

ASHETON PARK AT NORTHLAKES
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions is made this 14th day of May, 1993 by North Lake, Inc., hereinafter called "Declarant".

WHEREAS, Declarant is the owner of real property described in Exhibit "A" (hereinafter referred to as the "Total Property") attached hereto and incorporated herein by reference and plans, by phases, to develop said property to be known as NorthLakes Planned Community; and

WHEREAS, Declarant intends to develop the Total Property and by virtue of this Declaration is on this date committing portions of the Total Property to this Declaration and providing a method whereby various portions of the Total Property may become part of the Property subject to this Declaration by a recordation of a supplement to this Declaration; and

WHEREAS, Declarant has caused the NorthLakes Property Owners Association, Inc., as a Master Association, and the Asheton Park at NorthLakes Property Owners Association, Inc., to be formed for the purposes outlined in their respective articles of incorporation;

NOW, THEREFORE, Declarant hereby declares that all the property described in Exhibit "B" (hereinafter referred to as "Property") attached hereto and incorporated herein by reference shall be held, sold and conveyed or encumbered, rented, used, occupied and improved, subject to the easements, restrictions, covenants, and conditions described in Exhibit "C" which are for the purpose of protecting the value and the desirability of, and which shall run with the title to the real property and be binding on all parties having any rights, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The restrictions contained herein shall apply to or affect only to that real property described in Exhibit "B" which is subjected specifically to this declaration.

ARTICLE I: DEFINITIONS

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

1.01 Additional Property. The term "Additional Property" shall mean and refer to any real property lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Declarant may from time to time submit and add to the provisions of this Declaration.

1.02 Area of Common Responsibility. The term "Area of Common Responsibility" shall mean and refer to the Common Area together with those areas, if any, which by contract with any Association, any commercial establishment or association, any clubhouse or swimming pool, any owner or cooperative within the Total Property become the responsibility of the Association or a governmental entity.

1.03 Architectural Standards. The term "Architectural Standards" shall mean and refer to the Design Review and Construction Guidelines and other standards prepared, issued, and amended from time to time pursuant to Article V.

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

1.05 Assessment. The term "Assessment" shall mean and refer to assessments for Common Expenses provided for herein or by any Subsequent Amendment hereto.

1.06 Association. The term "Association" shall mean Asheton Park at NorthLakes Property Owners Association, Inc., an Alabama nonprofit corporation.

1.07 Board of Directors. The term "Board of Directors" shall mean and refer to the Board of Directors of the Association and their duly elected successors.

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

1.09 Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include recreational facilities and areas and any other areas or Improvements on or within the Property which are designated as Common Areas by Declarant from time to time.

1.10 Common Expenses. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association.

1.11 Declarant. The term "Declarant" shall mean and refer to North Lake, Inc., its successors and assigns.

1.12 Declaration. The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and all amendments thereto.

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

1.16 Improvement. The term "Improvement," shall mean and refer to any building, structure, or device constructed, erected, or placed upon any portion of the Property which in any way affects the exterior appearance of any Lot, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, 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 Common Area. "Improvements" shall also mean any contiguous area of excavation or fill, the total volume of which exceeds eight (8) cubic yards.

1.17 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, 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 the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which holds a first mortgage on any Lot or Improvement thereon, which has been duly and properly recorded in the Probate Office of Lee County, Alabama.

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

1.19 Lot. The term "Lot" shall mean and refer to any unimproved portion of the Property other than an intended Common Area, upon which it is intended that a structure be constructed. Upon the recordation of any subdivision plat covering any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed an Unimproved Lot until the Improvements constructed thereon are sufficiently complete to permit issuance of a Certificate of Occupancy there for. Upon such issuance, such Lot and the Improvements thereon shall collectively be considered to be an Improved Lot for purposes of this Declaration. In the event any Lot is resubdivided by Declarant, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.20 Member. The term "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

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

1.22 Mortgagee. The term "Mortgagee," shall mean and refer to the holder of any mortgage and shall include any Institutional Mortgagee.

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

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

1.25 Property. The term "Property" shall mean and refer to the real property within the boundaries described in Exhibit "B" attached hereto and incorporated by reference and shall further refer to such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration or which is owned or acquired by the Association.

1.26 Subsequent Amendment. The term "Subsequent Amendment" shall mean and refer to an amendment to this Declaration which adds additional property to that covered by this Declaration.

ARTICLE II: PROPERTY SUBJECT TO DECLARATION

2.01 General Declaration. The Declarant, its successors and assigns, declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and that the Property and any portion thereof and each Lot and Common Area 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 and that all of the above shall run with the title to the Property and shall be binding upon and inure

to the benefit of the Declarant and upon all Owners and Occupants of the Property, inclusive.

2.02 Additional Property. Declarant reserves the right in its absolute discretion, at any time, to add any Additional Property to the provisions of this Declaration. The Additional Property need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot and Declarant shall subject any Additional Property to this Declaration by an instrument executed by Declarant in the manner required for the execution of deeds and recorded in the Probate Office of Lee County, Alabama, which instrument shall be deemed an amendment to this Declaration and shall refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama where this Declaration is recorded, contain an exact description of Additional Property, state any differences that Declarant, in its sole discretion, specifies to regulate and control the use of said Additional Property, and contain a statement that the Additional Property is conveyed subject to the provisions of this Declaration. After submission of 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 or Improved Lots within the Additional Property so that there shall continue to be one vote in the Association per Lot within the Property. In no event shall any Additional Property apply to adjacent lands owned by Declarant.

2.03. Development and Subdivision of Property. Without obligation, the Declarant has the express right to make any improvements and/or changes to all Common Areas and to any Lots that may be owned by the Declarant to include the installation and maintenance of any Common Areas or changes in the boundaries of any Lots owned by Declarant, along with the installation or maintenance of any water, sewer or other utility system or facility within the Common Areas. Declarant also has

the express right to the installation of security, trash and refuse facilities. The Declarant has the right to combine and redivide any Lots owned by Declarant, and to record, amend, revise, and otherwise add to a subdivision plat, including, without limitation, locations and dimensions of all Lots, Improvements, Common Areas, Additional Property, public or private roads, utility and drainage systems, utility, drainage and access easements, set-back line restrictions, lakes, retention ponds, and drainage basins. Any and all amendments shall be binding on the portions of the Property so indicated as if such subdivision plat were incorporated into this Declaration.

ARTICLE III: EASEMENTS

3.01 Grant of Nonexclusive Easements to Owners. Declarant does hereby grant to each Owner and Occupant, their heirs and assigns, the nonexclusive easement of access to and the use and enjoyment of the Common Areas, subject to terms and conditions of this Declaration and the rules, regulations, fees, and charges that may be established by the Board from time to time. The nonexclusive easement granted shall be permanent and perpetual and shall pass with title to each Lot.

3.02. Reservation of Easements to Common Areas. There is reserved unto the Declarant, the Association and their respective agents, employees, representatives, invitees, heirs, successors, and assigns, without obligation, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Common Area for the purpose of Improvements, maintenance, installation, repair, and replacement as necessary for the Common Areas and inspection of Lots in order to determine compliance with the provisions of this Declaration. With reference to access to the Common Areas, Declarant shall not exercise such right so as to unreasonably interfere with the rights of the Owners to use and enjoy same.

3.03 Reservation of Maintenance, Landscape and Environmental Easements. There is reserved unto the Association, its employees, heirs, successors, and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, cutting, removing, clearing or pruning underbrush, weeds, stumps or any other unsightly growth so as to maintain reasonable health, fire, safety and appearance standards of the Property with the understanding that there is no obligation on the part of the Declarant or the Association to perform such duties. Declarant reserves the permanent and perpetual right to enter upon any Lot or Common Area for the purpose of taking any action necessary to comply with the Architectural Standards or approved landscape plans with regard to watershed, soil erosion, or environmental rules, regulations, and procedures which may be promulgated or instituted by any Governmental Authority or the Board. With exception of an emergency situation, the Declarant or the Association shall not unreasonably interfere with the use or occupancy of any Lot or Common Area.

3.04 Rights of Entry. The Association shall have the right, but shall not be obligated, to enter any Lot or Common Area for purposes related to emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter to make emergency repairs, to perform other work reasonably necessary for the proper maintenance and operation of the Property, and to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

ARTICLE IV: ASSOCIATION

4.01 Membership. Each and every owner of a Lot shall be a Member of the Association and as such shall be entitled to one (1) vote, regardless of the number of persons which may constitute the ownership of the Lot. Each Member shall comply with the provisions of this Declaration, the Articles of Incorporation, the By-Laws and all rules and regulations which may be adopted by the Board or the Members of the Association.

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

4.03 Control by Declarant. The Declarant retains the right to appoint and remove any member or members of the Board of the Association and any officer of the Association as long as Declarant is the Owner of any Lot within the Property, except a dwelling used as a personal residence. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Declarant shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section and the provisions of the above Section. At such time as Declarant no longer owns any interest in any Lot within the Property, except a dwelling used as a personal residence, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records of the Association, which Declarant has in its possession.

4.04 Agreements. The Board, in its sole discretion, has the express right under the terms of this Declaration, to enter into agreements to hire or utilize an individual, the

Declarant corporation or other legal entity to handle any aspect of the management, accounting and legal services as it deems necessary in connection with the operation of the Property. The individual, Declarant corporation or other legal entity shall receive monetary reimbursement for these services whether such personnel are furnished or employed directly by the Association and all such expense shall be considered a Common Expense. All decisions regarding same shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Property.

4.05 Rules and Regulations. The Board, in its sole discretion, may establish and enforce reasonable rules and regulations with regard to any and all Lots and Common Areas. Such rules and regulations shall be binding upon all Owners and Occupants until such time as a rule or regulation has been overturned, canceled or modified by the Board or by a majority vote of the Association at any regular meeting or special meeting called with regards to said rule or regulation; provided, however, that no such rule or regulation shall be overturned, canceled or modified without the express authority of the Declarant as long as Declarant owns any Lot or Common Area within the Property, except a dwelling used as a personal residence.

4.06 Indemnity for Damages. Each and every Owner in accepting a deed or contract for any Lot subject to these Restrictions, agrees to indemnify Declarant and its successors for any damage caused by such Owner, or the contractor, agent or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines of sanitary sewer lines. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, act of God, or any Owner 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 (3) resulting from theft, burglary, or other illegal entry into the Property or any Lot thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

4.07 Notice of Meetings and Quorum.

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 8.04.

(b) With respect to all other meetings of the members of the Association, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

ARTICLE V: DESIGN REVIEW

5.01 Design Review Committee. There is hereby established a Design Review Committee.

5.02 Membership. The Design Review Committee shall consist of not less than three (3) members and not more than seven (7), all of whom shall be appointed or elected. The members of the Design Review Committee may be, but shall not be required to be, members of the Association or Owners of any Lot. The regular term of office for each member of the Design Review Committee shall be one (1) year, coinciding with the fiscal year of the Association. Each Owner, by acceptance of a deed to or other conveyance to a Lot, shall be deemed to ratify the provisions of this Section.

(a) For so long as Declarant is the Owner of any Lot within the Property, except a dwelling used as a personal residence, Declarant shall have the sole and exclusive right to appoint and remove all of the members of the Design Review Committee.

(b) At such time as Declarant is no longer the Owner of any Lot within the Property, except a dwelling used as a personal residence, or, upon Declarant's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the Design Review Committee as provided in Section 5.02(a) above, then the members of the Design Review Committee shall be appointed by the Board of the Association.

(c) Any member of the Design Review Committee may be removed, with or without cause, by (i) Declarant, in its sole discretion, during the period of time that the provisions of Section 5.02(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.02(b) above are in effect. In the event of death or resignation of a member of the Design Review Committee, a substitute member shall be appointed to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.03 Procedure and Meetings. The Design Review Committee shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the Design Review Committee. The Design Review Committee shall meet on a regular basis as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the Design Review Committee shall constitute a quorum of the Design Review Committee for the transaction of business and the affirmative vote of a majority of those members present in person or by proxy at a meeting of the Design Review Committee shall constitute the action of the Design Review Committee on any matter which comes before it. The Design Review Committee is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys in order to advise and assist the Design Review Committee in performing its functions set forth herein. Each member of the Design Review Committee may be paid a stipend or honorarium as may from time to time be determined by the Board of the Association and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the Design Review Committee, subject to the approval of such expenses by the Board of the Association. The Design Review Committee 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 Design Review Committee.

5.04 Architectural Standards. The Design Review Committee is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines, and minimum requirements to be satisfied with respect to the construction, location, landscaping, and design of all Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any structure or other Improvements are to be submitted to and approved by the Design Review Committee, and any other matters affecting the construction, repair, or maintenance of any structure or other Improvements. The Architectural Standards adopted by the Design Review Committee shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners. It is expressly provided that an Owner may make interior improvements and alterations within his structure that do not affect exterior appearance without the necessity or requirement that Design Review Committee approval or consent be obtained.

5.05 Approval of Plans and Specifications.

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Property, to establish and preserve a harmonious design for the Property, and to protect and promote the value of the Property, the Lots, the Common Areas, and all Improvements thereon, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot by any Owner, other than

Declarant, which may affect the exterior appearance of any Lot unless plans and specifications therefor have been submitted to and approved by the Design Review Committee in accordance with the terms and provisions of section 5.05(b) below.

(b) The Design Review Committee is hereby authorized and empowered to approve all plans and specifications and the construction of all Improvements on any part of the Property. Prior to commencement of any structure or other Improvements, the Owner thereof shall submit to the Design Review Committee two (2) copies of plans and specifications and related data for all such Improvements, which shall include the following, all prepared at an appropriate scale and submitted in 8-1/2" x 11" format (or suitable multiple thereof):

(i) A landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below.

(ii) An accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, any structure(s) to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios, and outbuildings and the relationship of the same to any setback requirements applicable to the Lot or structure thereon.

(iii) A foundation plan, floor plans, and exterior elevation drawings of the front, back, and sides of the structure to be constructed.

(iv) Written specifications and, if requested by the Design Review Committee, samples indicating the nature, color, type, shape, height, and location of all exterior materials to be used in the construction of the structure on such Lot or any other Improvements thereto.

(v) The lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot.

(vi) Such other plans, specifications, or other information or documentation as may be required by the Architectural Standards or the Design Review Committee.

(c) The Design Review Committee shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any owner for approval are acceptable. One copy of all plans, specifications, and related data so submitted to the Design Review Committee shall be retained in the records of the Design Review Committee and the other copy shall be returned to the Owner submitting the same marked "approved," "approved as noted," or "disapproved." The Design Review Committee shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any persons retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof.

(d) The Design Review Committee shall have the right to disapprove any plans and specifications upon any ground which is inconsistent 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 on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements, objection to the landscaping plan 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 Design Review Committee, would render

the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The Design Review Committee shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or structure(s). Approval of plans and specifications by the Design Review Committee for Improvements in any particular case shall not be deemed an approval or otherwise obligate the Design Review Committee to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot within the Property.

(e) In the event the Design Review Committee fails to approve in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been deemed complete and accepted for review by the Design Review Committee, then the plans and specifications so submitted will be deemed to have been approved.

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

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

5.06 Landscaping Approval. In order to preserve, to the extent practicable, the natural landscaping and plant life situated on the Property and in order to enhance the aesthetic appearance of the Property, no tree cutting, landscaping, grading, 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 Design Review Committee. The provisions of Section 5.05 above regarding the method that such plans are to be submitted to the Design Review Committee, the time for approval or disapproval of the same, and the method of approving modifications or changes thereto shall be applicable to such plans.

5.07 Variances. The Design Review Committee, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V and Article VI with respect to any Lot. Any variance request submitted to the Design Review Committee shall be in writing and, upon approval of the same by the Design Review Committee, shall be evidenced by a written variance executed by either the chairman or vice chairman of the Design Review Committee. The provisions of this Section concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the Design Review Committee shall be binding upon the Design Review Committee in any matters regarding the granting of variances.

5.08 Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot without Design Review Committee approval of the plans and specifications for the same or (b) the Design Review Committee shall determine that any approved plans and specifications for any Improvements or landscaping are not being complied with, then, in either event, the Owner of such Lot shall be

deemed to have violated this Declaration and the Design Review Committee shall have the right to exercise any of the rights and remedies set forth in Section 11.02 below.

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

5.10 Subsurface Conditions. The approval of plans and specifications by the Design Review Committee for any structures or other Improvements shall not be construed in any respect as a representation or warranty by the Design Review Committee or Declarant to the Owner submitting such plans or to any of the successors or assigns of such owner that the surface or subsurface conditions of such Lot are suitable for construction of the Improvements or structure contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of surface and subsurface conditions for any construction.

5.11 Limitation of Liability. It is expressly provided that neither Declarant, the Design Review Committee, the Association, nor any agent, employee, representative, member, shareholder, partner, officer, or director thereof, shall have any liability of any nature whatsoever for any damage, loss, or prejudice suffered, claimed, paid, or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed, or approved in accordance with the provisions of this Article, (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 V, (d) the construction or performance of any work related to such plans, drawings, and specifications, (e) bodily injuries (including death) to any Owner, Occupant, or the respective family members, guests, employees, servants, agents, invitees, or licensees of any such Owner or Occupant, or any damage to any structure(s), 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 Improvements or the plans and specifications therefor or any past, present, or future soil, and/or subsurface conditions, known or unknown (including, without limitation, sink-holes, underground mines, tunnels, and water channels, and limestone formations on or under any Lot), and (f) any other loss, claim, damage, liability, or expense, including court costs and attorneys' fees, suffered, paid, or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, or any Improvements or structure situated thereon.

5.12 Commencement and Completion of Construction. Upon commencement of construction of any Improvements, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a Certificate of Occupancy issued by the appropriate governmental authorities.

5.13 Sales and Construction Activities. The Declarant, its agents, employees, successors, and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale or development of Lots, Common Areas, and the

Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs, and model dwellings and other structures, all as may be approved by Declarant from time to time; provided, however, that the location of any construction trailers of any assignees of Declarant's rights under this Section shall be subject to Declarant'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 and for any similar or related activities.

5.14 Compliance Certification. The Design Review Committee or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be established, furnish to an Owner a certificate in writing setting forth whether all necessary Design Review Committee approvals have been obtained and whether any Improvement has been constructed in accordance with the provisions of this Declaration.

ARTICLE VI: GENERAL COVENANTS AND RESTRICTIONS

6.01 Use Restrictions. Except as otherwise provided to the contrary in this Declaration, each Lot shall be used for such uses and purposes only as are designated on the subdivision plat, and no trade or business of any kind may be carried on in or from any residential Lot. 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 six (6) months, and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association.

6.02 Design Review Committee Approval. No Improvements of any nature whatsoever shall be constructed on any Lot unless such Improvements have been approved by the Design Review Committee in the manner set forth in Article V above. Further, all Improvements shall be constructed in compliance with all applicable laws, ordinances, rules, regulations, zoning and building code requirements of all Governmental Authorities. Each Owner shall be solely responsible for obtaining all necessary permits and licenses and otherwise paying all required fees associated with construction of any Improvements on such Owner's Lot.

6.03 Underground Utilities.

(a) 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.

(b) No Owner will erect, or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Design Review Committee. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables.

(c) In order to permit installation of underground electric service no Owner will commence construction of any structure until such Owner (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements the electric utility requires in connection with its construction,

operation, maintenance and removal of underground service lateral, and (3) otherwise complies with the applicable rules and regulations for underground distribution on file with and approved by the Alabama Public Service Commission. If required by the electric utility, such electric utility, its successors and assigns, may retain title to the underground service lateral and outdoor metering trough or power box (exclusive of circuit breakers), and said service entrance facilities provided by such utility will remain personal property belonging to such utility, its successors and assigns, in accordance with the Alabama Public Service Commission.

6.04 Building Setbacks.

(a) Subject to the provisions below, minimum and/or maximum building setback lines for all structures shall be established either (i) by the Design Review Committee, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included, or (iii) in the deed from Declarant to the Owner.

(b) No structures shall be built within the setback areas established in accordance with any of the procedures specified in the Section above. All porches, terraces, decks, and patios shall be deemed a part of the structures for the purposes of determining building setback areas pursuant to this Section.

6.05 Height Limitations. The height of all structures shall be compatible with all other structures adjacent to such Lot or structure, as determined by the Design Review Committee. No structure shall exceed two and one-half (2-1/2) stories in height.

6.06 Minimum Living Space. Minimum Living Space requirements may be established (i) by the Design Review Committee, (ii) on the subdivision plat for the subdivision of which such Lot is included (which may

vary for each phase of development, or (iii) in the deed from Declarant to the Owner.

6.07 Trees. Unless located within ten (10) feet of a dwelling, or three (3) feet of any driveway or sidewalk, no Owner shall cut, remove, or mutilate any tree, shrub, bush, or other vegetation having a trunk diameter of four (4) inches or more at a point of two (2) feet above ground level, without first obtaining the approval of the Design Review Committee. In the event such a tree is cut without such approval, it shall be replaced, on the same Lot, within a period of two months, and at the expense of the Owner, by three (3) trees of minimum four (4) inch diameter at a point two (2) feet above ground level. The foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the Design Review Committee nor shall the foregoing be deemed to release any Owner from the Section below.

6.08 Landscaping.

(a) The landscaping plan for each Lot shall, to the extent practicable, attempt to incorporate the natural plant life existing on such 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, which exist on such Lot.

(b) All front and side yards of each Lot shall, unless approved by the Design Review Committee as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(c) All landscaping shall be completed in accordance with the landscaping plan approved by the Design Review Committee no later than thirty (30) days following the issuance of a Certificate of Occupancy for the structure situated thereon.

(d) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain where such hedge or shrubbery interferes with traffic sight-lines for roadways. The determination of whether any such obstruction exists shall be made by the Design Review Committee, whose determination shall be final, conclusive, and binding on all Owners.

(e) The Association shall have the right to enter upon any part of a Lot and trim or prune, at the expense of the Owner, any hedge or other planting which in the opinion of the Association or the Design Review Committee, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided however, that the Owner shall be given fifteen (15) days' prior written notice of such action.

(f) No vegetable, herb, or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot, or in the rear yard of any corner Lot if same would be visible from any street.

(g) The Design Review Committee may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot.

(h) No Owner shall allow the grass on his Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(i) Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed as soon as such holiday season passes.

6.09 Walls or Fences. No fences or walls may be erected without the approval of the Design Review Committee. Chain link or wire fences are not allowed.

6.10 Roofing. The Design Review Committee shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any structure.

(a) No solar or other energy collection panel, equipment, or device shall be installed or maintained on any Lot including, without limitation, the roof of any structure if the same would be visible from any street.

(b) No plumbing or heating vents, stacks, and other projections of any nature shall be placed on the roof on the front of a structure. All such vents, stacks, and any other projections from the roof of any structure shall be located on the rear roof of such structure and shall (i) be painted the same color as the roofing material used for such structure and (ii) to the extent practicable, not be visible from any street.

(c) No projections of any type shall be placed or permitted to remain above the roof of any structure except for approved chimneys and vent stacks.

6.11 Exterior Lighting. All exterior lighting for any structure, including, without limitation, free standing lighting and utility lights attached to a structure, must be approved by the Design Review Committee.

6.12 Garages and Carports.

(a) Each residential Lot shall provide off-street parking for at least four (4) motor vehicles, two (2) of which must be provided for with a carport or a garage which is equipped with garage doors. Carports shall be located at the rear or side of lot and shall not face the street.

(b) Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the Design Review Committee.

(c) All automobiles owned or used by the Owner or Occupant of any dwelling and their respective family members shall be parked in carports or garages to the extent such space is available. Carports shall not be used for storage or for any other purposes or uses which would result in the space being unavailable for the parking of vehicles therein.

6.13 Mailboxes. Only one (1) mailbox shall be allowed on any Lot. All mailboxes shall be of the type, design, color, and location as may be established in the Architectural Standards or as approved by the Design Review Committee.

6.14 Utility Meters and HVAC Equipment. All electrical, gas, telephone, and cable television meters, to the extent practicable, shall be located at the rear of all structures. All exterior heating, ventilating, and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of a structure and, if the same are visible from the street, such compressor units and equipment shall be screened from public view by either walls or landscaping to be approved by the Design Review Committee.

6.15 Antennae and Satellite Dishes. No radio or television antenna, satellite dish, or other similar device or aerial shall be attached to or installed on any portion of the Property unless the same is contained entirely within the interior of a building or other structure, or is otherwise not visible from any street or adjacent Lot and is approved by the Design Review Committee. No radiation or transmission shall be permitted to originate

from any Lot which may interfere with the reception of radio or television signals within the Property.

6.16 Driveways and Sidewalks. All driveways and sidewalks on Lots shall be constructed with permanent surfaces, of materials and in a manner approved by the Design Review Committee.

6.17 Outdoor Furniture, Recreational Facilities.

(a) No furniture shall be placed, kept, installed, maintained, or located in or on the front or side yards or areas of a Lot. Any furniture placed, kept, installed, maintained, or located at the rear of or behind a structure shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear of a structure and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots.

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

(d) Free-standing playhouses and tree houses shall be permitted but only after Design Review Committee approval of the same.

(e) Basketball backboards shall be placed only in a locations approved by the Design Review Committee.

(f) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a structure and, to the extent practicable, shall not be visible from the street.

(g) All bird feeders, wood carvings, plaques, and other types of homecrafts shall be located only at the rear of a structure and shall not be visible from any street.

6.18 Pets and Animals. No animal shall be kept, raised, or bred by any Owner or Occupant upon any portion of the Property; provided, however, that dogs and cats may be kept as pets and maintained on a Lot so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas; all such structures or areas shall be located at the rear of a Lot and only constructed of materials and of a size approved by the Design Review Committee. Dogs shall not be allowed to roam unattended, but shall be kept and maintained within fenced or walled areas on a Lot, as approved by the Design Review Committee, or otherwise under leash. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the animals of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing the keeping of animals within the Property, including the right to assess fines for violations of such rules and regulations.

6.19 Trash, Rubbish, and Nuisances.

(a) No trash, lumber, metal, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate Property nor shall any nuisance or odors be permitted to exist or operate which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots within the Property. Noxious or offensive activities shall not be carried on, and each Owner and Occupant shall refrain from any act or use which would

cause disorderly, unsightly, or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation, or requirement of any 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 portion of the Property; provided, however, that the foregoing shall not apply to the use of any of the foregoing devices within any recreational areas of the Common Areas such as swimming pools. Any Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees, or contractors of such Owner or Occupant who dumps, places, or allows trash or debris to accumulate on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage, and any other refuse or waste shall not be kept 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 structure and shall be screened from view from streets and adjacent Lots by appropriate landscaping or fencing approved by the Design Review Committee; provided, however, that trash cans and containers can be moved to the front or side yard on trash collection days.

6.20 Recreational Vehicles and Machinery and Equipment.

(a) Commercial trucks, mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of

watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be stored or allowed to remain on any Lot unless the same is placed, stored, and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot. Any such enclosed structure must be approved by the Design Review Committee. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery, or equipment.

(b) Each Lot shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot). Vehicles shall be parked only in driveways constructed in accordance with the provisions of the above Section or in garages constructed in accordance with the provisions of the above Section, and not parked on any landscaped or natural areas of a Lot.

(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.

(d) The Board 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 mobile homes, 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.

6.21 Signs. No signs or advertising devices of any kind shall be maintained or permitted on any portion of the Property without the express written permission of the Design Review Committee. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the Design Review Committee.

6.22 Above Ground Tanks, Wells and Pipes. No exposed above-ground tanks and pipes for the storage of fuel, water, or any other substances shall be located on any portion of the Property. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained except for wells approved in writing by the Design Review Committee installed and maintained solely for irrigation purposes.

6.23 Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, tree house, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board of the Association, (b) any detached garages or other structures which are approved in writing by the Design Review Committee, and (c) construction trailers and/or sales offices erected or placed on any part of the Property by Declarant.

6.24 Clotheslines. No clothing or any other household fabrics shall be hung in the open unless same is not visible from any lot, common, and street, or public view.

6.25 Pools and Tennis Courts. Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools,

and tennis courts may be constructed, installed, and maintained on any Lot subject to approval of plans by the Design Review Committee. Above-ground swimming pools and lap pools shall not be permitted.

ARTICLE VII: MAINTENANCE RESPONSIBILITIES

7.01 Responsibilities of Association.

(a) The Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas, which responsibility shall include the maintenance, repair, and replacement of (i) all private streets and roads within the Property, walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, landscaped areas, recreational areas, and other improvements made by Declarant or the Association within any of the Common Areas or within any of the easements as provided in Article III above, (ii) such security systems, guardhouses, entrance gates, and 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 public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all lakes and ponds situated within or upon the Common Areas, and (iv) all retention lakes, ponds, and other water areas and facilities constructed by Declarant or the Association, wherever located (either within or outside of the Property so long as the same are utilized for the benefit of the Property), 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.

7.02 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, and Improvements situated thereon or therein, and all lawns, landscaping, and grounds on or within a Lot shall be the responsibility of the Owner of such Lot, who shall maintain same in a neat, clean, and sanitary condition, both inside and outside of any structures or other Improvements. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner.

(b) All areas of any Lot which are not improved by the construction of a structure thereon shall at all times be maintained by the Owner in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. Such maintenance obligations shall apply to all portions of a Lot to the edge of the pavement of any abutting roadway and shall be binding on the Owner at all times, either prior, during, or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines, and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals 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.

7.03 Remedies of Association. 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 (ii) 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 the below Section.

ARTICLE VIII: COMMON AREA ASSESSMENTS

8.01 Assessments and Creation of Lien. Each Owner of a Lot, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in the below Section, (b) special Assessments, to be established and collected as provided in the below Section, and (c) individual Assessments against any particular Lot 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 herein. All Assessments, together with late charges and interest as provided in the below Section, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in the below Section. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in the below Section, 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. 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 portion of the Property or any other cause or reason of any nature.

8.02 Purpose of Assessments. The annual and special Assessments provided for herein shall be used for the expenses of the Association and its general purposes of promoting the recreational, health, safety, welfare,

common benefit, and enjoyment of the Owners of the Property and otherwise for the general upkeep and maintenance of the Property, all as may be authorized from time to time by the Board of the Association.

8.03 Uniform Rate of Assessments.

(a) Both annual and special Assessments, as described in the below Sections, shall be assessed against each Lot in the Property at a uniform rate, with the Owner of each Lot being required to pay his prorata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots owned by such Owner and the denominator of which shall be the total number of Lots in the Property at the time such annual or special Assessment is levied. Each Lot shall be subject to equal Assessments.

(b) in the event any Additional Property is added to the Property, then the Lots within the Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots in the Property, subject to proration as provided in the below Section.

8.04 Computation of Annual Assessments.

(a) The annual Assessment for each Lot in the Property (including any Lot forming any part of the Additional Property) for the period commencing on the date hereof and continuing until and including December 31, 1998, shall be Three Hundred and No/100 Dollars (\$300.00) per annum per Lot in the Property. The foregoing shall not limit or restrict any special Assessments levied pursuant to the below Section (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of the below Section.

(b) Commencing with the fiscal year of the Association which begins on January 1, 1999 (i.e., from January 1, 1999, through December 31, 1999, 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 Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorata share of the same as provided in the above Section. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner. The provisions of the above Section 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 Assessments the increase of which exceed (without regard to proration or adjustment as provided in the below Section) the greater of either (i) ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in the United States Consumer Price Index or any successor index thereto for January of the current year over the index for January of the Base Year (i.e., January 1999) then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for

the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments. The limitations on increases in the amount of annual assessments provided in this Section shall not be applicable to the Base Year; accordingly, the actual annual Assessments for each Lot for the Base Year may exceed \$300.00 per annum increased by the greater of (i) ten percent (10%) or (ii) the percentage increase in CPI from the preceding calendar year.

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

(e) The Common Expenses to be funded by the annual 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 third party contractors;

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

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common

services for the Property, including, without limitation, trash collection and security services;

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

(v) The expenses of maintaining, operating, repairing, and replacing any portions of the Common Areas for which the Association is responsible, including, without limitation, roads comprising Common Areas within the Property, which maintenance and repair obligation shall include mowing, landscaping, seeding, cleaning, trash pick-up and removal, paving, repaving, striping, and patching all such roadways comprising Common Areas;

(vi) Expenses of maintaining, operating, and repairing any other amenities and facilities serving the Property which the Board determines from time to time would be in the best interest of the Association to so maintain, operate, and/or repair;

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

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

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

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

(xi) 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 Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

8.05 Special Assessments. In addition to the annual Assessments authorized in the above Section and the Special Assessments authorized in the Sections 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 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 the below Section. 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 the above Section.

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

8.08 Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Declarant 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 Assessments and any outstanding special 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 special assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Declarant, 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. The

Declarant shall not be responsible for the payment of annual or special Assessments on any Lots which it owns in the Property, other than those occupied as personal residence(s). Furthermore, for so long as Declarant is the Owner of any Lot within the Property, Declarant shall have the option to either pay annual Assessments on Lots owned by Declarant or fund any deficits which may exist between the total amount of annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Property. At such time as Declarant no longer has any interest in any Lot within the Property, except for a dwelling used for a personal residence, Declarant shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the Common Areas.

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

(a) 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 the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot for Assessments as provided above shall also include all late charges, interest

at the Applicable Rate and all attorneys' fees, court costs, and 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 any 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 the above Section, 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 the above Section in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot all late charges and interest at the Applicable Rate assessed pursuant to the above Section 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. If such delinquency is not paid in full within ten (10) days after the giving of such demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

(i) The name of the delinquent Owner;

(ii) The legal description and street address of the Lot upon which the lien claim is made;

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

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

The lien provided for herein shall be in favor of the Association, 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. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the

Association and/or its 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.

8.10 Subordination of Lien. The lien for Assessments and other charges authorized herein with respect to any Lot in the Property 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 Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to the Section 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 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 Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to the above Section, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner

notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot.

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

ARTICLE IX: CASUALTY, CONDEMNATION AND INSURANCE

9.01 Damage or Destruction to Common Areas.

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

(b) 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 a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to the above Sections, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace, or restore the

Common Areas to the condition as existed immediately prior to such fire or other casualty. Such special Assessments shall be levied against each Owner equally as provided in the above Section. Further special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement, or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 Damage or Destruction to Lots and Improvements. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Improvement then the Owner of such damaged Lot or Improvement shall promptly repair and otherwise restore same to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

9.03 Condemnation of Common Areas.

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered, authorized, and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild, or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to the above Sections, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration, or reconstruction. Such special Assessments shall be levied against each Owner as provided in the above Section. Further special Assessments may be made by the Board without necessity of a vote of the Owners approving or disapproving same, at any time during or upon 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 Property 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 the below Section, no Owner or Mortgagee of any Lot shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

9.04 Condemnation of Lots. In the event that all or any portion of a Lot is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild, and

otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. In the event restoration is impracticable or would otherwise violate this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition.

9.05 Insurance.

(a) The Board of the Association shall have the authority to obtain and maintain at all times adequate 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 Association, its Board, and all members, officers, agents, and employees thereof, in such amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability

insurance, and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a common expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Declarant, the Association, the members of the Board, and all officers, agents, and employees of the Association, including the manager for the Property and the Association, the Owners and the family members, servants, agents, tenants, and guests of the Owners and shall also name Declarant as an additional insured.

(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 Improvements. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Improvements 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 Improvement, does hereby waive and release Declarant, the Design Review Committee, the Association, and their respective agents, employees, representatives, partners, shareholders, members, 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 X: GENERAL PROVISIONS

10.01 Term. The terms, covenants, conditions, and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after twenty (20) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Lots within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Lee County, Alabama; provided, however, that the rights of way and easements established, granted, and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 Amendment by Declarant. For so long as Declarant owns any Lot within the Property except for a dwelling used as a personal residence, Declarant may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in the below Section, (a) in the event any amendment proposed by Declarant materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or materially and adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Declarant, who shall have the voting rights attributable to any Lots owned by Declarant) or (b) in the event any such proposed amendment by Declarant 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 amendment made pursuant to this Section shall be certified by Declarant and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted this Section and further agrees that, if requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Property if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgage on any Lots within the Property.

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

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment

which materially 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 Declarant owns a Lot in the Property, then Declarant must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in the Section below, then the provisions of the Section below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of the above Section shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to an incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Lee County, Alabama.

ARTICLE XI: ENFORCEMENT

11.01 Authority and Enforcement. In the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any 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 and shall be a personal obligation of such Owner which is guilty of such violation, (ii) suspend an Owner's right to vote in the Association, or (iii) suspend an Owner's or

Occupant's right (and the right of such Owner's or Occupant's family members, guests, and tenants) to use any of the recreational facilities located in or upon the Common Areas, 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.

11.02 Enforcement and Remedies. In the event any of the provisions of Articles V and VI 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 Design Review Committee and the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the Design Review Committee for such Improvements and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Design Review Committee or the Association in enforcing any of the provisions of Articles V and VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of nonconforming work, the completion of uncompleted work, or in any judicial proceeding, together with any other costs or expenses incurred by the Design Review Committee or the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of Articles V and VI, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 above and, if the same is not paid when due, shall be subject to the lien provided for

in Section 8.09 above and be subject to foreclosure as provided for therein. The rights and remedies of the Design Review Committee and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Design Review Committee or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

11.03 Procedure. In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association are violated by any Owner or Occupant or their respective agents, contractors, or invitees, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights pursuant to the above Section 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, the Architectural Standards, the Articles of Incorporation, 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 the above Section and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

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

ARTICLE XII: MISCELLANEOUS PROVISIONS

12.01 **Legal Expenses.** In addition to all other rights and remedies set forth herein, in the event either the Design Review Committee, its agents or representatives, or the Board, its agents and representatives, undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove, or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants, or conditions of this Declaration shall be paid for by the Owner against whom such action was initiated. The Design Review Committee, its agents and representatives, and the Board, 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 or to otherwise seek monetary damages as a result of any expenses incurred by either the Design Review Committee or the Association to cure such violation or breach.

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

enforceable to the fullest extent permitted by law.

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

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

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

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

12.07 **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 Declarant nor shall any provision be deemed to vest any reversionary interest in Declarant.

12.08 Interpretation. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant 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.

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

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

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

12.12 Reservation of Rights. No sale, transfer, conveyance, lease, pledge, encumbrance, or other hypothecation of any Lot by Declarant to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Declarant unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Declarant is transferring to any such third party.

12.13 Standards for Review. Whenever in this Declaration, Declarant, the Association, or the Design Review Committee 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 Declarant, the Association, or the Design Review Committee, as the case may be.

12.14 Oral Statements. Oral statements or representations by Declarant, the Association, the Design Review Committee, or any of their respective employees, agents, representatives, successors, or assigns, shall not be binding on Declarant, the Association, or the Design Review Committee.

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

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

12.16 Assignment. Subject to the provisions of the above Section, Declarant and the Design Review Committee shall each 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 Declarant and the Design Review Committee, respectively.

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

12.18 No Waiver. All rights, remedies, and privileges granted to Declarant, the Association, and the Design Review Committee 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.

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

North Lake, Inc.

By: Randall Rogers
Its President

Attest: Marshall Conner
Its Secretary

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned, a Notary Public in and for the State at Large, hereby certify that James Randall Rogers and Marshall J. Conner, whose names as President and Secretary of North Lake, Inc., are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they as such officers and with full authority for and as the act of said corporation.

Given under my hand and official seal, this the 14th day of May, 1993.

Carol P. Elrod
Notary Public

(NOTARY SEAL)

My commission expires: 11/20/93

EXHIBIT A

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ASHETON PARK AT NORTHLAKES

at the Southeast corner of Section 7, Township 19 North, Range 26 East, Lee County, Alabama, corner and starting point of the parcel herein to be described: From this starting point, thence North 29 degrees 29 minutes 21 seconds West, 119.04 feet; thence South 01 degree 30 minutes 35 seconds West, 100 feet; thence South 89 degrees 37 minutes 04 seconds West, 917.40 feet; thence North 01 degree 27 minutes 27 seconds East, 621.40 feet; thence South 89 degrees 42 minutes West, 592.85 feet; thence North 28 degrees 47 minutes 02 seconds West, 335.02 feet; thence North 89 degrees 44 minutes East, 500 feet; thence North 00 degrees 09 minutes 30 seconds West, 537.81 feet; thence South 89 degrees 30 seconds West, 747.70 feet; thence South 31 degrees 00 minutes 00 seconds East, 34.94 feet; thence South 41 degrees 58 minutes 09 seconds West, 83.72 feet to a point on the easterly margin of Alabama Highway No. 147; thence North 17 degrees 52 minutes 35 seconds West along the easterly margin of said highway for a distance of 148.18 feet; thence South 73 degrees 55 minutes 24 seconds East, 100 feet; thence North 89 degrees 50 minutes 30 seconds East, 765.61 feet; thence North 00 degrees 09 minutes 30 seconds West, 226.96 feet; thence South 89 degrees 51 minutes West, 212.13 feet; thence North 00 degrees 38 minutes 30 seconds West, 436.09 feet; thence North 12 degrees 05 minutes West, 159.08 feet to a point located in the centerline of Saugahatchee Creek; thence along the centerline of said creek on the following bearings and distances: North 68 degrees 04 minutes 44 seconds East, 192.96 feet; South 68 degrees 36 minutes 39 seconds East, 112.22 feet; South 61 degrees 21 minutes 50 seconds East, 66.34 feet; North 89 degrees 51 minutes 03 seconds East, 116.71 feet; North 50 degrees 59 minutes 26 seconds East, 3.93 feet; North 51 degrees 14 minutes 55 seconds East, 189.03 feet; South 72 degrees 34 minutes 30 seconds East, 152.19 feet; South 44 degrees 47 minutes 50 seconds East, 199.20 feet; South 01 degree 29 minutes 29 seconds East, 126.25 feet; South 41 degrees 40 minutes 33 seconds West, 115.87 feet; South 01 degree 55 minutes 15 seconds East, 289.17 feet; North 79 degrees 31 minutes 09 seconds East, 103.28 feet; South 73 degrees 36 minutes 27 seconds East, 107.63 feet; North 72 degrees 07 minutes 03 seconds East, 16.70 feet; North 14 degrees 07 minutes 24 seconds East, 158.53 feet; North 78 degrees 16 minutes 30 seconds East, 384.57 feet; North 09 degrees 38 minutes East, 147.85 feet; North 81 degrees 32 minutes 30 seconds East, 101.23 feet; South 07 degrees 58 minutes 18 seconds East, 96.93 feet; South 64 degrees 30 minutes 21 seconds East, 175.10 feet; South 05 degrees 44 minutes 39 seconds West, 115.00 feet; South 01 degree 03 minutes 06 seconds East, 150.31 feet; thence leaving the centerline of said creek South 01 degree 12 minutes 21 seconds West, 761.77 feet; South 81 degrees 38 minutes 33 seconds East, 181.51 feet to the northwest corner of Lot 3, Creekwood Subdivision; thence South 01 degree 57 minutes 21 seconds West along the West line of said lot for a distance of 446.47 feet; thence South 61 degrees 09 minutes 21 seconds East along the South line of said lot for a distance of 209.23 feet; thence South 43 degrees 08 minutes 02 seconds East, 660.15 feet; thence South 00 degrees 23 minutes 50 seconds East, 100 feet; thence North 89 degrees 20 minutes 48 seconds West, 841.30 feet; thence North 89 degrees 21 minutes 21 seconds West, 180.60 feet to the starting point.

EXHIBIT B

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ASHETON PARK AT NORTHLAKES

All lots in Asheton Park, a subdivision, as shown by plat of survey thereof prepared by T. Richard Fuller, Licensed Surveyor, Alabama Registration No. 7384, dated February 8, 1993, and recorded in Town Plat Book 16, at Page 41, in the Office of the Judge of Probate of Lee County, Alabama.

EXHIBIT C

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ASHETON PARK AT NORTHLAKES

1. Drainage and utility easements shown on the recorded subdivision plat of Asheton Park at Northlakes, as is recorded in Town Plat Book 16, at Page 41, in the Office of the Judge of Probate of Lee County, Alabama.
2. Building set-back lines for each lot as shown on the recorded subdivision plat recited above.
3. Minimum 2,500 square feet of living space per residence to be built on the lots described on the recorded subdivision plat recited above.
4. Declaration of Covenants, Conditions and Restrictions for Asheton Park at Northlakes to which this Exhibit C is attached and as recorded in the Office of the Judge of Probate of Lee County, Alabama.
5. Easements reserved to the Declarant in the Declaration of Covenants, Conditions and Restrictions for Asheton Park at Northlakes to which this Exhibit C is attached and as recorded in the Office of the Judge of Probate of Lee County, Alabama.
6. Drainage and utility easement from North Lake, Inc. to the City of Auburn, Alabama, dated February 17, 1993, and recorded in Deed Book 1735, at Page 44, in the Office of the Judge of Probate of Lee County, Alabama.

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