

CONDITIONS AND RESTRICTIONS FOR FOXCHASE SUBDIVISION
FOXCHASE RESIDENTIAL ASSOCIATION, INC.

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STATE OF ALABAMA)
)
COUNTY OF LEE)

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR FOXCHASE SUBDIVISION
AND THE FOXCHASE RESIDENTIAL ASSOCIATION, INC.

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Declarant is the owner of the property described in Exhibit "A" attached hereto and by reference made a part hereof and desires to create thereon an exclusive residential community having certain amenities for the use and benefit of all property owners within such community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of the amenities; and to this end desires to subject the property described in Exhibit "A", together with such additions as may hereafter be made pursuant to Article II hereof, to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth, each of which is intended for the benefit of said property and each owner of any part thereof; and

WHEREAS, the Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which can be delegated and assigned the power and authority of maintaining and administering the amenities, administering and enforcing the covenants governing same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter provided; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of Alabama a non-profit corporation known as Foxchase Residential Association, Inc. for the purpose of exercising the functions aforesaid in which are hereinafter more fully set forth; and

NOW, THEREFORE, the Declarant hereby declares, proclaims and publishes that the property described in Exhibit "A" attached hereto and, by reference, made a part hereof and such additions thereto as may hereafter be made pursuant to Article II hereof is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, easements, affirmative obligations, charges and liens (hereinafter sometimes referred to as the "covenants") hereinafter set forth. The restrictions contained herein shall not apply to or affect any property of the declarant which is not subjected specifically by written instrument to this Declaration.

ARTICLE I

DEFINITIONS

Section 1. The following words and terms when used in this Declaration or any supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

A. "Association" shall mean and refer to Foxchase Residential Association, Inc., an Alabama Non-Profit Corporation, its successors and assigns.

B. "Association properties" shall mean and refer to all property and improvements thereon, if any, now or hereafter owned, leased, or in the possession of the Association including, but not limited to, that property which is designated Association Properties to be conveyed by Declarant to Association by separate legal instrument. All Association Properties are to be devoted to and intended for the common use and enjoyment of the owners, their families, guests of the owners, persons occupying residential accommodations of owners on a guest or tenant basis, and visiting members of the general public (to the extent permitted by the Association's Board of Directors) subject to the published Rules and Regulations adopted by the Association's Board of Directors; provided, however, that any property leased by the Association shall lose its character as Association Properties upon the expiration of such lease.

C. "Declarant" shall mean and refer to Plainsmen Developments, Inc., the entity executing this Declaration, or (2) any successor in title to said entity to all or some portion of the property then subject to this Declaration; provided, however, that such successor in title shall acquire such property for purposes of development or sale; and, provided further, that in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance.

D. "Parcel" shall mean and refer to any improved or unimproved tract of land located within the Properties which is used or intended for use as a site for a single family dwelling and which is shown on any recorded plat of any part of the Properties. It does not include any site or parcel designated by the Declarant in Exhibit "B" and also any parcel or parcels which shall be added for amendment for a use other than residential.

E. "Member" shall mean and refer to all those persons or other entities who are members of the Association as provided for in Article III, Section One hereof.

F. "Member's Property". Member's property shall mean that portion of Foxchase Residential Association property which shall have been submitted to this Declaration for the purpose of creating a lien for assessments in favor of Foxchase Residential Association, Inc.

G. "Mortgage" shall mean and refer to any security

instrument by means of which title to property is conveyed or encumbered to secure a debt including, but not limited to, mortgages, security deeds, loan deeds and deeds to secure debt.

H. "Mortgagee" shall mean and refer to the holder of record, whether it be one or more persons, of a mortgage.

I. "Owner" shall mean and refer to the record owner of member's property.

J. "Person" shall mean and refer to an individual, corporation, partnership, association, trust or any other legal entity.

K. "Properties" shall mean and refer to the property described in Exhibit "A" attached hereto and, by reference, made a part hereof and such additions thereto as may be made pursuant to Article II hereof. The term property shall mean and include all presently existing permanent improvements built, installed or erected thereon; and all new or later acquired permanent improvements.

L. "Deed" shall mean and refer to any deed, assignment, lease, or other instrument conveying fee simple title or a leasehold interest in any part of the Foxchase Residential property subjected to these restrictions.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Property hereby subjected to this declaration. The property which is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to these Covenants consists of that which is described in Exhibit "A" attached hereto and by reference made a part hereof.

Section 2. Additions to the properties. Additional property may become subject to this Declaration in the following manner:

A. Additions by the declarant as a matter of right. The Declarant, its successors or assigns, shall have the right, without consent of the Association, at any time or times on or before December 31, 2015, to bring within the scheme of this Declaration and make a part of the Properties all or any portion of the property to be later so designated and, which shall be made a part hereof not theretofore made a part of the Properties; provided that, should the Declarant, its successors or assigns, elect not to subject such future designated property or any part thereof to the scheme of this Declaration, the Declarant, its successors or assigns, shall not be obligated to impose covenants thereon the same as, or similar to or different from the Covenants contained herein. Notwithstanding anything contained herein which might be otherwise interpreted to produce a contrary result, this Declaration does not create any charge, lien or other encumbrance or restriction on or affect in any way the title to any property

other than that which is described in Exhibit "A" attached hereto and, by reference, made a part hereof. The additions authorized under this sub-section shall be made by filing of record one or more Supplementary Declarations with respect to the additional properties, executed by the Declarant, its successors or assigns, which shall extend the Exhibit "A" properties and thereby subject such additions to assessment for their just share of the Association expenses. Said Supplementary Declarations may contain such complementary additions and modifications of the Covenants contained herein as may be necessary to reflect a similar character of the additional properties, which shall be restricted to single family residences, and further as are not inconsistent with the scheme of this Declaration; provided, however, that improvements constructed or to be constructed on such additional properties shall be of comparable or higher quality construction and aesthetically compatible in terms of architectural style with the improvements constructed or to be constructed on the property described in Exhibit "A" attached hereto. In no event however shall any such Supplementary Declaration revoke, modify or add to the Covenants established by this Declaration regarding the property described in said Exhibit "A".

B. Additions pursuant to association approval. Upon approval in writing of the Association pursuant to a vote of its members, and upon compliance with such terms and conditions as may be imposed by the Association pursuant to such vote, the owner of any property, other than that which may be subjected to the terms and scheme of this Declaration by the Declarant, its successors or assigns, as a matter of right, who desire to add it to the terms and scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration as described in Sub-section A above except that each such Supplementary Declaration shall be executed jointly by the Association and owner of the property thus being added in the Association. Notwithstanding the foregoing, improvements constructed or to be constructed on such additional properties shall be of comparable or higher quality construction and aesthetically compatible in terms of architectural style with the improvements constructed or to be constructed on the property described in Exhibit "A" attached hereto. Approval by the Association shall require assent of two-thirds (2/3) of the votes of each class of members of the Association voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. The quorum required for such meeting shall be the presence thereof at least of members and/or proxies entitled to cast sixty-percent (60%) of the votes of each class of members of the Association. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirements set forth herein, and the required quorum at any such subsequent meeting shall be forty percent (40%) of the votes of each class of members of the Association; provided, however, that no such subsequent meeting shall be held more than sixty (60) days

following the preceding meeting.

Section 3. Additional owners to become members. Upon the filing of any Supplementary Declaration as provided for in Section 2 of this Article II, the owners of such property shall become members of the Association and, subject to the provisions of Article III hereof, such owners and their successors-in-title shall thereby acquire with respect to such property, the rights and privileges granted herein to members of the Association.

Section 4. Mergers. Upon a merger or consolidation of the Association with another Association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated Association, or, in the alternative, the properties, rights and obligations of another Association may be added to the properties of the Association as a surviving corporation by operation of law or be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the Covenants contained herein with the Properties, together with the covenants and restrictions established upon any other properties as one plan. Except as hereinafter provided, no such merger or consolidation shall effect any revocation, change of or addition to the Covenants established by this Declaration within the Properties.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The membership of the Association shall consist of (a) every record owner, whether it be one or more persons, of fee simple title to any real property situated within the Properties, excluding, however, the Association and those persons having such interest merely as security for the performance of an obligation, and (b) the Declarant subject to the following provisions of this Article III. Membership shall be appurtenant to and may not be separated from ownership of such real property, which ownership shall be the sole qualification for membership.

Section 2. Voting Rights. Subject to the following provisions of this Section 2, the Association shall have three (3) classes of voting membership: Class "A", Class "B", and Class "C".

Class "A": Class "A" Members shall be the Declarant, its successors and/or assigns.

Class "B": Class "B" members shall be all members whose parcels or property shall abut or have a boundary line adjoining the lake shoreline, or which parcel or property extends into the lake, and whose parcels are within the designated property boundaries in Exhibit "A".

Class "C": Class "C" members shall be all members whose parcels or property shall be within the boundaries of the designated property in Exhibit "A", but whose parcel boundaries do not abut or have a boundary line adjoining the lake shoreline, or that said parcel or property boundaries do not extend into the lake.

Voting: On all voting matters affecting property under this Declaration, only Class "A" and "B" owners or members shall vote on matters affecting the lake shoreline. Class "B" members will be responsible during and after construction begins on their respective lots, for maintaining clean and safe conditions of the shoreline of their respective property including easements. Until such time that construction begins, Declarant reserves the right, but shall not be obligated, to remove or modify vegetation or unnatural conditions posing a nuisance to other property owners. All classes of ownership shall vote on all matters affecting the other parcels, easements, rights-of-way, roads, curbs, gutters, housing restrictions or limitations. On all matters for which they shall be entitled to vote, Class "A" shall have three (3) votes for each parcel or property owned, and Class "B" and "C" shall have one (1) vote for each parcel or property owned.

Class "A" membership shall cease and be converted to Class "B" membership upon the first of the following events to occur: (a) when the total votes outstanding in the Class "B" membership equal the total votes outstanding in the Class "A" membership; (b) abolishment by the Declarant of its Class "A" membership evidenced in written notice thereof delivered to the association; or (c) December 31, 2015.

When any property entitling the owner to membership as a Class "B" or "C" member of the Association is owned of record by other than a single natural person, the person entitled to cast the vote for such property shall be designated by a certificate signed by the record owner or owners of such property and filed with the secretary of the Association. Each such certificate shall be valid until revoked, superseded by a subsequent certificate or a change occurs in the ownership of such property.

The votes of the member shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

ARTICLE IV

PROPERTY RIGHTS IN THE ASSOCIATION PROPERTIES

Section 1. Easements of enjoyment. Every owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Association properties, subject to the privileges and restrictions contained herein, and such easement shall be appurtenant to and shall pass with every Parcel upon transfer and shall be a covenant that shall run with the land. All Residents who are not Members shall have a non-transferable privilege to use

and enjoy Association properties as limited herein for so long as they are Residents of a member's property. All such rights, easements and privileges, however, shall be subject to the right of Foxchase Residential Association, Inc. to adopt and promulgate reasonable rules and regulations pertaining to the use of Association Properties which shall enhance the preservation of such properties, the safety and convenience of the users thereof, or which, in the discretion of the Board of Directors of the Foxchase Residential Association, Inc., shall serve to promote the best interest of the Owners and Residents.

Declarant shall have the right to maintain a sales office on any of the Association Property for the purpose of the sale of lots in any subdivision property subject to this declaration or any lots in any property added pursuant to Article II, Section 2(a).

Section 2. Association properties.

A. Declarant may convey to Foxchase Residential Association, Inc., subsequent to the recordation of this Declaration, certain tracts or parcels of land within the Foxchase Residential property for parks, recreation facilities, common areas, and other related purposes. If, as and when additional property is subjected to the terms or scheme of this Declaration pursuant to Article II hereof, the owner thereof shall, prior to or simultaneously with the first conveyance of a parcel contained therein to an owner for purposes of residential occupancy, convey all Association Properties comprising a part of such additional property to the Association free and clear of all liens and encumbrances together with all improvements thereon which must then be fully completed.

B. Declarant and/or Foxchase Residential Association, Inc. shall have the right to alter the shoreline of the lake as necessary to maintain the lake and water level in the best interest of a majority of members or owners, including, but not limited to, removing or adding earth from or to the shoreline of parcels, or the dam, or removing or adding earth to the lake bottom under parcels, or the lake dam, and all deeds granted from within the property in Exhibit "A", shall be sold, transferred, conveyed or given shall be subject to this restriction, limitation or easement and such be a covenant that shall expressly run with the land.

Section 3. Extent of easements. The rights and easements of enjoyment in and to the Association Properties created hereby shall be subject to the following:

A. The right of the Declarant to the exclusive use of portions of the Association Properties reasonably required, convenient or incidental to, the improvement and sales of parcels including, but not limited to sales and business offices, storage areas, construction yards and signs. Such right of the Declarant may be delegated by it to developers and builders having an interest in the Properties and shall be exercised so as to avoid any unnecessary inconvenience to or infringement upon the rights

of other interested parties and shall continue until such time as such persons no longer own any parcel primarily for the purpose of sale or December 31, 2015, whichever shall first occur, without affecting any member's obligation to pay assessments coming due during such period of time or the permanent charge and lien on any members Parcel in favor of the Association;

B. The right of the Association to borrow money for the purpose of improving the Association Properties and, with the prior written approval of members entitled to cast at least two-thirds (2/3) of the votes of each class of members.

C. The right of the Association to take such steps as are reasonably necessary to protect the Association Properties against foreclosure;

D. The right of the Association to suspend the voting rights and right to use any Association Properties of any member for any period during which any such member's assessment remains unpaid.

E. The right of the Association to charge reasonable admission and other fees for the use of any Association Recreational Property;

F. The right of the Association to abandon, partition, subdivide, sell, dedicate, or transfer all or any part of the Association Properties for such purposes as stated herein, subject to however, such conditions as may be agreed to by the members entitled to vote thereon; provided however, that no such abandonment, partition, subdivision, sale, dedication or transfer, as to such purposes or as to the conditions thereof shall be effective unless first approved in writing by members entitled to at least two-thirds (2/3) of the votes of each class of members, holders of at least three-fourths (3/4) of all first mortgages secured by Parcels and, in the case of a dedication.

G. The right of the Association to grant such easements and rights of way to such utility companies or public agencies or authorities as it shall deem necessary or desirable for the proper servicing and maintenance of the Association Properties or other Property.

ARTICLE V

ASSESSMENTS

Section 1. Creation of the liens and personal obligation of assessments. The Declarant hereby covenants with the Association and with each and every member or property owner and each with the other and each shall by acceptance of a deed, whether or not it shall be so expressed in such deed or not, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) annual assessments or charges, and (b) special assessments or charges for the purposes set forth in Section 4 of this Article V, such assessments to be fixed, established and collected from time to time as hereinafter

provided. The annual and special assessments together with penalty for late payment, if any, and costs of collection thereof as hereinafter provided, shall be a charge and continuing lien on the property and improvements thereon against which each such assessment is made. Each such assessment, together with penalty for late payment, if any, and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment first became due and payable but such charges and liens shall run with the land or property against such property and be a continuing lien against such land or property. In the case of co-ownership of such property, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. Should the Association employ an attorney to collect any assessment, Association shall be entitled to collect in addition thereto all costs of collection including attorney's fees.

Section 2. Purpose of assessments. The annual assessments levied by the Association shall be used exclusively for the acquisition, improvement, maintenance, and operation of the Association Properties; payment for services which the Association is authorized to provide, including, but not limited to, taxes and insurance on the Association Properties, construction of improvements on the Association Properties, and repair, replacement and additions to the Association Properties; payment of the cost of labor, equipment, materials, management and supervision necessary to carry out its authorized functions; payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized functions; establishment and maintenance of an adequate reserve fund for maintenance, repairs and replacement of those portions of the Association Properties that must be replaced on a periodic basis; and other charges as may be required by this Declaration or that the Association or its Board of Directors shall determine to be necessary to meet the primary purposes of the Association. Special Assessments shall be used for the purposes set forth in Section 4 of this Article V. Notwithstanding the levy of annual or special assessments as aforesaid, the Association shall be entitled to charge a reasonable user's fee for any future recreational facility that may become part of the Association Properties. First mortgagees of Parcels and the first mortgagee, if any, of the Association Properties may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Association Properties and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Association properties and first mortgagees making such payments shall be owed immediate reimbursements therefor from the Association. Each owner or member shall be responsible for his own return of taxes on his Parcel and for the payment of all taxes and governmental assessments, if any, assessed thereon by the

taxing authorities.

Section 3. Annual assessments. The Foxchase Residential Association, Inc. Board of Directors shall, after consideration of current costs and future needs of the Association, fix the annual assessment for any particular year. Should the Board of Directors fail to fix the annual assessment for any particular year, the prior year's assessment shall be continued automatically until such time as the Board shall act.

Section 4. Special assessments for capital improvements. In addition to the annual assessment authorized by Section 3 hereof, the Association's Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the cost of: Construction or reconstruction on the Association Properties; unexpected maintenance, repair or replacement of the Association properties and capital improvements thereon, if any, including the necessary fixtures and personal property related thereto, additions to the Association Properties; necessary facilities and equipment to offer the services authorized herein; and repayment of any loan made to the Association to enable it to perform the duties and functions authorized herein; provided, however, that any such assessment shall have the assent of two-thirds (2/3) of the votes cast by each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all member not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Such special assessments in any one (1) year may not exceed a sum equal to the amount of the annual assessment for such year except for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty, loss and may not be used to fund the reserve for maintenance, repairs or replacement of those portions of the Association Properties that must be replaced on a periodic basis.

Section 5. Quorum for any action authorized under Section 3 and 4. At the first meeting called as provided for in Section 3 and 4 of this Article V, the presence at the meeting of member or of proxies entitled to cast sixty percent (60%) of the votes of each class of members shall constitute a quorum. If the required quorum is not forthcoming at the first meeting called, not more than two (2) subsequent meetings may be called, subject to the notice requirements set forth in said Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of commencement of annual assessments; due dates. The annual assessments provided for in this Article V shall be established on a calendar year basis and shall commence as to all Parcels on the first day of the month following

conveyance to the Association of the Association properties subjected to this Declaration simultaneously with such Parcels. Each such annual assessment shall be adjusted according to the number of months remaining in the calendar year. Each such adjusted assessment shall be paid by the owner to the Association within ten (10) days after the date on which said assessment shall have commenced unless otherwise provided by the Association's Board of Directors. Thereafter, the Board of Directors shall fix the amount of the annual assessment and shall send written notice of the same to every owner subject thereto at least thirty (30) days in advance of each annual assessment period. Unless otherwise provided by the Board of Directors, the annual assessment for each Parcel shall become due and payable in full within ten (10) days after the first day of January of each year and shall be paid to the Association when due without further notice from the Association. The due date of any special assessment shall be fixed in the resolution authorizing such special assessments. An assessment not paid by February 11 of said year shall be considered one month late; and an assessment not paid by March 11 of said year shall be considered two months late; and an assessment not paid by April 11 of said year shall be considered three months late; and an assessment not paid by May 11 of said year shall be considered four months late.

The Association shall, within five (5) days after written request thereof, furnish to any member liable for an assessment, a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. A reasonable charge, as determined by the Association's Board of Directors, may be made for the issuance of such certificates. Any such certificate shall be conclusive evidence, against all but the member, of payment of any assessment therein stated to have been paid.

Section 7. Effect of non-payment of assessments: The personal obligation of the owner; the lien; remedies of the Association.

- A. If an assessment is not paid on or before the date when due, (being the dates specified in Section 6 hereof, unless otherwise provided by the Board of Directors), then such assessment shall become delinquent and shall, together with the penalty for late payment and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Parcel in the hands of the then owner, his heirs, devisee, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the member to pay such assessment shall remain his personal obligation and shall not pass to his successors-in-title unless expressly assumed by them. If such successors-in-title assume such member's personal obligation such member shall nevertheless remain as fully obligated as before to pay to the Association any

and all amount which he was obligated to pay immediately preceding the transfer and such member and such successors-in-title assuming such liability shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such member and such successors-in-title creating the relation of principal and surety as between themselves.

- B. If an assessment is one month late, there shall be assessed a penalty of \$25.00 plus the amount of the assessment; and if an assessment is two months late, there shall be assessed a penalty of \$50.00 plus the amount of the assessment; and if an assessment is three months late, there shall be assessed a penalty of \$75.00 plus the amount of the assessment; and if an assessment is four months late, there shall be assessed a penalty of \$100.00 plus the amount of the assessment, and the Association may bring legal action against the member personally obligated to pay the same or foreclose its lien against such member's Parcel, in which event costs and attorney's fees shall be added to the amount of such assessments as may then be due. Each member, by his acceptance of a deed to his Parcel, vests in the Association the rights and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. The lien provided for in this Article V shall be in favor of the Association, and shall be for the benefit of all other members. The Association, acting on behalf of the member, shall have the power to bid on the Parcel at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Association Properties and future facilities or by abandonment of his Parcel.

C. If an assessment is not paid on or before the date when due, the Association may also suspend the voting rights and the right to use any Association facilities or properties of the delinquent member. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on such member's Parcel in favor of the Association.

Section 8. Subordination of charges and liens to mortgagee.

A. The lien of the assessments and charges provided for herein (annual, special or otherwise) is hereby made subordinate to the lien of any first mortgage placed on the Parcels subject to assessment if, but only if, all assessments and charges with respect to such Parcel authorized herein having a due date on or prior to date such mortgage is filed for record having been paid.

The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such mortgage is filed for record and prior to the satisfaction, cancellation, or foreclosure of such mortgage or the sale or transfer of mortgages Parcel pursuant to sale under the power contained in such mortgage.

B. Such subordinate is merely a subordination and shall not relieve the owner of the mortgaged Parcel of his personal obligation to pay all assessments and charges coming due during the time he is owner of such Parcel; shall not relieve such Parcel from the lien provided for herein (except to the extent of a subordinated lien is extinguished as a result of subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure of by sale under power); and no sale or transfer of such Parcel to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to a sale under power, shall relieve any existing or previous owner of such Parcel of any personal obligation, or relieve such Parcel or the then owner of such Parcel of liability for any assessments or charges authorized hereunder coming due after such sale or transfer.

Section 9. Declarant exempt from assessments. The Declarant shall be exempt from the payment of any association dues or assessments on property owned by the Declarant in Foxchase Residential properties, except the Declarant shall pay assessments with respect to any parcel upon which it may declare.

ARTICLE VI

ADMINISTRATION

Section 1. Responsibility for administration. The administration of the property subject to the jurisdiction of the Association, the maintenance, repair, replacement and operation of the Association properties and/or future facilities and those acts required of the Association by this Declaration shall be the responsibility of the Association. Such administration shall be governed by this Declaration and the Association's Articles of Incorporation and By-Laws, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents, together with those reasonably implied to effect it's purposes and shall be exercised in the manner provided therein.

Section 2. Management agreements. The Association may enter into such management agreements as may be necessary or desirable for the administration and operation of the Property subject to the jurisdiction of the Association. Such management agreements shall be entered into pursuant to a Resolution duly adopted by the Association's Board of Directors, each of which shall provide therein: The compensation to be paid; the term thereof which shall

not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods; the termination thereof by either party without cause or payment of a termination fee on ninety (90) days or less written notice; the termination thereof by either party for use on thirty (30) days written notice; and such other matters as may be agreed upon which are not inconsistent with the terms of this Declaration or the Association's Articles of Incorporation and By-Laws, as amended from time to time. Copies of any management agreement then currently in effect shall be made available for inspection by the members, each of whom shall be bound by the terms and conditions thereof. Should the Association enter into any management agreement as provided for herein and thereafter, upon the termination or expiration of same, assume self-management of the property subject to its jurisdiction, the Association shall provide written notice thereof to each mortgagee of a Parcel whose name and address have theretofore been furnished to the Association together with a written request for such notice.

Section 3. Limitation of Liability; indemnification.

Notwithstanding the duty of the Association to maintain, repair, and replace parts of the Association properties and/or future facilities, the Association shall not be liable for injury or damage caused by any latent condition of the Association properties and/or future facilities nor for injury or damage caused by the elements, its members or other persons; nor shall any officer or director of the Association be liable to any member for injury or damage caused by such officer or director in the performance of his duties unless due to the willful misfeasance of malfeasance of such officer or director. Each officer or director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been such an officer or director, or any settlement thereof, whether or not he is such an officer or director at the time such expenses and liabilities are incurred, except in such cases wherein the officer or director is adjudged guilty or willful misfeasance of malfeasance in the performance of his duties; provided that, in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

Section 4. Covenant enforcement. The Declarant, or the Association as the case may be shall have the exclusive authority to enforce the covenants in this Declaration, with remedies to include but not limited to, imposition of due fines, restriction of use of Association property and legal action. The Declarant or the Association is specifically authorized to use legal action to enforce the provision of this Declaration.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. Unless otherwise first approved in writing by the holders of at least three-fourths (3/4) of all first mortgages secured by Parcels, the Association's Board of Directors shall obtain insurance for all insurable improvements on the Association properties against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full, current replacement cost, less ordinary deductible amounts, or any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall also obtain a public liability policy covering all Association Properties and facilities for the hazards of premises operations or actions arising out of bodily injury, property damage, false arrest, invasion of privacy and libel and slander caused by the negligence of the Association or any of its agents, which public liability policy shall be at least Five Hundred Thousand and No/100ths Dollars (\$500,000.00) single limit as respects the hazards enumerated herein. Premiums for all such insurance shall be common expenses paid for by the Association.

Section 2. Damage and destruction.

A. Immediately after any damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and settlement of all claims arising under such insurance, obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property and, if such damage or destruction is substantial, provide written notice of the same to each mortgagee having an interest therein whose name and address have theretofore been furnished to the Association together with a written request for such notice. repair or reconstruction, as used in this Article, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or the casualty. Subject to subsection (C) hereof, all such damage or destruction shall be repaired or reconstructed as soon as practicable after such casualty shall occur. The Association's Board of Directors may advertise for sealed bids from and may negotiate with any licensed contractors for such repair or reconstruction and may enter into such contract or contracts for such repair or reconstruction as it may deem necessary or advisable. The contracting party or parties may be required to provide a full performance and payment bond for such repair or reconstruction.

B. In the event that the insurance proceeds paid to the Association are not sufficient to defray the cost of such repair or reconstruction, the Association's Board of Directors shall have the authority to and shall, subject to subsection (C) hereof, levy

;a special assessment against all owners in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Assessments for such purpose may be made, without a vote of the members, at any time during or following the completion of any repair or reconstruction.

C. In the event of damage or destruction by fire or other casualty to all or any part of the Association Properties and/or future facilities, such damage or destruction shall be repaired or reconstructed unless within sixty (60) days after such casualty an instrument requesting that the damage or destruction not be repaired or reconstructed is signed by members of the Association entitled to cast at least eighty percent (80%) of the votes of each class of members and filed with the Association's Board of Directors, in which event the damaged or destroyed area or areas shall be cleaned up and maintained in a neat and attractive condition. If, for any reason, the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction is not made available to the Association within said period of sixty (60) days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said period of time shall in no event exceed one hundred twenty (120) days after the casualty. No mortgagee shall have any right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed except that insurance proceeds paid as a result of damage or destruction to all or any part of the Association Properties and facilities shall not be used for other than repair or reconstruction unless otherwise first approved in writing by the holder of at least three-fourths (3/4) of all first mortgages secured by Parcels.

ARTICLE VIII

ARCHITECTURAL AND LANDSCAPE CONTROL

Section 1. Design review board. "The Design Review Board (DRB)" shall be composed of three (3) individuals so designated from time to time (a) by the Declarant until control of the DRB exists with the Foxchase Residential Association and, (b) by the Foxchase Residential Association after delegation of such control; the Foxchase Residential Association being entitled at all times after delegation of such control to appoint the DRB by a majority of the Association. The affirmative vote of a majority of two-thirds (2/3) of the membership of the DRB shall be required to approve any plans and specifications submitted under this Article VIII, and this approval once given shall be final and binding. However, in the event of any disapproval of plans and/or specifications submitted by any applicant for such approval, permit or authorization may, within ten (10) days after receipt of notice of such adverse decision file a written request for the DRB to have the matter in question reviewed by the full Association.

If the DRB agrees in a two-thirds vote to allow review by the Association Thereafter, the decision of the majority of the members of the full Association with respect to such matters shall be final and binding.

Section 2. Approval required. No buildings or accessory structures such as decks, patios, courtyards, swimming pools, driveways, mailboxes, exterior lights or garages, or similar structures shall be commenced, erected, placed, moved onto or permitted to remain on any Parcel, nor shall any existing structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless a copy of completed final plans and specifications and related data (including a description of any proposed new use) thereof shall have been submitted to and approved by the DRB. Such plans and specification shall be in such form and shall contain such information, as may be required by the DRB, but in any event shall include:

A. Site plans submitted to DRB shall have at a minimum a scale of 1" = 20' and shall contain at least the following: a clearing and grading scheme with proposed and existing land contours, grades and flow of the site drainage system; location and size of trees, six inches in diameter or larger, proposed to be removed from the site; and the dimensions and locations of all buildings, access drives, parking, utilities (septic system, water, power, telephone, cable, etc.), street pavement location, and all other proposed improvements to the site.

B. Landscape and irrigation plans submitted to the DRB shall have a minimum scale of 1" = 20' showing: The size, type and location of existing and proposed tree locations (six inch at caliper (48 inch from ground level) or larger); the location of all planting areas including existing plant materials incorporated into the plan, the species and size of all stock at the time of planting (six inches at caliper (48 inches from ground level) or larger); and an irrigation plan including the source of water supply. Any water supply other than the standard utility must be approved and will require a conditional agreement.

C. Plans at a minimum scale of 1/4" = 1.0" for all floors, cross sections and elevations including projections and wing walls (floor plans should also show total square feet of air conditioned living area).

D. Plans, elevations, types of materials and other information associated with any other site improvement or ornamentation, including exterior lighting, walls, fencing and screening, patios, decks, pools, porches, and signage.

E. Samples and color chips of all exterior finishes and materials to be incorporated into the plan if requested by the DRB.

F. Such other information, data and drawings as may be reasonably requested by the DRB.

G. The review fee is \$10.00 until reset by the Declarant or Association.

Section 3. Games and play structures. All basketball backboards and any other fixed games and play structure are subject to approval by the DRB and shall be located at the side or rear of the building not visible from the street, if possible, or on the inside portion of the corner homesite within setback lines. Tree houses or platforms of a like kind or nature shall not be constructed unless approved by the DRB.

Section 4. Swimming pools and tennis courts. Any swimming pool or tennis court to be constructed upon any homesite shall be subject to review by the DRB. The design must incorporate, at a minimum, the following:

A. The composition of the material must be thoroughly tested and accepted by the industry for such construction.

B. Pool cages and screens must be of a color and material approved by the DRB.

C. Fencing of tennis courts shall be chain link (darkly colored) and limited to ten (10) feet in height.

D. Pool screening and tennis court fencing shall not be visible from the street in front of the dwelling unit if possible.

Section 5. Basis for disapproval of plans. The Design Review Board shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

A. Failure of such plans and specifications to comply with any of the restrictions;

B. Failure to include information in such plans and specifications as may have been reasonably requested;

C. Objection to the exterior design, appearance or materials of any proposed structure;

D. Incompatibility of any proposed structure or use with existing structures or uses upon other Parcels in the vicinity;

E. Objections to the location of any proposed structure upon any Parcel or with reference to other Parcels within the vicinity;

F. Objections to the site plan, clearing plan, drainage plan or landscaping of any Parcel;

G. Objection to the color scheme, proportions, style of architecture, height, bulk, or appropriateness of any proposed structure;

H. Objection to parking areas proposed for any Parcel on the grounds of (i) incompatibility to proposed uses and structures on such Parcel, or (ii) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel;

I. Failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environment of the Parcel;

J. Any other matter which, in the judgment of the DRB would render the proposed structure, structures or uses inharmonious with the general plan of improvement of the property or with structures or uses located upon other Parcels in the vicinity;

K. Failure of property owner to use a licensed builder

unless otherwise approved by the DRB.

Approval of any such plans shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless such six (6) month period is extended by agreement with the DRB, in which event the extended time period shall be applicable.

In any case where the DRB shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the DRB shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

Section 6. Retention of copy of plans. Upon approval by the DRB of any plans and specification submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the DRB.

Section 7. Rules of design review board; effect of approval or disapproval; time for approval. The DRB may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Parcels, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the DRB at any time, and no inclusion in, omission from or amendment of such rule or statement shall be deemed to bind the DRB to approve or disapprove any feature or matter subject to approval or to waive the exercise of the DRB's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any plans or specifications shall not be deemed a waiver of the DRB's right, in its discretion, to disapprove such plans or specifications or any of the features or elements subsequently submitted for use on any other Parcel or Parcels. Approval of any such plans or specifications relating to any Parcel, however, shall be final as to that Parcel, and such approval may not be revoked or rescinded thereafter, provided, (i) that the structures and uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the restrictions, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval have been adhered to and complied with in regard to all structures on and uses of the Parcel in question.

In the event the DRB fails to approve or disapprove any plans or specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been

approved, as submitted, and no further action shall be required.

Section 8. Failure to obtain approval. If any structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced on any Parcel, otherwise than in accordance with the plans and specifications approved by the DRB pursuant to the provisions of this Article VIII, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article VIII, and without the approval required herein, and upon written notice from the DRB, any such structure so altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or altered, and any such use shall be terminated, so as to extinguish such violation.

After a period of fifteen (15) days after the notice of such a violation and the owner of the Parcel upon which such violation exists shall not have taken reasonable steps toward the removal or termination of such violations, the Declarant or the Foxchase Residential Association shall have the right, through its agents and employees, to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this section shall not be valid as against a bona fide purchaser (or a bona fide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in a Court of record in Lee County prior to the recordation among the land records of Lee County of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage). In the alternative, the Declarant or Foxchase Residential Association, Inc. may bring an action to enjoin violation.

Section 9. Certificate of compliance. Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the DRB, the DRB shall, upon written request of the owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure and the Parcel on which structure is placed and stating that the plans and specifications, the location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies with the requirements of the DRB. Preparation and recording of such certificate shall be at the expense of such owner. Any certificate of compliance issued in accordance with the provisions of this section shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures on the Parcel, and the use or uses described therein, comply with all the requirements of this Article VIII and with all other requirements of this Declaration as to which the DRB exercises any discretionary or interpretive powers.

Section 10. Inspection and testing rights. Any agent of Declarant, the Foxchase Residential Association, Inc., or the DRB may at any reasonable time or times enter upon and inspect any Parcel and any improvements, but not the interior of any dwelling without prior permission, thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither the Declarant, Foxchase Residential Association, Inc., nor the DRB nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. With limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines or systems, each owner agrees to notify the DRB prior to its installation of sanitary sewer lines or systems and to permit such inspection and testing thereof by the DRB both before and after back fill as required by the DRB.

Section 11. Waiver of Liability. Neither the DRB nor any architect nor agent thereof, nor Foxchase Residential Association, Inc., nor Declarant, nor any agent or employee of any of the foregoing, shall be responsible in any way for any failure of Structures to comply with requirements of this Declaration, although a certificate of compliance has been issued, any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications and all persons submitting any such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to in this Section and further agree to and do hereby release said entities and persons for any and every such cause.

Section 12. Builders to be approved. No Structure shall be constructed on any lot by anyone other than a licensed building contractor unless approved otherwise. The DRB shall maintain a list of qualified home builders and may add or subtract from said list as appropriate.

ARTICLE IX

EXTERIOR MAINTENANCE

Section 1. Association properties. The responsibility for the maintenance, in a neat and attractive condition, of all Association Properties and facilities shall be as prescribed in Article VI of this Declaration.

Section 2. Exterior maintenance. All parcels subject to these restrictions and conditions, together with all additions and improvements located thereon, shall be maintained in a neat and

attractive condition by and at the expense of their respective owners. Such maintenance shall include, but shall not be limited to, painting, staining, repairing, replacing and caring for roofs, gutter, downspouts, building surfaces, trees, shrubs, grass, walks, driveways, mailboxes, and other exterior improvements; provided, however, any such work shall be compatible in appearance and quality with the range of colors and materials then existing on other buildings in the neighborhood. The landscape shall be properly maintained by the homeowner who shall provide adequate watering (subject to drought restrictions imposed by government authorities). Parcels must be maintained free of unsightly weeds, vines, dead or fallen trees, trash, garbage, etc. Reflective glass is prohibited. No window air conditioning units shall be permitted.

Each owner shall keep all Parcels owned by him, and all improvements therein or thereon, in good order and repair, including but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the DRB, as hereinafter defined, any Owners fail to perform, the duties imposed by the preceding sentence, DECLARANT and the DRB after fifteen (15) days written notice to the Owner to remedy the condition in question, shall have the right, through its agent and employees, to enter upon the Parcel in question and to repair, maintain, repaint and restore the Parcel or such improvements and the cost thereof shall be binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question.

The lien provided in the paragraph above shall not be valid as against a bona fide purchaser/s (or a bona fide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in a court of record in Lee County, Alabama, prior to the recordation among the property records of Lee County, Alabama, of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

Section 3. Appurtenances. All exterior mechanical equipment including, but not limited to, transformers, vents, air conditioning compressors, pool pumps, meters, etc. shall be concealed from view by walls of the same material and color as the building or by an opaque landscaping screen. No solar heaters shall be allowed where visible from any street, unless prior approval obtained from the DRB.

ARTICLE X

PROTECTIVE COVENANTS

Section 1. Land use and building type. All Parcels in this development shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Parcel other than one detached single-family dwelling not to exceed three (3) stories in height and a private garage for not more than four (4) cars, provided, however, due to the unusual topography of the property, the DRB reserves the right in its sole discretion to alter or waive any portion or all of this restriction.

Section 2. Dwelling, quality & size. The main floor area of each residential Structure, exclusive of porches, garages, and storage areas shall not be less than 2000 square feet in the case of a one story Structure and not less than 1400 square feet in the case of a one and one-half (1-1/2) or more story Structure, with the additional story having a minimum square footage of 600 square feet, using outside dimensions. It is the intention of this Section to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these restrictions, conditions and covenants are recorded. Builders and owners should include sufficient storage space in the principal building to eliminate the need for outdoor storage sheds.

Section 3. Fences and Walls. Fences are not recommended but may be approved by the DRB when darkly colored chain link cedar, cypress, or other 40 year life material is used, and the design is consistent with other standards of this Association. All fences and/or walls where permitted shall be of the same material and design as the adjacent building. Where a fence or wall is deemed to be unnecessary or unsightly and detracting the visual value of common areas, a landscape screen in lieu of a fence or wall shall be required. No fence or wall over five (5) feet in height shall be permitted except for tennis courts and swimming pools and other special conditions as approved by the DRB. In general fences or walls are not encouraged. Hedges, berms, or other landscape alternatives are preferred. If a fence or wall is allowed, it shall be no nearer to any street than the rear corner of the dwelling unless otherwise approved by the DRB and shall not be within 30 feet of the lake. No sea walls or retaining walls will be allowed on the lake unless unusual erosion problems warrant such a structure as determined by the DRB.

Section 4. Walls. No wall shall be constructed or permitted to remain upon any Parcel if it is higher than eight (8) feet or if its finished appearance is constructed of concrete block, concrete bricks, cinder block or combination thereof unless otherwise approved by the DRB.

Section 5. Roofs. Flat roofs shall not be permitted on the main portion of the structure provided; however, the DRB shall have discretion to approve such roofs on the main body of a

building, if modern or contemporary in design. No built-up roofs shall be permitted except on approved flat surfaces.

Section 6. Building location. No building shall be located nearer than 15 feet to the side lot line of any diversely owned adjoining tract of land, nor nearer than 50 feet from the front property line or 50 feet from the side street line of any road in said development, and no nearer than 80 feet to the lake shoreline; provided, however, due to the unusual topography of this land, the DRB reserves the right in its sole discretion to alter or waive any portion or all of this restriction. For the purpose of this section, eaves, steps, patios, driveways, sidewalks, and open porches shall be considered as part of a building.

Section 7. Nuisances. In order to preserve and maintain the beauty and integrity of the neighborhood, no noxious or offensive activity shall be carried on upon any Parcel nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. During construction and at all times thereafter, the Parcel shall be kept neat, free and clear of debris and trash; all the builders are to provide standard construction on-site sanitary facilities for their workmen.

Section 8. Livestock and poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel except that, subject to the preceding paragraphs, dogs, cats, or animals commonly accepted as household pets may be kept, provided that such animals are not kept, bred, or maintained for commercial purposes. Notwithstanding the foregoing, a limited number of horses, not to exceed three, may be kept on certain lots upon written approval of the Declarant or the Board of Directors of the Association. No structure or area for the care, housing, or confinement of any animal shall be constructed or maintained without the prior written approval of the DRB, and such structure or area shall be in compliance with the terms and conditions set forth in the Declaration, the "Architectural Review & Guidelines" and any applicable ordinances.

Section 9. Streets. Declarant, the City or County may at any time lower or raise the street surfaces to conform with the grades established by an Engineer or Declarant, the City or the County, and said action shall to give rise to a claim against Declarant, the City, or the County for damages to abutting property.

Section 10. Easements. Declarant hereby reserves the following easements over, across and through the Parcels in this development, to-wit:

- A. An easement of ten (10) feet in width along and to the side line of each parcel;
- B. An easement ten (10) feet in width along the rear line

of each parcel in this development; and

C. All easements for utilities and drainage as shown upon the plat of this development.

The easements hereby reserved are for the purposes of installing, maintaining, and replacing public utilities and for open ditch storm water drainage. Declarant reserves the right for itself, its agents, servants, employees, contractors, and assigns to enter upon each Parcel, from time to time, for the purpose of installing such utilities and/or excavating such ditches and for repairing, renewing and/or replacing the same. Any damage done by declarant in the use of the easement shall be repaired by declarant in a reasonable time.

Section 11. Temporary Structures. No structure, including garages, fences, out buildings, driveways, storage sheds, tool sheds, green houses, doll houses, etc. shall be erected or permitted to remain on any Parcel nor on any tract allocated to a residential structure, prior to the erection of a residence thereon. Afterwards, such structure shall be approved as provided in Article VIII, Section 2.

Section 12. Signs. No sign of any character or description, nor advertising matter of any kind shall be displayed or placed on any part of the property with the exception of "For Sale" or "For Rent" signs, applicable to the lot where located, and except during the construction period of any phase of the development by developer, contractor or material supplier, and such signs must not exceed 2' X 3' in size. Signs used by a builder, developer, contractor or materialman to advertise the property during said construction shall be neat and attractive in appearance.

Section 13. Lawn furnishings. No bird baths, frog ponds, flag poles, lawn sculpture, artificial plants, bird houses, rock gardens, or similar types of accessories and lawn furnishings are permitted on any homesite without prior approval of the DRB.

Section 14. Temporary residence. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Parcel at any time as a Residence, either temporarily or permanently, unless special circumstance approval is granted by the DRB for a specified time period.

Section 15. Sight distance at intersection. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Parcel within the triangular area formed by the street property line and a line connecting them at points twenty five (25) feet from the

intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Parcel within ten (10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 16. Clothes drying equipment. Clothes lines or drying yards shall not be permitted except as allowed in paragraph 22B.

Section 17. Mail boxes and newspaper tubes. Only mailboxes and newspaper tubes approved by the DRB shall be allowed.

Section 18. Vehicles. All motor vehicles owned, leased or used by any Resident or kept on the premises are to be typically parked in the garage and only in the case of more vehicles than garages parked in the driveway, shall be currently licensed and maintained in proper operating conditions so as not to be a hazard by noise, exhaust emissions or appearances. All motor vehicles including trail bikes, motorcycles and all terrain vehicles shall be driven only upon paved streets and driveways; except for areas provided by the declarant or association and such vehicles as are authorized by Declarant and/or Association as needed to maintain, repair or improve the property. No boat, motor home, travel trailer or recreational vehicle shall be allowed to be parked for an extended period of time if it aesthetically detracts from the subdivision as determined by declarant or Association. No such vehicles are to be parked on the street.

Section 19. Flood easement. Any purchaser of a Parcel which abuts the lake acknowledges the right of the Declarant or the Association to raise or lower the lake contour line or to alter any or all parcel or property contour or lake boundary lines for the benefit of all members, and by acceptance of his, her, or its deed, each member agrees that the conveyance by Declarant, or its successors and assigns is made subject to said rights and easements whether or not specifically stated in said deed.

Section 20. Construction and marketing activities. So long as Declarant or any builders are engaged in developing or improving any portion of this development, such person shall be exempted from the provisions of this Article affecting movement and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model houses. Such exemption shall be subject to rules as may be established by

Declarant to maintain reasonable standards of safety, cleanliness and general appearance of the Properties.

Section 21. Oil and mining operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Parcel, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Parcel, nor derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Parcel without the approval of the DRB.

Section 22. A. Sewage Disposal. No individual sewage disposal system shall be permitted on any Parcel unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of Lee County Department of Public Health and/or the Alabama Department of Public Health. Approval of such systems as installed shall be obtained from such authority. Declarant makes no representation concerning the suitability of any lot for installation of a sewage disposal system.

B. Hidden Service Court. A service court, or drying yard area hidden from view from the lake and from any adjacent street and from adjoining lot owners must be included in the architectural or landscaping plans if desired, and constructed so as to provide space for garbage and trash cans, wood piles, clothes drying areas and other similar uses.

Section 23. Boat docks. Boat docks, Piers, etc. are to be approved by the DRB and will only be allowed in locations that do not restrict lake traffic as determined by the DRB. These structures must follow a uniform design and appearance as provided by the DRB. Docks/Piers will not extend beyond 20' of the shoreline and be located in a recessed area of the lot's shoreline when possible.

Section 24. Boat houses and ramps. Boat houses or enclosures on the water will be discouraged by the DRB. Boat houses will only be approved in locations that do not restrict lake traffic as determined by the DRB. These structures must follow a uniform design and appearance as provided by the DRB. Boat houses will not extend beyond 20' of the shoreline and will not protrude above 8' over the normal water level. Boat houses will be located in a recessed area of the lot's shoreline when possible and must be well maintained regarding appearance. Boat ramps for launching will be provided by the Declarant and cannot be installed on individual parcels.

Section 25. Lake responsibilities. A. General Regulation. Plainsmen Developments, Inc. reserves the right to temporarily drain the lake at any time (pending 30 days written notice to lot owners) for no more than ninety (90) days if avoidable, for

repairs and/or modifications to the dam or underwater properties. The lake level may also be lowered once per winter as determined by the Declarant, to allow property owners an opportunity to clean up or repair their respective beach areas.

B. Lake Committee. Maintenance, fish stocking, regulations, or modifications to the lake or shoreline will be the responsibility of the lake front property owners ("class B" members). A group referred to as the "Lake Committee" will be established to govern the rules, regulations, actions, and financial needs regarding the lake and its use. The committee will consist of all participating water front owners and use the association officers or separately elected officers as the governing body. A minimum 50 percent of the lake front property owners or representatives will be required to elect officers.

All lake front property owners will be required to meet the financial responsibilities produced from the Lake Committee regarding fees for maintenance and upkeep. Each owner constitutes 1 equal unit of responsibility in the total sum of lake front property owners. Other fees such as fish stocking and the corresponding privilege will be governed by the Lake Committee rules.

Initial rules governing the use of Emerald Lake are as follows. Any modification or additions to the set rules will be the responsibility of the Lake Committee. Any changes to the governing rules of the Lake Committee will require a 70 percent vote with all owners given prior due notice of the action and the meeting time and place at least two weeks prior to the meeting.

Any legal liabilities of actions resulting from breaking the rules set by the Lake Committee will be the responsibility of the Committee to enforce and assess damages resulting there from against the offending party.

Furthermore it is the responsibility of each property owner to remain informed and inform family members or guests of such rules.

C. Lake Use Rules.

Fishing will be allowed with the following restraints:

(1) Fisherpersion must yield to water skiers between 10:00 a.m. and 1 hour before official sunset. Water skiing can only be done behind an AWSA approved competition ski boat.

(2) Boat drivers must be approved by the recreational committee requiring competence in piloting a competition boat and full understanding of the safety requirements involved. A driver may lose privileges at any time if an unsafe act is committed.

(3) Skiers must yield to fishing boats the first and last hour of the allowable skiing period.

(4) Only 1 ski boat pulling skiers will be permitted at a time unless 2 boats agree to dual operation and stay on opposite sloughs. Other boats may wait at south end of lake with skier ready in which case boat in operation is limited to six passes down the lake.

Other Uses:

(1) Swimming/Float/Snorkeling - allowed between 8:00 a.m.

and 10:00 p.m. yielding to water skiing and fishing, when beyond 20 feet from shoreline.

(2) Non-Powered Boats- Canoes, sailboats and sailboards must yield to fishing and water skiing activities beyond 50 feet of shoreline. No outboard motor craft shall be allowed on lake.

(3) Diving- Underwater activities such as snorkeling or scuba diving must be supervised by an adult (or accompanied by a certified diver in the case of scuba) with a divers flag marking the location of activity.

(4) All other uses - Any other use of the lake must be reviewed and approved by the recreational committee.

Section 26. Preservation of trees. NO TREE HAVING A DIAMETER OF SIX (6) INCHES OR MORE (MEASURED FROM A POINT FOUR FEET ABOVE GROUND LEVEL) SHALL BE REMOVED FROM ANY PARCEL WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF THE DRB. The DRB, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the DRB may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section, Declarant and the DRB and the respective agents of each may come upon any Parcel during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither Declarant, nor the DRB, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 27. Underground utilities. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not erect or grant to any person, firm or corporation the right, license or privilege to erect facilities, including poles and wires, for the transmission of electricity, telephone messages and the like above the surface of the ground on any Parcel and no external or outside antennas of any kind shall be erected unless prior approval is first obtained from the DRB, but such owner or covenant owners agree to installation of future underground utilities.

Section 28. Driveways. All homesite shall have a paved driveway of stable and permanent construction of at least twelve (12) feet in width. Unless prior approval is obtained from the DRB, all driveways must be constructed of asphalt, brick, concrete or stone. All Drive approaches must be concrete. When curbs are required to be broken for driveway entrances, the curb shall be repaired in an orderly fashion in such a way as to be acceptable to the DRB, and conform to governmental standards.

Section 29. Garage. All homes or residential structures require a minimum of a double garage that does not face the street or open to the street. The DRB has discretion to alter or

amend this provision if circumstances warrant.

Section 30. Foundation. No exposed block foundation shall be allowed.

Section 31. Construction color scheme. General development colors are to be natural earth tones, with no bright or loud offensive colors, and with use of natural wood sidings, brick, stone or dryvit. No unpainted aluminum windows, storm or screen doors, speckled or glazed effect on bricks, artificial exterior stone or awnings of fiberglass or metal will be allowed. The DRB has final authority regarding the exterior color or colors to be used on any structure, and prior approval must be obtained from the said DRB. Wood structures unless painted or unless of cedar or cypress, are not recommended. The DRB will generally require 65% exterior construction using masonry, dryvit, stone or brick.

Section 32. Garbage Containers/Gas Tanks. Garbage Containers shall be of a type approved by the City of Opelika, Alabama or by Foxchase. All garbage containers shall be kept to the rear of the dwelling and/or behind a structure or screen such as not to be visible to the street, except for days designated as garbage pick-up days. No fixed or permanent tanks or tanks greater than 10 gallons in size (propane, LP, kerosene, or petroleum tanks) are permitted on any parcel unless approved by the DRB.

Section 33. Herbicides, Pesticides, and Fertilizers. Declarant or Foxchase reserve the right to limit the use of herbicides, pesticides and commercial fertilizers. The use of these materials may be reviewed by the DRB or Foxchase, and the declarant, DRB, Foxchase may publish an approved list of such materials. The declarant, Foxchase, DRB or the Lake Association reserve the right to schedule periodic testing of the water of the lake for compliance with water quality standards. Any of said authorities may limit or restrict the use of any substance that negatively impacts water quality or oxygen in the lake to a level that would be harmful to any wild life that the lake supports.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Construction period. With respect to each Residential Parcel, construction of the residential building shall be completed within one (1) year from the date of beginning construction, unless approved by the DRB. In addition to all other rights and remedies for breach of these restrictions, in the event this restriction is not fully complied with the Declarant shall have the right, but not the obligation, to repurchase the Parcel for a amount not to exceed the purchase price paid Declarant for the Parcel without interest. Declarant

reserves the right, in his sole discretion, to waive any portion of this section without the consent of the DRB or the Foxchase Residential Association.

Section 2. Repurchase option. In the event the Owner of a Parcel desires to convey the Parcel prior to the expiration of two (2) years after the purchase from Declarant, and in the further event that the Owner has not begun construction of the building thereon, Declarant shall have and retains the option to purchase such Parcel for an amount equal to the best written offer owner has. Owner shall give Declarant written notice of Owner's best offer on such Parcel and Declarant shall have ten (10) days after receipt thereof to exercise his option to purchase.

Section 3. Annexation. Each owner agrees that such Owner will support or consent to any annexation issues approved by vote of the association.

Section 4. Duration. The covenants contained herein shall run with and bind the land, shall be and remain in effect, and shall inure to the benefit of and be enforceable by this Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of which this Declaration is filed for record in the Office of the Judge of Probate of Lee County, Alabama. Thereafter, said Covenants shall be renewed and extended automatically for successive periods of ten (10) years each, unless, during the last year any particular term, an instrument in opposition to any such automatic renewal and extension signed by at least three-fourths (3/4) of the Parcel Owners and recorded in the Office of the Judge of Probate of Lee County, Alabama, in which event the Covenants shall expire at the end of the then current term. Written notice of any proposal to not renew and extend the Covenants shall be given to each mortgagee of a Parcel whose name and address have thereto been furnished to the Association with a written request for such notice.

Section 5. Amendments. This Declaration may be amended at any time during the initial twenty (20) year term hereof by an instrument signed by at least nine-tenths (9/10) of the Parcel Owners, and thereafter by an instrument signed by at least three-fourths (3/4) of the Parcel Owners and recorded in the Office of the Judge of Probate of Lee County, Alabama. Should any proposed amendment alter materially the Covenants contained herein, written notice thereof shall be given to each mortgagee of a Parcel whose name and address have theretofore been furnished to the Association together with a written request for such notice. Notwithstanding the foregoing, amendments to this Declaration for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity authorized to fund or guarantee mortgages on parcel within a planned unit development, as such requirements may exist from time to time.

Section 6. Notice. Any notice required to be sent to any Owner or Mortgagee pursuant to any provision of this Declaration or the Association's By-Laws may be served personally or by depositing such notice in the mail, postage prepaid, addressed to the Owner or the Mortgagee, to show it is intended at his last known place of residence or business, or to such other address as may be furnished to the Secretary of the Association, and such service shall be deemed sufficient. The date of service by mail shall be the date of mailing. Notice to one or two or more co-owners shall constitute notice to all.

Section 7. Enforcement. Enforcement of the Covenants contained herein and the Association's Articles of Incorporation and By-Laws may be by any appropriate proceeding at law or in equity by the association or any aggrieved Owner against any person or persons violating or attempting to violate the same, either to restrain violation, to enforce personal liability, to recover damages or to enforce any lien created by these Covenants. The remedies provided for herein are distinct and cumulative and the exercise of any one or more of them shall not preclude the exercise of any or all of other legal remedies now or hereafter provided. Any failure by the Association or any owner to enforce any of said Covenants, Articles of Incorporation or By-Laws, however long continued, shall in no event be deemed a waiver of the right to do so thereafter. Any person entitled to file a legal action for any violation of these Covenants, the Association's Articles of Incorporation or By-Laws shall be entitled to recover reasonable attorney's fee as a part of such action.

Section 8. Notice of default to mortgagees. The first mortgagee of a Parcel shall be entitled to written notification from the Association of any default by the owner of such Parcel in the performance of his obligations under this Declaration or the Association's Articles of Incorporation, By-Laws or rules and regulations which is not cured within sixty (60) days, provided that a request for such notice shall have been made in writing to the Association by such mortgagee.

Section 9. Consent of first mortgagees regarding exterior appearance. Notwithstanding, and in addition to, any other provision of this Declaration, the Association's Articles of Incorporation, By-Laws and rules and regulations, the Association shall not be entitled, by act or omission, to change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the improvements constructed or to be constructed on the Parcels. The exterior maintenance of such improvements, the maintenance of common fences and driveways, or the upkeep of lawns and planting in the Properties, unless first approved in writing by the holders of at least three (3/4) of all first mortgages secured by Parcels.

Section 10. Leasing of lots. Any lease agreement between any Owner and his Lessee regarding any Parcel or portion thereof must be in writing and must provide herein that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Association's Articles of Incorporation and By-Laws, and that any failure by the Lessee to comply with the terms of such document shall constitute a default under the lease.

Section 11. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application hereof to any person as to any property shall be prohibited or held invalid, such prohibition or invalidity shall not effect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 12. Grantee's acceptance. The Grantee of any parcel subject to the coverage of these Restrictions by acceptance of the deed or other instrument conveying an interest or title to, or the execution of a contract for the purpose thereof, whether from Declarant or a subsequent Owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

Section 13. Right of Declarant to modify restrictions with respect to unsold parcels. With respect to any unsold parcel, Declarant may include in any contract or deed hereinafter made or entered into, such modifications and/or additions to these Restrictions as Declarant in his discretion desires.

Section 14. Assignment by Foxchase Residential Association. The Foxchase Residential Association shall be empowered to assign its rights hereunder to any successor, non-profit corporation (herein referred to as "successor corporation") and upon such assignment the successor corporation shall have all the rights and be subject to all the duties of the Foxchase Residential Association hereunder.

Section 15. No waiver. The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.