocated without the prior written approval of the Association. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

**9.31 Swimming Pools** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, and lap pools may be constructed, installed and maintained on any Lot subject to the prior written approval of the plans for the same by the ARC or the Association in accordance with the covenants, conditions and restrictions contained. Above-ground pools shall not be permitted. The Association shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities within the Property.

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

**9.33 Additional Regulations.** In addition to the restrictions set forth in this Declaration, (i) each of the ARC and the Association shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot and (ii) the Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Association, in its sole discretion, determines to be in the best interests of all Owners with respect to the use, maintenance and repair of the Common Areas in the Development, which rules and regulations shall be binding on all Owners, Lots or Dwellings. In the event the Architectural Standards of the ARC shall be in conflict with the Architectural Standards of the Association, the Architectural Standards of the Association shall govern.

**9.34 Variances.** The Association, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article IX above and this Article X with respect to any Lot or Dwelling. Any variance request submitted to the Association shall be in writing and, upon approval of the same by the Association, shall be evidenced by a written variance executed by the Chairman, President or a Vice President of the Association.

**9.35 Enforcement and Remedies.** In the event any of the provisions of this Article IX is breached or is not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to do any or all of the following: (a) require cessation of such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article IX, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners





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and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article IX, shall constitute an individual Assessment to such Owner pursuant to Section 6.2 of this Declaration, and if the same is not paid when due, shall bear interest, and shall be subject to the lien provided for in Section 6.1 of this Declaration, and shall be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration in Sections 8.14, 9.9, 9.33, 9.34, and Article XII of this Declaration.

## **ARTICLE X**

### **CASUALTY, CONDEMNATION AND INSURANCE**

#### **10.1 Damage or Destruction to Common Areas.**

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

(b) Notwithstanding anything provided in Section 10.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy (i) an extraordinary Common Area Assessment in the case of damage to Common Areas against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 7.4 and 7.5 above, which such extraordinary Common Area Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty; or (ii) elect to partially repair, replace and restore, or to remove and clean-up, the damaged portions of the Common Areas. Such extraordinary Common Area Assessments shall be levied against each Owner as provided in Section 7.2 above; provided that the percentage share for each class of Lots with respect to the extraordinary Common Area Assessment shall be the same as the percentage share of such class of Lots for the then current annual Common Area Assessment. Further extraordinary Common Area Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such extraordinary Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

**10.2 Damage or Destruction to Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty or remove any remaining damaged or destroyed Improvements from the Lot and leave such Lot or Dwelling and any remaining Improvements thereon in a





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clean, safe, orderly and sightly condition; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article VIII of this Declaration, and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such repair, restoration or removal shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

### **10.3 Condemnation of Common Areas.**

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered and authorized to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy an extraordinary Common Area Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 7.4 and 7.5 above, which such extraordinary Common Area Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such extraordinary Common Area Assessments shall be levied against each Owner as provided in Section 7.2 above; provided that the percentage share for each class of Lots with respect to the extraordinary Common Area Assessment shall be the same as the percentage share of such class of Lots for the then current annual Common Area Assessment. Further extraordinary Common Area Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 11.3(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided,





however, that the Owners of any Lot or Dwelling which is subject to any such taking and the Board of the Association may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

**10.4 Condemnation of Lots or Dwellings.** In the event that all or any portion of a Lot or Dwelling 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 or Dwelling responsible for the maintenance and repair of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article VIII of this Declaration, and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling 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.

**10.5 Insurance.**

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

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

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

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Common Area Expense, as determined in accordance with Sections 7.1(b) hereof. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the manager for the Development, the Association, and the Owners and the family members, servants, agents, tenants and guests of the Owners.

(e) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot and Dwelling. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot or Dwelling, does hereby waive and release Developer, the manager of the Development, the Association, and their respective agents, employees,





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representatives, partners, shareholders, members, managers, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

## ARTICLE XI TERM AND AMENDMENTS

**11.1 Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of the Association, Developer, 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 twenty-five (25) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Shelby County, Alabama, provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall run with the land and shall continue to benefit and burden the Property as therein provided.

**11.2 Amendment by Developer.** For so long as there is any Lot without a Dwelling constructed thereon within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Shelby County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 11.4 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Dwelling or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent of the Owners affected thereby (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendments made pursuant to this Section 11.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 11.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

**11.3 Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 11.2 above, shall be proposed and adopted by the Owners in the following manner:

(a) The Owners of not less than one third (1/3) of the Lots within the Development may submit a written petition to the Association indicating their desire to amend the Declaration which petition shall be signed by said Owners and shall state the proposed amendment with particularity in the





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petition. The date of delivery of such petition to the Association shall be the record date and the Association shall establish a date, time and place for a meeting of the Owners not less than ten (10) nor more than fifty (50) days after the record date.

(b) The Association shall thereupon deliver written notice of the date, time, place and purpose of the meeting to all Owners on the record date. At the meeting, the proposed amendment must be approved by the Owners holding at least three-fourths (3/4) of the Lots in the Development in order to be adopted; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot or Dwelling in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 11.4 below, then the provisions of Section 11.4 below shall be applicable to such proposed amendment.

(c) Any and all amendments which have been approved in accordance with the provisions of Section 11.3(a) and (b) above shall be set forth in a written instrument executed by the proper officers of the Association and such written instrument shall include the sworn statement of the President or the Chairman of the Board of the Association stating unequivocally that the vote of the requisite number of Owners was duly obtained in accordance with the provisions of this Declaration. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama.

**11.4 Restrictions on Amendment.** Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 1.2, 1.3, 1.4, 3.1 through 3.14, 4.2, 4.3, 4.6, 4.8, 6.3, 8.2, 11.2, 11.3, 11.4 and 13.1 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

## **ARTICLE XII ENFORCEMENT**

### **12.1 Authority and Enforcement.**

(a) In the event that the Board of the Association determines that (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense





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of such Owner, and said cost shall be a personal obligation of such Owner and shall constitute an individual Assessment to such Owner under Section 6.2 of this Declaration and shall be subject to the lien and foreclosure rights granted pursuant to Section 6.4 of this Declaration.

(b) In addition to the provisions of Section 12.1(a) above, in the event any Owner or Occupant or their respective agents, contractors invitees, violates any of the provisions of this Declaration, or the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling and shall be a personal obligation of such Owner which is guilty of such violation, or (ii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

**12.2 Procedure.** In the event any of the terms or provisions of this Declaration and the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, or infringe upon or suspend any other rights pursuant to Section 12.1 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:

(i) The alleged violation;

(ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration or the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 12.1 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.

**12.3 Nonexclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XII are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

### ARTICLE XIII MISCELLANEOUS PROVISIONS

**13.1 Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board of the Association in accordance with the foregoing provisions





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of this Section 13.1 and the provisions of Section 4.2 above. At such time as there is no Lot without a Dwelling constructed thereon within the Development, or the Developer elects to terminate its exclusive voting rights, whichever shall first occur, a special meeting of the Association shall be called within a reasonable time but not later than 120 days thereafter at which time the Members of the Association shall elect a new Board which shall undertake the responsibilities of the Board and Developer shall deliver all books, accounts and records of the Association, if any, which Developer has in its possession within ninety (90) days after the election of the new Board.

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

**13.3 Severability.** If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

**13.4 Captions and Headings.** The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

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

**13.6 Binding Effect.** The terms and provisions of this Declaration shall be binding upon, and shall inure to the benefit of Developer, the Association and its members, each Owner, Tenant, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns.

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

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

**13.9 Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and give that interpretation or construction which, in the opinion of Developer





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or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

**13.10 Rights of Third Parties.** This Declaration shall be recorded for the benefit of Developer, the Association and its Members, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Development of 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.

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

**13.12 No Partition.** Each Owner, by its acceptance of a Lot or Dwelling, waives any right to seek or obtain judicial partition of any portion of the Development.

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

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

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

**13.16 Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid unless a different method for delivery of notice is specified in this Declaration or applicable laws. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Development. All notices to the Association or to the ARC shall be delivered or sent in care of Developer to the following address:

CHELSEA RIDGE ESTATES, LLC  
Attn: Lynal Chappell, Member  
P.O. Box 94  
Westover, AL 35147





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or to such other address as the Association or the ARC may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

**13.17 Assignment.** Subject to the provisions of Section 13.13 above, Developer shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer.

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

**No Waiver.** All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same; or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure 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.





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

CHELSEA RIDGE ESTATES, LLC  
an Alabama limited liability company

By: \_\_\_\_\_

Lynal Chappell  
Managing Member

STATE OF ALABAMA)  
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County in said State, hereby certify that Lynal Chappell, whose name as Managing Member of CHELSEA RIDGE ESTATES, 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 managing member with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 10<sup>th</sup> day of August, 2023.

\_\_\_\_\_  
Notary Public

My Commission Expires: 06/02/2027







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### CONSENT OF LENDER

William E. Nichols, as the holder and owner of a mortgage which secures the real property made subject to the Declaration of Covenants, Conditions and Restrictions for Chelsea Ridge Estates, 2<sup>nd</sup> Sector Phase I, as recorded in Map Book 57, Page 57, and the Amended Map of Chelsea Ridge Estates, 2<sup>nd</sup> Sector Phase I, as recorded in Map Book 58, Page 48, in the Probate Office of Shelby County, Alabama, and which mortgage is recorded in Instrument No. 20200831000381100, in the Probate Office of Shelby County, Alabama, does hereby consent to the filing of the Declaration and does hereby agree that said property shall remain subject to the terms and conditions of the Declaration if the lender should succeed to the interest of the mortgagor by foreclosure of its mortgage or by accepting a deed in lieu of the foreclosure.

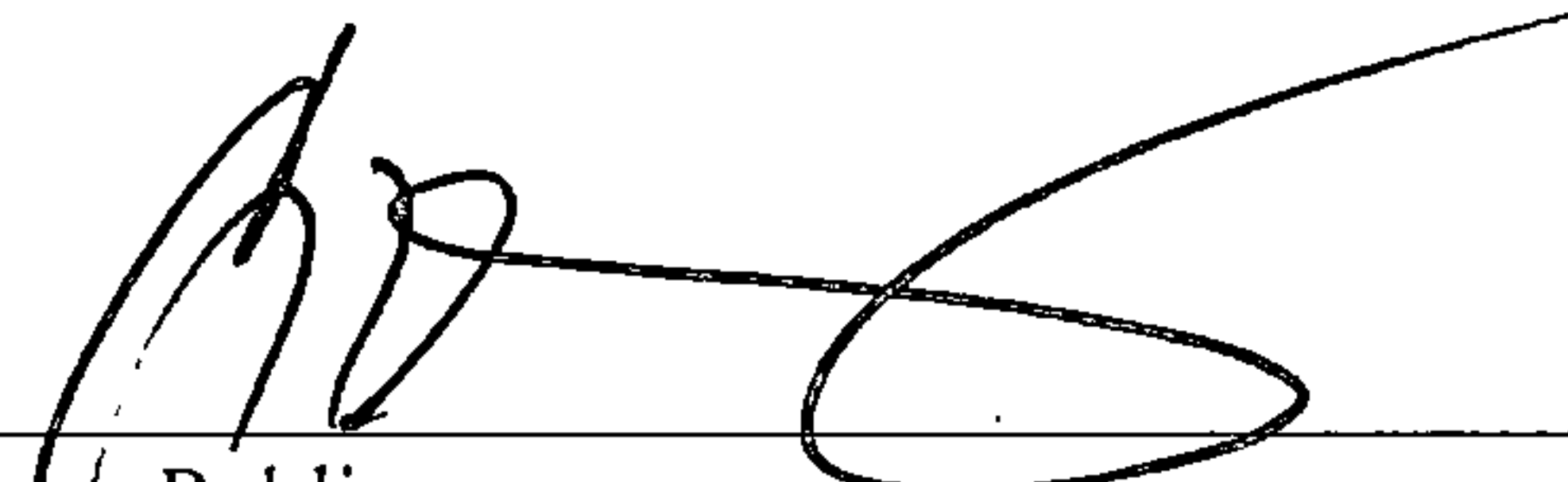
IN WITNESS WHEREOF, the undersigned has executed this consent on this 9<sup>th</sup> day of August, 2023.

  
WILLIAM E. NICHOLS

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a notary public in and for said County in said State, hereby certify that William E. Nichols, whose name 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, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 9<sup>th</sup> day of August, 2023.

  
Notary Public  
My Commission Expires: 06/02/2027

This Instrument was prepared by:

Clayton T. Sweeney, Attorney at Law  
2700 Highway 280 East Suite 160  
Birmingham, AL 35223







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## EXHIBIT "A"

### DESCRIPTION OF PROPERTY

Lots 1 through 13 and 45 through 60, according to the Survey of the Amended Map of Chelsea Ridge Estates, 2<sup>nd</sup> Sector, Phase I, as recorded in Map Book 58, Page 48, in the Probate Office of Shelby County, Alabama