

TOWN CREEK SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS TOWN CREEK SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 31st day of August, 2011 by Town Creek Development Company, LLC, an Alabama limited liability company (the “Developer” and “Declarant”).

ARTICLE I

Definitions

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

1.01 Additional Property. The term “Additional Property” shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Development) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of **Section 2.02** below.

1.02 AR&CCB or Board. The term “Board” or letters “AR&CCB” shall mean the board of directors described in the Bylaws of the corporation pursuant to the rights and obligations conferred upon such architectural review and covenant compliance board pursuant to this Declaration.

1.03 Architectural Standards. . The term “Architectural Standards” shall mean the standards prepared, issued, and amended from time to time by the AR&CCB pursuant to **Section 3.01** below to the mutual benefit of the Owners and for the purpose of reviewing and approving all exterior improvements, landscaping, and any other Improvements which may be made to any Lot or Dwelling.

1.04 Builder. Any Person who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers or who purchases one (1) or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

1.05 Declaration. The term “Declaration” shall mean and refer to this Town Creek Subdivision – Declaration of Covenants, Conditions and Restrictions and all amendments thereto.

1.06 Developer or Declarant. The term “Developer” or “Declarant” shall mean Town Creek Development Company, LLC, an Alabama limited liability company, or any successor, successor-in-title or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as the Developer in a recorded instrument executed by the immediately preceding Developer; provided, however, there shall be only one (1) Developer or Declarant hereunder at any one time.

1.07 Development. The term “Development” shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to **Section 2.02** hereof.

1.08 Development Period. The period of time during which the Developer owns any property which is subject to this Declaration or any Additional Property, or during which the Developer has the unilateral right to subject Additional Property to this Declaration pursuant hereto. The Developer may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.09 Dwelling. The term “Dwelling” shall mean and refer to any improved Lot for occupancy as a residence for a single family.

1.10 Governing Documents. The Declaration, all supplemental declaration, all architectural standards, design guidelines, and rules of the Board, and all additional covenants governing any portion of the Property or any of the above, as each may be amended from time to time.

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

1.12 Improvement. The term “Improvement” shall mean and refer to all Dwellings, any building, structure, or device constructed, erected, or placed upon any Lot which in any way affects the exterior appearance of any Lot or Dwelling. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling.

1.13 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 Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Public Records.

1.14 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, ventilation, and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, bulk storage areas, attics, and basements.

1.15 Lot. The term “Lot” shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon for occupancy as a residence for a single family. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by Developer pursuant to the provisions of **Section 2.05** hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.16 Mortgage. The term “Mortgage” shall mean and refer to any mortgage, deed of trust, or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Public Records.

1.17 Mortgagee. The term “Mortgagee” shall mean and refer to the holder or beneficiary of any Mortgage and shall include any Institutional Mortgagee.

1.18 Occupant. The term “Occupant” shall mean 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 Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

1.19 Owner. The term “Owner” shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling whether a corporation, partnership, proprietorship, association, or other Person, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchase, or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract, or other agreement.

1.20 Owner Control Period. The period of time during which the Owners are entitled to appoint members of the Board.

1.21 Person. A natural person, corporation, partnership, limited liability company, or other legally recognized entity, or a fiduciary acting on behalf of another person or any other legal entity.

1.22 Property. The term “Property” shall mean and refer to that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference. The Property shall also include any additional Property made subject to this Declaration pursuant to **Section 2.02** hereof.

1.23 Public Records. The official real property records of the Probate Office of Lee County, Alabama or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

ARTICLE II

Property Subject to the Declaration

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

2.02 Additional Property. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Public Records, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions, and restrictions as the Developer, in its sole

discretion, shall specify to regulate and control the use, occupancy, and improvement of such Additional Property. In no event shall Developer be obligated to submit and Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions, or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this **Section 2.02** may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this **Section 2.02** shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to **Section 2.02** of this Declaration.

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

2.04 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Development, to make improvements and changes to all Lots or Dwellings owned by Developer, including without limitation, changes in the location of the boundaries of any Lots or Dwellings owned by Developer.

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

ARTICLE III

The Architectural Standards

3.01 Architectural Standards. The AR&CCB in hereby authorized to promulgate (enforce), amend or modify from time to time (the) written Architectural Standards, governing policies, guidelines, and minimum requirements to be satisfied with respect to the construction, location, landscaping, energy efficiency requirements, specifications, and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot are to be submitted to and approved by the AR&CCB, and any other matters affecting construction, repair, or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the AR&CCB shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all owners.

The AR&CCB shall adopt the Architectural Standards at its initial organizational meeting and thereafter shall have sole and full authority to amend them subject to approval of the Developer during the Development Period. Any amendments to the Architectural Standards shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Standards; the AR&CCB is expressly authorized to amend the Architectural Standards to remove requirements previously imposed or otherwise to make the Architectural Standards less restrictive.

3.02 Approval of Plans and Specifications; Procedures for Plan Approval.

(a) Improvements. No Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any lot or dwelling by any owner, other, than developer, which affect the exterior appearance of any lot or dwelling unless plans and specifications therefore have been submitted to and approved by the AR&CCB in accordance with the terms and provisions of **Section 3.02(b)** below. Without limiting the foregoing, the construction and installation of any dwellings, sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servant's quarters, or any other outbuildings, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any dwelling or Improvements, unless the plans and specifications for the same have been submitted to and approved by the AR&CCB in accordance with the terms and provisions of **Section 3.02(b)** below.

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

- (i) Two (2) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios, and outbuildings and the relationship of the same to any setback requirements applicable to the Lot or Dwelling.
- (ii) Two (2) copies of a grading plan, foundation plan, floor plans, and exterior elevation drawings of the front, back, and sides of the Dwelling to be constructed on the Lot.
- (iii) Two (2) copies of written specifications and, if requested by the AR&CCB, samples indicating the nature, color, type, shape, height, and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing, and other materials to be utilized on the exterior of a dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves, and cornices on the exterior of such Dwelling.
- (iv) Two (2) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.
- (v) Two (2) copies of a landscaping plan prepared and submitted in accordance with the provisions of **Section 3.04** below.
- (vi) Such other plans, specifications, or other information or documentation as may be required by the Architectural Standards.

(c) Approval of Plans; Filing Fees. The AR&CCB 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 AR&CCB shall be retained in the records of the AR&CCB and the other copy shall be returned to the Owner submitting the same marked “approved,” “approved as noted,” or “disapproved.” The AR&CCB shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys retained in order to approve such plans and specifications and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, an Owner may make interior

improvements and alterations within his Dwelling that do not affect exterior appearance without the necessity or requirement that AR&CCB approval or consent be obtained.

(d) Disapproval of Plans. The AR&CCB 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 Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any Improvement or any other matter which, in the sole judgment of the AR&CCB, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The AR&CCB shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the AR&CCB for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the AR&CCB to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or dwelling within the Development.

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

(f) Revisions to Plans. Any revisions, modifications, or changes in any plans and specifications previously approved by the AR&CCB must be approved by the AR&CCB in the same manner specified above, and may incur additional fees.

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

3.03 Builder or General Contractor Approval. In order to ensure that appropriate standards of construction, including energy efficiency standards, are maintained throughout the Property, all Builders and general contractors must be approved by the AR&CCB prior to engaging in any construction activities. The AR&CCB may implement an approval process utilizing established criteria and requiring the submission

of a written application for approval. Approval of Builders and contractors may not be construed as a recommendation of a specific architect, Builder or contractor by the AR&CCB or the Declarant, nor a guarantee or endorsement of the work of such architect, Builder or contractor. Once approved (unless such approval is withdrawn by the AR&CCB), an approved Builder or contractor shall not be required to re-submit to the approval process.

3.04 Landscaping Approval. In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation, or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the AR&CCB. The provisions of **Section 3.02** above regarding the method that such plans are to be submitted to the AR&CCB, the time for approval or disapproval of the same, and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

3.05 Construction without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot or dwelling without AR&CCB approval of the plans and specifications for the same or (b) the AR&CCB shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or dwelling shall be deemed to have violated this Declaration and the AR&CCB shall have the right to exercise any of the rights and remedies set forth in **Section 3.17** below.

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

3.07 Subsurface Conditions. The approval of plans and specifications by the AR&CCB for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the AR&CCB or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

3.08 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to

withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

3.09 Implied Rights; Board Authority. The Board may exercise any right or privilege given to it expressly by this Declaration or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, all rights and powers of the Board may be exercised by the Board without a vote of the Owners.

3.10 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the AR&CCB, 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 III**, (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 III**, (d) the construction or performance of any work related to such plans, drawings, and specifications, (e) bodily injuries (including death) to any Owner, Occupant, or the respective family members, guests, employees, servants, agents, invitees, or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements, or the personal property of any owner, Occupant, or any damage to any Dwellings, Improvements, or the personal property of any Owner, Occupant, or the respective family members, guests, employees, servants, agents, invitees, or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore or any past, present, or future soil, and/or subsurface conditions, known or unknown (including, without limitation, sink-holes, underground mines, tunnels, and water channels, and limestone formations on or under any Lot or Dwelling), and (f) any other loss, claim, damage, liability, or expense, including court costs and attorney's fees, suffered, paid, or incurred by any owner arising out of or in connection with the use and occupancy of any Lot, dwelling, or any Improvements situated thereon.

Neither the Declarant, the Developer, the Board, nor any committee, or member of any of the foregoing, shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the members, officers and directors of the Board shall be defended and indemnified as provided in **Section 10.02**.

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

3.12 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, 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 of Lots and/or Dwellings or the development of Lots, Dwellings, and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs, and model Dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this **Section 3.16** shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

3.13 Enforcement of Standards and Remedies. In the event any of the provisions of this **Article III** 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 AR&CCB shall have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the AR&CCB for such Improvements and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the AR&CCB in enforcing any of the provisions of this **Article III**, 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 AR&CCB in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this **Article III**, shall be paid by such Owner, shall constitute an individual assessment to such Owner and, if the same is not paid when due, shall be subject to the lien for assessment under **Section 5.06** hereof and be subject to foreclosure as permitted under local law. Notwithstanding anything provided herein to the contrary, the rights and remedies of the AR&CCB set forth herein shall not be deemed exclusive of any other rights and remedies which the AR&CCB may exercise at law or in equity or any of the enforcement rights specified herein.

3.14 Compliance Certification. The AR&CCB or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary AR&CCCB approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

ARTICLE IV

Use and Development Restrictions

4.01 Use Restrictions. Except as otherwise provided to the contrary in **Section 3.13** above and in this **Section 4.01**, each Lot and Dwelling shall be used for single-family residential purposes only; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, zero-lot-line homes and cluster or patio homes for residential purposes. 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 is otherwise in compliance with the rules and regulations promulgated and published from time to time by the AR&CCB; provided, however, that during the Development Period Developer shall have the right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine.

4.02 Approval. No Dwelling or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless the plans and specifications for such Dwelling and/or Improvements have been approved by the AR&CCB in the manner set forth in **Article III** above.

4.03 Underground Utilities. All utility lines, pipes, conduits, and wiring for electrical, gas, telephone, water, sewer, cable television, security, and any other utility service for any portion of the Property shall be installed and maintained below ground, except to the extent required and approved by the AR&CCB with regards to solar panels and other energy efficiency facilities approved for installation and/or construction for the Dwelling.

4.04 Building Setbacks. Minimum building setback lines for all Dwellings shall be subject to the governing authorities.

4.05 Sitting of Dwellings. Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the AR&CCB pursuant to the provisions of **Section 3.02** above. Notwithstanding anything provided in **Section 4.04** above to the contrary, the AR&CCB may require building setback requirements different from those described in **Section 4.04**, including building setbacks which are greater than those specified in **Section 4.04** above.

4.06 [reserved.]

4.07 Height Limitations. The height of all dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed two and one-half (2 ½) stories in height, including main level.

4.08 Minimum Living Space. Each Dwelling shall have a minimum square footage of air conditioned and heated living area of at least 2,000 square feet, exclusive of open porches, attached garages, carports or other non-living areas, and, in the case of any residence to be constructed having more than one story, the same must have a minimum ground floor square footage of air conditioned and heated living area of at least 1,600 square feet, exclusive of open porches, attached garages or other non-living areas.

4.09 Landscaping.

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

(b) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the AR&CCB no later than thirty (30) days following the issuance of a certificate of occupancy for the Dwelling situated thereon.

(c) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for roadways within the Development. The determination of whether any such obstruction exists shall be made by the AR&CCB, whose determination shall be final, conclusive, and binding on all Owners.

(d) No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, bird houses, or other fixtures and accessories shall be placed or installed within the front yard of any Lot or Dwelling without approval of AR&CCB.

(e) No vegetable, herb, or similar gardens shall be planted or maintained in the front of any Lot or Dwelling.

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

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

4.10 Roofing.

(a) The AR&CCB shall have the right to establish specific requirements for the type and color of roofing materials which may be utilized for any Dwelling. “Architectural style” metal roofing, slate, “architectural style” asphalt shingles, and wood shake are all approved roofing materials. Others may be approved by AR&CCB. The slope and style of roof shall be compatible/complementary with others in the Development and with the style of the proposed Dwelling to be constructed.

(b) Notwithstanding anything in this Declaration to the contrary, placement of solar or other energy collection panel, equipment, or device shall be permitted (even on the front elevation or visible from the street where proven necessary to the Board). Such solar facilities shall be subject to review and approval by the AR&CCB. Circumstances may require additional work or costs to make such solar facilities more aesthetically acceptable.

(c) No plumbing or heating vents, stacks, and other projections of any nature, except as provided for in **Section 4.10 (b)** above, shall be placed on the roof on the front of a Dwelling. All such vents, stacks, and any other projections from the roof of any Dwelling shall be located on the rear or side roof of such Dwelling and shall (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, not visible from any street.

(d) No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for (i) approved chimneys, vent stacks, and (ii) energy efficiency equipment as provided for in **Section 4.10 (b)** above.

4.11 Exterior Lighting. All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by the AR&CCB.

4.12 Exterior Materials and Finishes.

(a) Approved exterior building material finishes for any Dwelling shall include brick, stone, stucco, cement siding, and such other materials as may be approved by the AR&CCB. All wood surfaces utilized on the exterior of any Dwelling shall be painted; stained wood shall not be permitted unless approved by the AR&CCB; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors. Prohibited exterior finish materials shall include particle board, plywood, simulated brick, vinyl siding, and any other materials as the AR&CCB may from time to time determine. Aluminum, vinyl and fiberglass are allowed at cornice and for other exterior trim applications as approved by the AR&CCB.

(b) All brick, stonework, and mortar, as to type, size, color, and application, must be approved by the AR&CCB. All exterior colors, including without limitation, the

color of all roofing materials, brick, stone, stucco, trim, cornices, eaves, railings, doors, and shutters shall be subject to AR&CCB approval.

(c) No wooden steps or stoops shall be allowed on the front or sides of any Dwellings, unless approved by the AR&CCB.

(d) No concrete, concrete block, or cinder block shall be used as an exposed building surface; any concrete, concrete block, or cinder block utilized in the construction of a Dwelling, foundation or retaining wall that is visible from the front yard shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.) or a complimentary material (e.g., brick stone, stucco, etc). Retaining walls not visible from the front may utilize concrete, prefinished concrete block, wood or other materials as approved by the AR&CCB.

(e) Metal flashing, valleys, vents, and gutters installed on a Dwelling, with the exception of those that are copper, shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

4.13 Chimneys. The exterior of all chimneys shall be constructed of brick, stone, or stucco unless placed in the rear of the Dwelling. No cantilevered chimneys or chimneys with siding shall be permitted except that chimneys on the rear of a dwelling may be constructed with siding if it is not visible from the street. All metal chimneys or other materials placed on top of or around a chimney, with the exception of copper, shall be painted to blend with the color of the roofing material used for such a dwelling.

4.14 Garages. Garage doors shall be constructed of such materials and style as are complimentary to the home and neighborhood and must be approved by the AR&CCB. Garage doors shall be kept closed at all times except when in use.

4.15 Walls, Fences and Gates. No chain link, vinyl coated chain link, or wire fences shall be permitted within the Development except those fences erected by Developer or approved by the AR&CCB. Decorative fences are allowed in front yard but must be shown on landscape plan and along with the style and type must be approved by the AR&CCB. Electric fences shall not be permitted, except underground containment fences. The type of materials utilized for (including the color thereof) and the location of all fences, walls, and gates must be approved by the AR&CCB.

4.16 Windows, Window Treatments, and Doors.

(a) Reflective glass, except Low-E, shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades, or other purposes.

(b) Wood, Vinyl or Metal clad wood windows are approved. Cantilevered bay windows must be approved by the AR&CCB (which may require additional

landscaping in front of such bay windows). Burglar bars or doors shall not be permitted. Wrought Iron doors must be approved by the AR&CCB.

(c) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets, and paper or plastic bags are not appropriate window treatments.

4.17 Mailboxes. Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color, and location as may be established in the Architectural Standards or as approved by the AR&CCB. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by the AR&CCB, but no further inscription, paintings, ornaments, or artistry shall be allowed.

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

4.19 Satellite Dishes and Antennae. No satellite dishes shall be allowed on the front of any Lot or Dwelling unless approved by the AR&CCB. No radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Development unless the same is contained entirely within the interior of a building or other structure, or is not visible from any street or is approved by the AR&CCB. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Development.

4.20 Driveways and Sidewalks. All driveways and sidewalks for each Lot or Dwelling shall be constructed of asphalt or concrete. Other materials may be used but must be approved by the AR&CCB.

4.21 Outdoor Furniture, Recreational Facilities, and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained, or located in or on the front of a Lot or Dwelling, except on covered porches, or unless approved by AR&CCB.

(b) Children's toys, swing sets, jungle gyms, trampolines, and other outdoor and recreational equipment and appurtenances shall be allowed only at the side or rear of a Dwelling and shall be obscured from any street by landscape.

(c) No Outside clotheslines or other outside facilities for drying or airing clothes shall be located in the front yard of a Lot or Dwelling. They shall be allowed only at the side or rear of a Dwelling and shall be obscured from any street by landscape.

(d) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear or side yards of a Dwelling.

(e) Bird feeders, bird baths, fountains and landscape ponds shall not be permitted in the front yards of any Lot or Dwelling unless approved by AR&CCB.

(f) Wood carvings, plaques, and other types of home crafts shall not be permitted in the front yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front of any Dwelling.

4.22 Pets and Animals. No animals, livestock, birds, or poultry of any kind shall be kept, raised, or bred by any Owner upon any Lot, Dwelling, or other portion of the Development; provided, however, that not more than two (2) dogs and / or two (2) cats may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. Structures or areas for the care, housing, or confinement of any pet shall be located at the rear of a Dwelling. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the AR&CCB, or otherwise under leash. Underground radio fences are allowed.

4.23 Trash, Rubbish, and Nuisances.

(a) No trash, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots or dwellings within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot or Dwelling, and each Owner and Occupant shall refrain from any act or use of a Lot or dwelling which would cause disorderly, unsightly, or unkempt conditions or be in violation of any law, statute, ordinance, rule, regulation, or requirement of any Governmental Authority.

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

4.24 Recreational Vehicles and Machinery and Equipment.

(a) 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 permitted or allowed to remain on any Lot or Dwelling unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors on such Lot or Dwelling and such enclosed structure is not of any size to be disproportionate with other structures on Lot or adjacent Lots. Any such enclosed structure must be approved by the AR&CCB.

(b) Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Vehicles shall be parked only in driveways constructed in accordance with the provisions of **Section 4.20** above. Vehicles shall not be parked on any landscaped or natural areas of a Lot or dwelling.

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

4.25 Signage. Except for “For Sale,” “For Rent” or temporary signs for political campaign signs or upcoming charitable events, no signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or dwelling or elsewhere on any portion of the Property without the express written permission of the AR&CCB. The approval of any signs and posters including, without limitation, name and address signs, shall be upon such conditions as may from time to time be determined by the AR&CCB. Notwithstanding the foregoing (a) the restrictions set forth in this **Section 4.25** shall not be applicable to Developer or to any signs erected pursuant to **Section 4.28 (b)** below and (b) Developer shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any easement areas established in **Section 8.02** below.

4.26 Above Ground Tanks and Wells. No exposed above-ground tanks for the storage of fuel, water, or any other substances shall be located on any Lot or Dwelling.

4.27 Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot or dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions (b) any detached garages or other structures which are approved in writing by the AR&CCB, (c) dog houses for not more than two (2) dogs so long as such

dog houses are not visible, or are screened, from view from all streets, and (d) construction trailers and/or sales offices erected or placed on any part of the Property by developer or builders pursuant to **Section 3.10** above.

4.28 Construction of Improvements.

(a) During the construction of any Improvements or Dwelling, all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material. No construction materials may be buried on or beneath any Lot, Dwelling, or any other portion of the Development. No Owner shall allow dirt, mud, gravel, or other substances to collect or remain on any street.

(b) One (1) sign may be posted on a Lot advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining AR&CCB approval.

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

4.29 Subdivision. No Lot may be subdivided or resubdivided without the prior written approval of the AR&CCB; provided, however, that the provisions of this **Section 4.29** shall not be applicable to Developer.

4.30 Swimming 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 or Dwelling subject to the prior written approval of the plans for the same by the AR&CCB and the restrictions contained herein. Above-ground pools shall not be permitted. The AR&CCB shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities, and tennis courts within the Development.

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

4.32 Additional Regulations. In addition to the restrictions set forth in this Declaration, the AR&CCB shall have the right, in its sole discretion, from time to time and at any time to adopt, modify, and amend the Architectural Standards in order to

impose such other, further, or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling.

4.33 Variances. The AR&CCB, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to its Architectural Standards with respect to any Lot or Dwelling when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with its duly adopted procedures, rules and regulations. Any variance request submitted to the AR&CCB, shall be evidenced by a written variance executed by either the chairman or vice chairman of the AR&CCB, and no variance shall be contrary to this Declaration or prevent the AR&CCB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. The provisions of the corporation's bylaws concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the AR&CCB shall be binding upon the AR&CCB in any matters regarding the granting of variances.

4.34 Enforcement and Remedies. In the event any of the provisions of this **Article IV** are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, the AR&CCB shall have the right, at its option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives, and independent contractors enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the AR&CCB in enforcing any of the provisions of this **Article IV**, including, without limitation, attorney's fees, court costs, and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the AR&CCB in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this **Article IV**, shall constitute an individual Assessment to such Owner pursuant to Article V, and, if the same is not paid when due, shall be subject to the lien provided for in **Section 5.06** and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the AR&CCB set forth herein shall not be deemed exclusive of any other rights and remedies which the AR&CCB may exercise at law or in equity or any of the enforcement rights specified herein.

ARTICLE V

ASSESSMENTS

It is the intent and goal of the Developer for this development to require few, if any, general assessments on Lots in this development, with the goal to be that fee income generated by the Board will cover most Board Expenses. However, since fee income will be insufficient to fund all anticipated Board Expenses, the Board shall have the following rights.

5.01 Creation of Assessments. There are hereby created assessments for Board expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Assessments, as needed, to fund Board Expenses for the general benefit of all Lots (hereinafter "Section 5.01 Assessments"); (b) Special Assessments as described in **Section 5.04**; and (c) Specific Assessments as described in **Section 5.05**. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in **Section 5.06**. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Board shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by a Board member setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Board may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot. If the Board so elects, assessments may be paid in two (2) or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board action or resolution.

The obligation to pay assessments is a separate and independent covenant on the part of

each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from any Board action it takes.

The Board is specifically authorized to enter into subsidy contracts or contracts for “in kind” contribution of services, materials or a combination of services and materials with the Declarant or other entities for payment of Board Expenses.

5.02 Computation of Assessments. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Board Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in **Section 5.03**. Assessments shall be levied equally against all Lots subject to assessment, including unimproved Lots acquired by the first Owner thereof other than the Declarant.

The assessment rate shall be set at a level which is reasonably expected to produce total income for the Board equal to the total budgeted Board Expenses, including reserves. In determining the total funds to be generated through the levy of **Section 5.01** Assessments, the Board, in its discretion, may consider other sources of funds available to the Board, including any surplus from prior years and any fee income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the Section 5.01 Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Board Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Board and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Section 5.01 Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting during the Owner Control Period by Owners representing at least sixty-seven percent (67%) of the Lots or Dwellings within the Development and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) days prior to it becoming effective. The revised budget shall become effective unless disapproved in

accordance with the above procedure.

5.03 Reserve Budget. The Board, as deemed necessary in its discretion, may prepare budget reserve amounts sufficient to meet the projected needs of the Board, as shown on the budget over the budget period.

5.04 Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots. Special Assessments shall be allocated equally among all Lots. During the Owner Control Period any Special Assessment shall become effective unless disapproved at a meeting by Owners representing at least sixty-seven percent (67%) of the Lots or Dwellings within the Development which will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

5.05 Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Lot or Lots to cover costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying any Specific Assessment under this **Section 5.05**. In addition, fines levied by the Board pursuant to **Sections 3.10, 4.34, and 9.01** shall constitute Specific Assessments.

5.06 Lien for Assessments. The Board shall have a lien against each Lot to secure payment of delinquent assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Alabama law), late charges in such amount as the Board may establish (subject to the limitations of Alabama law), costs of collection and reasonable attorneys' fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or nonjudicial foreclosure.

The Board may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Board following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Board. The Board may sue for unpaid assessments and other charges authorized hereunder without foreclosing or

waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Board Expenses collectible from Owners of all Lots subject to assessment hereunder, including such acquirer, its successors and assigns. All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

5.07 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to a Person other than the Declarant. The first annual Section 5.01 Assessment levied on each Lot shall be adjusted according to the number of days remaining in the month at the time assessments commence on the Lot.

5.08 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Section 5.01 Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Board may retroactively assess any shortfalls in collections.

5.09 Capitalization of Board. Upon the earlier of: (i) acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder; (ii) the issuance of a certificate of occupancy for the residential dwelling thereon; or (iii) actual occupancy of the Lot by a Person other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser or occupant to the working capital of the Board in an amount equal to one hundred dollars (\$100.00). This amount shall be in addition to, not in lieu of, any Section 5.01 Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Board at closing of the purchase and sale of the Lot to the first Owner or, if the obligation to make the capital contribution arises by virtue of occupancy of a Lot by a Person other than a Builder or Declarant, the capital contribution shall be paid immediately upon demand by the Board. Capital contributions shall be used by the Board in covering operating expenses and other expenses incurred by the Board pursuant to the Governing Documents.

5.10 Default Interest Rate; NSF Checks; Late Fees. Except as otherwise provided in the Governing Documents, any assessment levied upon an Owner which is not paid

within fifteen (15) Days after the date upon which it is due shall bear interest at the lesser of (a) the rate of eighteen percent (18%) per annum; or (b) the maximum rate of interest permissible under the laws of the State of Alabama. Any payment received by the Board shall be applied first to any attorneys fees and other costs of collection, then to any interest accrued on the late installment, then to any administrative late fee and then to the delinquent assessment.

ARTICLE VI

Maintenance Responsibilities

6.01 Responsibilities of Owners.

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

(b) Each Lot or Dwelling, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the AR&CCB pursuant to **Section 3.04** above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner in a well kept condition. Dead vegetation, stumps, weeds, rubbish, debris, garbage, and waste materials shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Development. All vegetation must be neatly mowed and trimmed.

(c) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the AR&CCB as provided in **Sections 3.02** and **3.04** above or (ii) do any work which, in the reasonable opinion of the AR&CCB, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement thereto, without in every case obtaining the prior written approval of the AR&CCB.

6.02 Damage or Destruction to Lots and Dwellings. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore Lot or

Dwelling 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 IV** 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 other casualty.

ARTICLE VII

Term and Amendments

7.01 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 fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Lots or Dwellings within the Development agreeing to terminate or modify this Declaration has been recorded in the Public Records; provided, however, that the rights of way and easement 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.

7.02 Amendment by Developer. During the Development Period, Developer may amend this Declaration by a written instrument filed and recorded in the Public Records, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in **Section 10.05** below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to use and enjoyment of his Lot or dwelling or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this **Section 7.02** shall be certified by Developer and shall be effective upon recording of the same in the Public Records. Each Owner, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this **Section 7.02** and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title

insurance coverage with respect to any Lots or Dwellings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

ARTICLE VIII

Easements and Stream Buffer

8.01 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and its respective heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all Lots and Dwellings which are reasonably necessary or convenient for the use of any portions of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this **Section 8.01** to the contrary, the utilization of any of the easements and rights established and reserved pursuant to this **Section 8.01** shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any lot.

8.02 Reservation of Easements for Monuments, Walls, Fences, Berms, and Focal Point Landscape Areas.

(a) Easement for Monuments, Bridge Structures and Associated Landscape. Developer does hereby establish and reserve for itself and its heirs, successors, and assigns, a permanent and perpetual easement appurtenant upon a portion of land on **Lot 1** and on **Lot 28 as shown on Exhibit C**, for the purpose of constructing, installing, maintaining, repairing monument and related improvements, and installing and maintaining the surrounding landscape; provided, however, that the Developer or AR&CCB shall not have any obligation to maintain or improve the monument or the related improvements and landscape. Developer does hereby establish and reserve for itself and its heirs, successors, and assigns, a permanent and perpetual easement appurtenant upon a portion of land, on **Lot 3, Lot 4, and Lot 17 as shown on Exhibit C**, for the purpose of constructing, installing, maintaining, repairing decorative structure called “Bridge”, landscape surrounding it and related improvements; however, that the

Developer or AR&CCB shall not have any obligation to maintain or repair the bridge or related improvements.

(b) Easement for Fences, Perimeter Walls and Berms. Developer does hereby establish and reserve for itself and its respective heirs, successors, and assigns, a permanent and perpetual easement appurtenant over across, through, and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling which constitutes the perimeter boundary of the Development for the purpose of constructing, installing, maintaining, repairing, operating, and replacing a perimeter wall, fence, or berm around the perimeter boundary of the Development; provided, however, that the Developer shall not have any obligation to construct any such perimeter wall, fence or berm.

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

8.04 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself and the AR&CCB, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards, or any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board, or to perform any other responsibilities under this Declaration. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities; provided, however, that such easement shall not impose any duty or obligation upon Developer or AR&CCB. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the AR&CCB of the rights reserved in this **Section 8.04** shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

8.05 Easement for Drainage and Maintenance.

(a) Developer does hereby establish and reserve for itself and its heirs, successors, and assigns, a permanent and perpetual easement appurtenant upon *Lots 11, 12, 13, 14, 26, 27 and 28 as shown on Exhibit C*, for the purpose of drainage; provided, however, that the Developer **shall not** have any obligation to construct or maintain any such drainage easement or swale. The Owner has the responsibility to maintain any such easement constructed as not to obstruct drainage flow.

(b) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself and the Board, and their respective representatives, successors and assigns, contractors, and agents, over, across, under, through, and upon each Lot for the purposes of:

- i. drainage of natural or man-made water flow and water areas from any portion of the Property;
- ii. changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot;
- iii. dredging, enlarging, reducing, or maintaining any water areas or waterways within the Property; and
- iv. installing such pipes, lines, conduits, or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Property.

8.07 Easement for Entry. Declarant reserves, creates, establishes, promulgates, and declares non-exclusive, perpetual, reciprocal easements for the Board to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Board's officers, committee members, agents, employees, and managers of the Board, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

8.08 Lateral Support. Declarant reserves, creates, establishes, promulgates, and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every Lot and any improvement which contributes to the lateral support of another Lot shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

8.09 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise

of any easement reserved hereunder or shown on any subdivision plat for the Property, except in cases of willful or wanton misconduct.

8.10 Stream Buffer. In compliance with Section 413.12.A. and E. of the *City of Auburn Zoning Ordinance updated February 2011 Section 413. Stream Buffer*, Declarant references aforesaid Ordinance. It is the responsibility of Lot Owners and Occupants to abide by the Ordinance. *Exhibit C attached herewith shows Stream Buffer on Lots 1, 2, 3, 4, 5, 6 and 17.*

ARTICLE IX

Enforcement

9.01 Authority and Enforcement. In addition to the provisions of **Sections 3.14, 4.34,** above, in the event any Owner or Occupant or their respective agent, contractors, or invitees violates any of the provisions of this Declaration or the Architectural Standards, the Board shall have the power to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling and shall be a personal obligation of such Owner which is guilty of such violation.

9.02 Procedure. In the event any of the terms or provisions of this Declaration, or the Architectural standards are violated by any Owner or Occupant, or the respective agents, contractors, or invitees of any Owner or Occupant, the ARC&CB shall not impose a fine 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 abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration or the Architectural Standards. The foregoing procedure shall only be applicable to the enforcement rights specified in **Section 9.01** above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of the Declaration.

9.03 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement, and procedural rights set forth in this **Article IX** are in addition to and shall not be deemed to limit the other rights set forth in this Declaration.

ARTICLE X

Miscellaneous Provisions

10.01 Legal Expenses. In addition to all other rights and remedies set forth herein, in the event the AR&CCB, its agents or 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 AR&CCB, its agents and representatives, 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 the otherwise seek monetary damages as a result of any expenses incurred by the AR&CCB to cure such violation or breach.

10.02 Indemnification. The Board shall indemnify, defend and hold harmless every member, officer, director and committee member of the Board against any and all expenses, including trial and appellate attorney's fees and costs, reasonably incurred by or imposed upon any member, officer, director or committee member in connection with any action, suit or other proceedings to which he or she may be a party, by reason of being or having been an officer or director or member of the Board. The members, officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct or bad faith, with regard to the business of the Board. The members, officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Board, except to the extent that they are members of the Board, and the Board shall indemnify, defend and forever hold each of said members, officers and directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any member, officer or director, or former member, officer or director may be entitled. The Board may, as a part of the common expense, maintain adequate general liability insurance, and officers and directors liability insurance to fund this obligation, if such insurance is reasonably available and felt to be appropriate by the Board.

10.03 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.

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

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

10.06 Binding Effect. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant, and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors, and assigns of each Owner, Occupant, and Mortgagee, and shall inure to the benefit of developer, the AR&CCB, all the Owners, and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

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

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

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

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

10.11 No Trespass. Whenever the Developer, the AR&CCB, 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 or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

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

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

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

10.15 Oral Statements. Oral statements or representations by Developer, the AR&CCB, or any of their respective agents, representatives, successors, or assigns, shall not be binding on Developer or the AR&CCB.

10.16 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 AR&CCB or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Development. All notices to the AR&CCB shall be delivered or sent in care of AR&CCB to the following address, being its initial principal business office:

861-D North Dean Road
Auburn, Alabama 36830

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

10.17 Assignment. Subject to the provisions of **Section 10.13** above, Developer and the AR&CCB shall each have the right to assign any person or entity who shall thereupon have the same rights, power, reservations, and duties as Developer and the AR&CCB, respectively.

10.18 Further Assurances. Each Owner covenants and agrees to execute, sign, and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts, or

things, supplemental, conformity, or otherwise which may be reasonably requested by Developer, or the AR&CCB for the purpose of or in connection with clarifying, amending, or otherwise consummating any of the transactions and matters herein.

10.19 No Waiver. All rights, remedies, and privileges granted to Developer and the AR&CCB 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.

ATTACHED EXHIBITS:

- Exhibit A: Legal Description of the Property
- Exhibit B: Town Creek Architectural Standards
- Exhibit C: Site Plan showing Easements for Entry Monuments, Bridge Structures and associated Landscape, Drainage Easements, and Stream Buffer

[SIGNATURES ARE ON THE NEXT PAGE]

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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

TOWN CREEK DEVELOPMENT COMPANY, LLC

By: _____
Jack M. Johnson, Manager

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that JACK M. JOHNSON whose name is signed to the foregoing agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as manager of the company and with full authority, executed the same voluntarily for and as the act of the company on the day the same bears date.

Given under my hand and official seal, this the ____ day of _____, 2011.

NOTARY PUBLIC

(SEAL)

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Commence at a point known as the Northwest Corner of Section 6, T-18-N, R-26-E, Lee County, Alabama, thence S 73°08'57" E 2749.16' to an iron pin and POINT OF BEGINNING for the herein described parcel of land; thence N 00°23'00" W 891.36' to an iron pin; thence N 00°04'45" E 400.15' to an iron pin; thence N 89°34'25" E 302.13' to an iron pin; thence S 31°56'03" E 598.31' to an iron pin; thence S 00°31'37" W 185.53' to an iron pin; thence N 62°29'22" W 120.26' to an iron pin; thence N 71°28'02" W 75.42' to an iron pin; thence Chord Bearing S 06°40'53" W, Chord Distance 20.44', Radius 267.50' to an iron pin; thence S 71°28'02" E 69.65' to an iron pin; thence S 62°29'22" E 131.67' to an iron pin; thence S 37°03'44" W 385.67' to an iron pin; thence S 00°19'08" W 270.00' to an iron pin; thence N 89°50'39" W 379.82' to an iron pin; Containing 14.13 acres, more or less, and lying in and being a part of the SW 1/4 of the SW ¼ of Section 31, Township 19 North, Range 26, East, Lee County, Alabama.

EXHIBIT B

**TOWN CREEK
ARCHITECTURAL STANDARDS**
(Revised as of August 10, 2011)

SEE ATTACHED

EXHIBIT C

**Easements for Entry Monuments, Bridge Structures and Associated
Landscape, Drainage Easements and Stream Buffers**

See Attached