

RESTRICTIVE COVENANTS FOR  
SOUTH LAKE SUBDIVISION, PHASE ONE  
(CREEK STONE SECTION)  
A PRESTON HOLDINGS LLC DEVELOPMENT

1281 535  
Recorded in the Above  
RISC Book & Page  
04-17-2007 01:20:27 PM  
Bill English - Probate Judge  
Lee County, AL  
Book/Pg: 1281/535  
Term/Cashier: BCAN1 / ssl  
Tran#: 1629.32673.44417  
Recorded: 04-17-2007 13:20:53  
REC Recording Fee  
Total Fees: \$ 158.00

158.00

ARTICLE I

Definitions

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

**1.02 ACC.** The term or letters "ACC" shall mean the architectural control committee appointed pursuant to Section 5.02 here of with the rights and obligations conferred upon such architectural control committee pursuant to this Declaration.

**1.03 Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued, and amended from time to time by the ACC pursuant to Section 5.04 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other improvements which may be made to any Lot, Dwelling, or Common Area.

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

**1.05 Assessment.** The term "Assessment" shall mean the annual and special assessments and any other charges assessed against an Owner by the Association pursuant to Article VIII hereof.

**1.06 Association.** The term "Association" shall mean South Lake Subdivision Homeowners' Association, Inc., an Alabama nonprofit corporation.

**1.07 Board.** The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

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

**1.09 Common Areas.** The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include areas or improvements on or within the Development, which are designated as Common Areas by Developer from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easements of use or enjoyment or any other rights, license, or benefits therein or to the use thereof.

**1.10 Common Expenses.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association including, without limitation, those expenses described in Section 3.04 (e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

**1.11 Declaration.** The term "Declaration" shall mean and refer to this document and any amendments thereto.

**1.12 Developer.** The term "Developer" shall mean Preston Holding, LLC, a limited liability company, its successors and assigns.

**1.13 Development.** The term "Development" with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.02 hereof.

**1.14 Dwelling.** The term "Dwelling" with an initial capital letter, shall mean and refer to any residential structure constructed on a Lot.

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

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

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

**1.18 Lot.** The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot

for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by Developer pursuant to the provisions of Section 2.05 hereof, the resubdivided Lots shall constitute the number of Lots which result after such division or combination of Lots.

**1.19 Mortgage.** The term "Mortgage" with an initial capital letter shall mean and refer to any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Lee County, Alabama.

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

**1.21 Occupant.** The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

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

**1.23 Property.** The term "Property" with an initial capital letter shall mean and refer to that certain real property situated in Lee County, Alabama, which is more particularly described on *Exhibit A* attached hereto and made a part hereof and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof.

**1.24 Home Builder.** The term "Home Builder" with initial capital letters refers to any person or legal entity licensed as such by the State of Alabama and approved by the Developer to construct a dwelling or structure on a specific lot in South Lake Subdivision, Phase One.

**1.25 Subdivision.** The term "Subdivision" with initial capital letter shall mean South Lake Subdivision, Phase One, according to and as shown by map or plat of said subdivision of record in Town Plat Book 29, at Page 53, in the Office of the Judge of Probate of Lee County, Alabama.

## ARTICLE II

### Property Subject to the Declaration

**2.01 General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, including any part thereof and each Lot, Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of the Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area thereof. This Declaration shall not nor shall this Declaration apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration.

**2.02 Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Lee County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupancy, or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property, and (d) state such other or different covenants, conditions, and restrictions as the Developer in its sole discretion, shall specify to regulate and control the use, occupancy, and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Lee County, Alabama, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions, or restrictions set forth in the Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such

transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

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

**2.04 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Development, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Developer, including without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Developer or of the Common Areas, (iii) installation and maintenance of any water, sewer, and any other utility systems and facilities within the Common Areas, and (iv) installation of security and trash and refuse facilities.

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

## ARTICLE III

### Easements

**3.01 Grant of Nonexclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyments of the Common Areas, if any, in common with Developer, its successors and assigns, and all other Owners and Occupants. The easement and right granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot and Dwelling.

### 3.02 Reservation of Easements With Respect to Common Areas.

(a) **Basement Upon Common Areas.** Developer does hereby establish and reserve, for itself, the ACC, the Association, and their respective agents, employees representatives, invitees, heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all of the Common Areas, if any, for the purpose of (i) construction Dwellings and other Improvements in and to any Lots and Dwellings, (ii) installing, maintaining, repairing, and replacing any other Improvements to the Property or to the Common Areas, and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Dwelling within the Development, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement for access, ingress to, and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) **Changes in Common Areas.** Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify, and realign the boundaries of any of the Common Areas, if any, and any Lots or Dwellings owned by Developer all without requiring the consent or approval of any Owner or Mortgagee. Developer further reserves the right, but shall not have any obligations, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

**3.03 Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, creating, replacing, relocating, maintaining, and operating master television and/or cable systems, security and similar systems, and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation, and replacement of all such utility services and all the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.03 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or



provider of any service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.03 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

**3.04 Reservation of Easements for Signs, Walks and Trails.**

**Easement for Signs, Walks, and Trails.** Developer does hereby establish and reserve for itself and the Association and their respective successors, and assigns, a permanent and perpetual easement appurtenant over, across, through, and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling and any public or private roadway which is directly adjacent to and abuts such Lot or Dwelling for the purpose of constructing, installing, maintaining, repairing, operating, replacing, and the use of side walks, walkways, trails, bicycle and jogging lanes, traffic directional signs, and related improvements; provided, however, that neither Developer nor the Association, shall have any obligation to construct any of the foregoing improvements.

**3.05 Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 7.02 (b) below, Developer does hereby establish and reserve for the Association and its agents, employees, successors, and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

**3.06 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the ACC, the Association, and their respective agents, employees, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein, shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities. Except in case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.06 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

**ARTICLE IV**

**Association**

**4.01 Membership.** The Owner of each Lot or Dwelling subjected hereto shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be

separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot shall, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner, and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to

such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the right and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separate and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

**4.02 Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.02.

**4.03 Voting Rights.** Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws and the rights of Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling. Such voting rights shall continue to apply to each Lot or dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interest in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to all Lots or Dwellings owned by Developer.

**4.04 Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have



the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity, or inconsistency between the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to (i) the power to purchase one or more Lots and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same, (ii) subject to the provisions of this Section 4.04, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining, or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.04, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interest, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the ACC, the Association, and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided in Section 9.03 below the dedication or transfer of title to any of the Common Areas must be approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association called for such purpose, and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell, or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

**4.05 Agreements.** Subject to the conditions, restriction, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems

advisable, as well as such other personnel as the Association shall deem necessary or desirable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation, or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

**4.06 Management by Developer or its Affiliates.** Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Developments, at such compensation and on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality, and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

**4.07 Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings, and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled, or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, cancelled, or modified unless such action is also approved by Developer for so long as Developer owns any Lot or Dwelling in the Development.

**4.08 Indemnification.** The Association shall and does hereby indemnify, defend, and agree to hold each of every officer, agent, representative, and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit, or other proceedings (including the settlement of any suit or

proceedings if approved by the Board) to which such person may be made a party by reason of being of having been an officer, agent, representative, or member of the Board of the Association. The officers, agents, representatives, and members of the Board of the Association shall not be liable for any mistake in judgment, negligence, or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives, and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall and does hereby indemnify, defend, and agree to forever hold each such officer, agent, representative, and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative, or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

## ARTICLE V

### Architectural Control Committee Development And Architectural Standards

**5.01 Committee Composition.** The ACC shall consist of not less than three (3) nor more than five (5) persons, each of whom shall be appointed or elected as provided in Section 5.02 below. A member of the ACC may, but shall not be required to be an Owner. The regular term of office for each member of the ACC shall be three (3) years, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.02 below may be removed with or without cause in the manner provided in Section 5.02 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Dwelling, shall be deemed to ratify the provisions of Section 5.02 below.

### **5.02 Appointment and Removal of ACC Members.**

(a) For so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ACC. The ACC shall initially be composed of three members.

(b) At such time as Developer is no longer the Owner of any Lot or Dwelling within the Development or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ACC as provided in Section 5.02 (a) above, then the number of members and the members of the ACC shall be appointed by the Board of the Association.

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

**5.03 Procedure and Meetings.** The ACC shall elect a chairman and the chairman, or in chairman's absence the vice-chairman, shall be the presiding officer at all meetings of the ACC. The ACC shall meet on a regular basis as well as upon call of the chairman or vice-chairman. A majority of the total number of members of the ACC shall constitute a quorum of the ACC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ACC shall constitute the action of the ACC on any matter which comes before it. The ACC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys in order advise and assist the ACC in performing its functions set forth herein. Each member of the ACC may be paid a stipend or honorarium as may from time to time be determined by the Board of the Association and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ACC, subject to the approval of such expenses by the Board of the Association. The ACC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings, and all other matters concerning the conduct of the business of the ACC.

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

**5.05 Approval of Plans and Specifications.**

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the Development, and to protect and promote the value of the Property, the Lots, the Dwellings, and all improvements thereon, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Dwelling by an Owner, other than Developer, which affect the exterior appearance of any Lot or Dwelling unless the plans and specifications therefore have been submitted to and

approved by the ACC in accordance with the terms and provisions of Section 5.05(b) below. Without limiting the foregoing, the construction and installation of any Dwellings, sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants quarters, or any other outbuildings, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Dwelling or improvements, unless the plans and specifications for the same have been submitted to and approved by the ACC in accordance with the terms and provisions of Section 5.05(b) below. Any property Owner that either directly or through his Agent or contractor violates this provision is subject to being enjoined through the courts for specific performance of this provision and a minimum fine of \$5,000.00 per day for each day the violation continues after notification is delivered to the Owner.

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

- (i) Two (2) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios, and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling.
- (ii) Two (2) copies of a foundation plan, floor plans, and exterior elevation drawings of the front, back, and sides of the Dwelling to be constructed on the Lot.
- (iii) Two (2) copies of written specifications and, if requested by the ACC, samples indicating the nature, color, type, shape, height, and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing, and other materials to be utilized on the exterior of the Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves, and cornices on the exterior of such Dwelling.
- (iv) Three (3) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.
- (v) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below.

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

(c) The ACC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications, and related data so submitted to the ACC shall be retained in the records of the ACC and the other copy shall be returned to the Owner submitting the same marked approved, approved with conditions and requirements as noted, or disapproved. The ACC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors, and attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, any Owner may make interior improvements and alterations within the Owner's Dwelling that do not affect exterior appearance all without the necessity or requirement that ACC approval or consent be obtained.

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

(e) In the event the ACC fails to approve in writing any such proposed plans and specifications within Sixty (60) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been approved.

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

(g) If construction of the Dwelling or the Improvements has not substantially commenced, by clearing and grading, pouring of footing, and commencing framing and other related construction work within sixty (60) days of approval by the ACC of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced or continued on such



Lot or Dwelling and the Owner of such Lot or Dwelling shall be required to resubmit all plans and specifications for any Dwelling or other Improvements to the ACC for approval in the same manner as set forth in this Article V.

**5.06 Landscaping Approval.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation, or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the ACC. The provisions of Section 5.05 above regarding the method that such plans are to be submitted to the ACC, the time for approval or disapproval of the same, and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

**5.07 Construction Without Approval.** If (a) any improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot or dwelling without ACC approval of the plans and specifications for the same or (b) the ACC shall determine that any approved plans and specifications for any improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ACC shall have the right to exercise any of the rights and remedies set forth in Section 5.13 below.

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

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

**5.10 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ACC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer, or director thereof, shall have any liability of any nature whatsoever for any damage, loss, or prejudice suffered, claimed, paid, or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed, or approved in accordance with the provisions of the Article V, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications, or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such

plans, drawings, and specifications, (e) bodily injuries (including death) to any Owner, Occupant, or the respective family members, guests, employees, servants, agents, invitees, or licensees, or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements, or the personal property of any Owner, Occupant, or the respective family members, guest, employees, servants, agents, invitees, or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore or any past, present, or future soil, and/or subsurface conditions, known or unknown (including, without limitation, sink-holes, underground lines, tunnels, and water channels, and limestone formations on or under any Lot or Dwelling), and (f) any other loss, claim, damage, liability, or expense, including court costs and attorneys' fees, suffered, paid, or incurred by any Owner arising out of or in connection with the used and occupancy of any Lot, Dwelling, or any Improvements situated thereon.

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

**5.12 Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors, and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the development of Lots, Dwellings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, sign, and model Dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 5.12 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as models residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

**5.13 Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the ACC and the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ACC for such Improvements and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ACC or the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects designers land planners, and any other persons involved in the correction of nonconforming work, the completion of uncompleted work, or in any judicial proceeding, together with any other costs or

expenses incurred by the ACC or the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ACC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

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

## ARTICLE VI.

### Use and Development Restrictions

**6.01 Use Restrictions.** Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.01, each Lot and Dwelling shall be used for single-family residential purposes only allowing only one unrelated person to the Owner to live in the Dwelling, and no trade or business of any kind may be carried on in or from any Lot or Dwelling; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, cooperatives, duplexes, zero-lot-line homes, and cluster or patio homes for residential dwelling purposes. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, and (b) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas, single-family residential purposes, or any of the residential uses authorized above for Additional Property, then such use must be approved in writing by the ACC.

**6.02 ACC Approval.** No Dwellings or other improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling and/or improvements have been approved by the ACC in the manner set forth in Article V above.

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

**6.04 Building Setbacks.**

(a) Subject to the provisions of Section 6.05 below, minimum building setback lines for all Dwellings shall be established either (i) by the ACC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (iii) in the deed from Developer to the Owner of such Lot.

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above. Steps, stoops and porches shall not be deemed a part of the Dwelling for the purpose of determining building setback areas pursuant to this Section 6.04.

**6.05 Setting of Dwellings.** Prior to commencing any construction on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ACC pursuant to the provisions of Section 5.05 above. Notwithstanding anything provided in Section 6.04 above to the contrary, the ACC may require building setback requirements different from those described in Section 6.04, including building setbacks which are greater than those specified in Section 6.04 above.

**6.06 Trees.** Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner, other than Developer, shall cut, remove, or mutilate any tree, shrub, bush, or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ACC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the ACC.

**6.07 Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed two and one-half (2-1/2) stories in height, as measured from the finished grade of the Lot.

**6.08 Minimum Living Space.** Minimum Living Space requirements shall be established (i) by the ACC, (ii) on the subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (iii) in the deed from Developer to the Owner of a Lot. In no case shall the minimum living space requirement be less than 1,150 square feet.

**6.09 Landscaping.**

expenses incurred by the ACC or the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ACC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

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

## ARTICLE VI.

### Use and Development Restrictions

**6.01 Use Restrictions.** Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.01, each Lot and Dwelling shall be used for single-family residential purposes only allowing only one unrelated person to the Owner to live in the Dwelling, and no trade or business of any kind may be carried on in or from any Lot or Dwelling; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, cooperatives, duplexes, zero-lot-line homes, and cluster or patio homes for residential dwelling purposes. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, and (b) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine. Notwithstanding anything provided in this Section 6.01, to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas, single-family residential purposes, or any of the residential uses authorized above for Additional Property, then such use must be approved in writing by the ACC.

**6.02 ACC Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling and/or Improvements have been approved by the ACC in the manner set forth in Article V above.

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

**6.04 Building Setbacks.**

(a) Subject to the provisions of Section 6.05 below, minimum building setback lines for all Dwellings shall be established either (i) by the ACC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (iii) in the deed from Developer to the Owner of such Lot.

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above. Steps, stoops and porches shall not be deemed a part of the Dwelling for the purpose of determining building setback areas pursuant to this Section 6.04.

**6.05 Setting of Dwellings.** Prior to commencing any construction on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ACC pursuant to the provisions of Section 5.05 above. Notwithstanding anything provided in Section 6.04 above to the contrary, the ACC may require building setback requirements different from those described in Section 6.04, including building setbacks which are greater than those specified in Section 6.04 above.

**6.06 Trees.** Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner, other than Developer, shall cut, remove, or mutilate any tree, shrub, bush, or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ACC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the ACC.

**6.07 Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed two and one-half (2-1/2) stories in height, as measured from the finished grade of the Lot.

**6.08 Minimum Living Space.** Minimum Living Space requirements shall be established (i) by the ACC, (ii) on the subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (iii) in the deed from Developer to the Owner of a Lot. In no case shall the minimum living space requirement be less than 1,150 square feet.

**6.09 Landscaping.**



(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ACC for approval pursuant to the provisions of Section 5.06 above. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers, and natural environment, including natural drainage channels, which exist on such Lot. Each lot will have its own front and street visible side yard irrigation and sprinkler system to maintain the landscaping systems.

(b) All frontage and side yards of each Lot shall, unless approved by the ACC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with a mixture of BMP grass or Bermuda grass. All areas not sodded shall be seeded with Bermuda grass seed. Under no circumstance will Bahia grass seed be planted within the Development.

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

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

(e) No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses, or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling.

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

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

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

(i) Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling within 10 days as such holiday passes.

#### 6.10 Roofing.

(a) The ACC shall have the right to establish specific requirements for the pitch of any roof with a minimum of 5" on 12" for the houses.

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

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

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

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

#### **6.12 Exterior Materials and Finishes.**

(a) Approved exterior building material finishes for any Dwelling shall include brick, stone, stucco, synthetic plaster (e.g., dryvit), staining, preprinted aluminum trim and such other materials as may be approved by the ACC. The ACC may approve the use of Hardy Board, Wood or Vinyl Siding for the sides and rears of the houses. All wood surfaces utilized on the exterior of any Dwelling shall be painted. Stained wood shall not be permitted unless approved by the ACC. However, the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of exterior doors. Prohibited exterior finish materials shall include particle board, plywood, simulated brick, and any other materials as the ACC may from time to time determine.

(b) All brick, stonework, and mortar, including type, size, color, and application, must be approved by the ACC. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g., dryvit), trim, cornices, eaves, railings, doors, and shutters shall be subject to ACC approval.

(c) No wooden steps or stoops shall be allowed on the front or side of any Dwellings, unless approved by the ACC.

(d) No concrete, concrete block, or cinder block shall be used as an exposed building surface; any concrete, concrete block, or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.).

(c) Metal flashing, valleys, vents, and gutters installed on a Dwelling shall be painted to blend with the Color of the exterior materials to which it is adhered or installed.

6.13 Chimneys. The exterior of all chimneys shall be constructed as approved by the ACC.

#### 6.14 Garages.

(a) A minimum of a one (1) car garage with doors will be required for each Dwelling. Garage doors shall be constructed of such materials as are approved by the ACC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ACC. All Garages shall be constructed as side entry units where possible.

(b) All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein. No parking of vehicles in any public or private street for more than 24 hours will be permitted or allowed.

6.15 Fences. All fences fronting or abutting a street must be a 6 foot naturally stained wood. The ACC shall approve all fences or comparable fencing products. Specifications for approved fencing may be obtained from the ACC.

#### 6.16 Windows, Window Treatments, and Doors.

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

(b) Windows shall be approved by the ACC.

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

6.17 Mailboxes. Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color, and location as may be approved by the ACC. The mailbox for each Lot shall be obtained from the Developer and its location shall be approved by the ACC before installation. Other than the Lot or Dwelling number, no mailbox shall have any other inscription, painting, ornament or artistry. In lieu of mailboxes, the Association may provide within any of the Common Areas a kiosk or community mail center.

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

6.19 Satellite Dishes and Antennas. Satellite dishes shall be approved by the Acc and must be unscen from any road abutting said lot. No radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Development unless the same is contained entirely within the interior of a building or other structure, is not visible from any street or adjacent Lot or Dwelling, and/or is approved by the ACC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling, which may interfere with the reception of radio or television signals within the Development.

6.20 Driveways and Sidewalks. All driveways and sidewalks for each Lot or Dwelling must be constructed of concrete and constructed as the dwelling is constructed. All side walks must be 4 feet in width. All lots must have a driveway and appropriate sidewalks.

#### 6.21 Outdoor Furniture, Recreational Facilities, and Clotheslines.

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

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

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

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

(e) Basketball backboards shall be located in a location not visible from the street and as approved by the ACC.

(f) Outside clotheslines or other outside facilities for drying or airing clothes are prohibited on any Lot or Dwelling. No clothing, rugs, or other items shall be hung, placed, or allowed to remain on any railing, fence, or wall.

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

(h) Bird feeders, wood carvings, plaques, and other types of homecrafts shall not be permitted in the front yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques, and other types of homecrafts shall be located so as to not be visible from any street.

**6.22 Pets and Animals.** No animals, livestock, birds, or poultry of any kind shall be kept, raised, or bred by any Owner upon any Lot, Dwelling, or other portion of the Development; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or be a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas and all such structures or areas shall be located at the rear of a Dwelling, shall not be visible from any street, and shall be constructed of materials and of a size approved by the ACC. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ACC or otherwise under leash. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Development, including the right to assess fines for violations of such rules and regulations.

**6.23 Trash, Rubbish, and Nuisances.**

(a) No trash, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or be detrimental to persons using, occupying, or owning any other Lots or Dwellings within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner

and Occupant shall refrain from any act or use of a Lot or Dwelling which would cause disorderly, unsightly, or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation, or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed upon any Lot or Dwelling or other portion of the Development; provided, however, that the foregoing shall not apply to Developer or to the use of any of the foregoing devices within any recreational areas of the Common Areas such as swimming pools. Any Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees, or contractors of such Owner or Occupation who dumps, places, or allows trash or debris to accumulate on the Owner's Lot, Dwelling, or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association in removing the same. This provision applies to any home builder during construction of the Dwelling and each home builder must have a trash container on site during such construction and the site must be cleaned and cleared of trash and left over materials on a daily basis.

(b) Trash, garbage, and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from streets and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ACC; provided, however, that trash cans and containers can be moved to the front or side yard of any Dwelling on trash collection days for such Lot or Dwelling.

(c) Except as otherwise provided in Section 6.28(a) below, no outdoor burning of trash, garbage, leaves, wood, shrubbery, trees or other materials shall be permitted on any Lot, Dwelling, or other portion of the Development.

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

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be permitted stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored, and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ACC. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery, or equipment.



(b) Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 6.20 above or in garages constructed in accordance with the provisions of Section 6.14 above. Vehicles shall not be parked on any landscaped or natural areas of a Lot or Dwelling.

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

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

6.25 Signage. No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ACC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ACC. Notwithstanding the foregoing (a) the restrictions set forth in this Section 6.25 shall not be applicable to Developer or to any signs erected pursuant to Section 6.28(c) below and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 3.05 above.

6.26 Above Ground Tanks and Wells. No exposed above ground tanks for the storage of fuel, water, or any other substances shall be located on any Lot or Dwelling or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwelling.

6.27 Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, tree house, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot or Dwelling; provided,

however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board of the Association, (b) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all streets and adjacent Lots or Dwellings, and/or the park; and (c) construction trailers and/or sales offices erected or placed on any part of the Property by Developer pursuant to Section 5.12 above.

#### 6.28 Construction of Improvements.

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street, and (iii) all construction trash, debris, and rubbish on each Lot shall be properly disposed of outside the Development at least weekly. Used construction materials may be burned on-site so long as such burning does not create a nuisance to other Owners or violate the laws, ordinances, codes, statutes, rules, or regulations of any applicable Governmental Authority. In no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling, or any other portion of the Development. No Owner shall allow dirt, mud, gravel, or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers, and suppliers shall cause all such dirt, mud, gravel, and other substances to be removed from the treads and wheels of all vehicles, used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any streets within the Development.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, material-men, and suppliers shall (i) utilize off-street parking only, and (ii) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.06 above, are to be preserved. All erosion control systems must be maintained properly and seed and mulch must be applied to all cleared areas within 48 hours of such clearing, except in the building pad for the dwelling. All construction materials must be stored at least 20 feet from the edge of the curb on each lot during construction. Dirt or other materials must be cleaned off the street at the end of each day.

(c) Up to two (2) signs, in size and color approved by the ACC, may be posted on a Lot at a height not to exceed three (3) feet from the ground level advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ACC approval. The location of such signage shall be established by the ACC but in no event shall any signage authorized by this Section 6.28 or which may be approved by the ACC be attached, nailed, or otherwise adhered to any tree or other plant life on a Lot.

(d) Other than required by the needs of the Developer, no construction trucks, equipment, or machinery, including any trailers used for the transportation of construction equipment or machinery shall be parked overnight on any streets or roads within the Development. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials, and all trash, debris, and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and unclean condition.

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

**6.29 Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of the ACC; provided, however, that the provisions of this Section 6.29 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval, or similar right-to-use programs.

**6.30 Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, and tennis courts may be constructed, installed, and maintained on any Lot or Dwelling subject to the prior written approval of the plans for the same by the ACC and the restrictions contained herein. Above-ground pools shall not be permitted. The ACC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities, and tennis courts within the Development.

**6.31 Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, Ordinances, Statutes, Rules, regulations, requirements and code provisions of the Governmental Authorities.

**6.32 Additional Regulations.** In addition to the restrictions set forth in this Declaration, the (i) ACC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify, and amend the Architectural Standards in order to impose such other, further, or different requirements or restrictions which shall be binding on all Owners, Lots, and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling, and the (ii) Board of the Association shall have the

right from time to time and at any time to adopt, modify, and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots, and Dwellings.

**6.33 Variances.** The ACC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot or Dwelling. Any variance request submitted to the ACC shall be in writing and, upon approval of the same by the ACC shall be evidenced by a written variance executed by either the chairman or vice chairman of the ACC. The provisions of Section 5.03 above concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the ACC shall be binding upon the ACC in any matters regarding the granting of variances.

**6.34 Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the Association or the ACC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives, and independent contractors enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ACC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ACC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ACC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

## ARTICLE VII

### Maintenance Responsibilities

**7.01 Responsibilities of Owners.**

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

(b) Each Lot or Dwelling, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ACC pursuant to Section 5.06 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of any roadway abutting such Lot or Dwelling and shall be binding upon the Owner of each Lot or Dwelling at all times, either prior, during, or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines, and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe, and attractive condition. Trees, shrubs, vines, plants, and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage, and waste materials shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Development.

(c) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the ACC as provided in Sections 5.05 and 5.06 above, or (ii) do any work which, in the reasonable opinion of the ACC, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every case obtaining the prior written approval of the ACC.

#### 7.02 Responsibilities of Association.

(a) Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep

in good repair and condition all portions of the Common Areas, which responsibility shall include the maintenance, repair, and replacement of Improvements made by Developer or the Association within any of the Common Areas or within any of the easements encumbering the Lots or Dwellings as provided in Article III above, which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, (ii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all lakes and ponds situated within or upon the Common Areas, and (iv) all retention lakes, ponds, and other water areas and facilities constructed by the Developer or the Association, wherever located (either within or outside of the Development so long as the same are utilized for the benefit of the Development) including, without limitation, implementing and maintaining siltation, soil erosion, and sedimentation programs and otherwise dredging, cleaning, and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, Act of God, or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling, or (3) resulting from theft, burglary, or other illegal entry into the Development, any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason for any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

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



maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.09 below.

## ARTICLE VIII

### Common Area Assessments

**8.01 Assessments and Creation of Lien.** Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in Section 8.04 below, (b) special Assessments, to be established and collected as provided in Section 8.05 below, and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 8.09 (a) below, and all court costs and attorneys fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Dwelling and the Owner's grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from the grantee's grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.09(a) below, court costs, and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution, or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Areas, or any other portion of the Development or any other cause or reason of any nature.

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

**8.03 Uniform Rate of Assessments.**

(a) Both annual and special Assessments, as described in Sections 8.04 and 8.05 below, shall be assessed against each lot or Dwelling in the Development at a uniform rate, with the Owner of each Lot or Dwelling being required to pay the Owner's pro rata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings in the Development at the time such annual or special Assessment is levied. Each Lot and Dwelling shall be subject to equal annual and special Assessments.

(b) Notwithstanding anything provided in Section 8.03(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots and/or Dwellings within the Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots and Dwellings in the Development, subject to proration as provided in Section 8.08 below.

**8.04 Computation of Annual Assessments.**

(a) Notwithstanding anything provided to the contrary in this Declaration, the annual Assessment for each Lot and Dwelling in the Development (including any Lot or Dwelling forming any part of the Additional Property) for the period commencing on the date hereof and continuing until the Association deems that a change in the amount or a reassessment is made, shall be Fifty and no/100 Dollars (\$50.00) upon the closing of the sale of each Lot or Dwelling, and Fifty and no/100 Dollars (\$50.00) for each year or part thereof thereafter. Closings occurring after January in each year shall only require the payment of a pro rata part of the annual assessment based upon the number of months remaining in the calendar year. Thereafter, the Association may reevaluate the amount of the annual assessment.

The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 8.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 8.06 below.

(b) Commencing with the fiscal year of the Association which begins on July 1, 2006 (i.e., from July 1, 2006 through June 30, 2007 which period is hereinafter referred to as the "Base Year"), and annually thereafter, the Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 8.03 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner. The provisions of Section 8.04(a) above shall not apply to the Base Year or any subsequent year thereafter.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Assessments the increase of which exceed (without regard to proration or adjustment as provided in Section 8.08 below) the greater of either (i) ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in the United States Consumer Price Index or any successor index thereto for January of the current year over the index for January of the Base Year then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments.

(d) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.05 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years Common Expenses.

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

- (i) Salaries, fringe benefits, and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board, and any third party contractors;
- (ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;
- (iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Development, including, without limitation, trash collection and security services;
- (iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance, and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents, or representatives of the Association or for any of the members of the ACC;
- (v) The expenses of maintaining, operating, repairing, and replacing any portions of the Common Areas for which the Association is responsible, including, without limitation, roads comprising Common Areas within the Development, which maintenance and repair obligation shall include mowing, landscaping, seeding, cleaning, trash pick-up and removal, paving, repaving, striping, and patching all such roadways comprising Common Areas;
- (vi) Expenses of maintaining, operating, and repairing any other amenities and facilities serving the Development which the Board determines from time to time would be in the best interest of the Association to so maintain, operate, and/or repair;
- (vii) The expenses of the ACC which are not defrayed by plan review charges;
- (viii) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;
- (ix) The costs and expenses for conducting recreational, culture, or other related programs for the benefit of the Owners and Occupants;

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

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

**8.05 Special Assessments.** In addition to the annual Assessments authorized in Section 8.04 above and the Special Assessments authorized in Sections 9.01 (b) and 9.03 (a) (i) below, the Board may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 9.01 (b) and 9.03 (a) (i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 8.07 below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may be in the Board's sole discretion and may extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.03 above.

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

**8.07 Notice of Meetings and Quorum.**

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all Owners not

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

(b) With respect to all other meetings of the members of the Association, including specifically, meetings pursuant to which special Assessments are to be levied upon each Lot or Dwelling pursuant to Section 8.05 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

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

fund any deficits relating to the Common Expenses or the Common Areas. Until changed, the initial annual fee is \$50.00 per year.

**8.09 Effect of Non-Payment; Remedies of the Association.** Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due, the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner of such Lot or Dwelling shall be deemed in default. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the rate of eighteen percent (18 %) per annum (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from Owner, such Owner agrees to pay all attorneys' fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

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

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate as specified in Section 8.09(a) above, together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.01 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.09(a) above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative

thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

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

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default), and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

**8.10 Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional



Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such institutional Mortgagee was recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot or Dwelling.

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

## ARTICLE IX

### Casualty, Condemnation, and Insurance

#### 9.01 Damage or Destruction to Common Areas.

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

(b) Notwithstanding anything provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace, and restore the damaged portions of the Common Areas, and such deficiency

cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.05 and 8.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace, or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such special Assessments shall be levied against each Owner equally as provided in Section 8.03 above. Further special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement, or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association or account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

**9.02 Damage or Destruction to Lots and Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty, provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition.

**9.03 Condemnation of Common Areas.**

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized, and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild, or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.05 and 8.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration, or reconstruction. Such special Assessments shall be levied against each Owner as provided in Section 8.05 above. Further special Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same at any time during or upon the completion of any such repair, replacement, or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03 (c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

**9.04 Condemnation of Lots or Dwellings.** In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild, and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject in all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition.

**9.05 Insurance.**

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

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

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

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the Association, the members of the Board, and all officers, agents, and employees of the Association, including the manager for the Development

and the Association, the Owners and the family members, servants, agents, tenants, and guests of the Owners and shall also name Developer as an additional insured.

(e) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title, and all other types of insurance with respect to his Lot and Dwelling. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot or Dwelling, does hereby waive and release Developer, the ACC, the Association, and their respective agents, employees, representatives, partners, shareholders, members, officers, and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

## ARTICLE X

### Term and Amendments

10.01 **Term.** The terms, covenants, conditions, and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors, and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive, and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Lots or Dwellings within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Lee County, Alabama. However, that the rights of way and easements established, granted, and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 **Amendment by Developer.** For so long as Developer owns any Lot or Dwelling within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the consent and approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 10.04 below (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of the Owner's Lot or Dwelling or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent and approval thereto by fifty percent (50

(%) of all of the Owners (including Developer who shall have the voting rights attributable to all Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent and approval thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance, or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings, (iii) required by any Institutional Mortgagee in order to enable such institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

**10.03 Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 10.02 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title, or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot or Dwelling in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 10.04 below, then the provisions of Section 10.04 below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.03(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association

or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Lee County, Alabama.

**10.04 Restrictions on Amendment.** Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 2.02, 2.04, 2.05, 3.01 through 3.06, 5.02, 5.10, 5.12, 6.01, 6.25, 6.27, 8.03, 8.04, 10.02, 10.03, 10.04 and 12.01 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

## ARTICLE XI

### Enforcement

**11.01 Authority and Enforcement.** In addition to the provisions of Sections 5.13, 6.22, 6.23(a), 6.34, 7.02(b), and 8.09 above, in the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling and shall be a personal obligation of such Owner which is guilty of such violation, (ii) suspend an Owner's right to vote in the Association, or (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests, and tenants) to use any of the recreational facilities located in or upon the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

**11.02 Procedure.** In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

(i) The alleged violation:

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

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified, in any other section or provision of this Declaration.

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

## ARTICLE XII

### Miscellaneous Provisions

**12.01 Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

**12.02 Legal Expenses.** In addition to all other rights and remedies set forth herein, in the event either the ACC, its agents or representatives, or the Board, its agents and representatives,



undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove, or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants, or conditions of this Declaration shall be paid for by the Owner against whom such action was initiated. The ACC, its agents and representatives, and the Board, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by either the ACC or the Association to cure such violation or breach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PO Box 1820 Phenix City, AL 36867

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

**12.17 Assignment.** Subject to the provisions of Section 12.13 above, Developer and the ACC shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations, and duties as Developer and the ACC respectively.

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

**12.19 No Waiver.** All rights, remedies, and privileges granted to Developer, the Association, and the ACC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative, and the exercise of anyone or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.20 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Fred D. Peak.

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

PRESTON HOLDINGS, LLC  
By JEDD HOLDINGS, L.L.C.  
ITS MANAGER.  
By: [Signature]  
FRED D. PEAK, MANAGER OF JEDD  
HOLDINGS, L.L.C.

STATE OF ALABAMA  
COUNTY OF LEE

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Fred D. Peak whose name as Manager of Jedd Holdings, L.L.C. which is the sole member and manager of Preston Holdings, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument and with full authority and power executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 17<sup>th</sup> day of April, 2007..

(Notary Seal)

[Signature]  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_

MY COMMISSION EXPIRES JAN. 10, 2010

1201 585  
MISC Book & Page

EXHIBIT "A"

Lots 1 through 27, inclusive, South Lake Subdivision, Phase One, according to and as shown by map or plat of said subdivision of record in Town Plat Book 29, at Page 53, in the Office of the Judge of Probate of Lee County, Alabama.

AMENDMENT TO RESTRICTIVE COVENANTS  
FOR SOUTH LAKE SUBDIVISION, PHASE ONE,  
CREEKSTONE SUBDIVISION, PHASE TWO and  
CREEKSTONE SUBDIVISION, PHASE THREE

WHEREAS, there appears of record in Miscellaneous Book 1281 at Page 535 in the Office of the Judge of Probate of Lee County, Alabama, Restrictive Covenants in regard to South Lake Subdivision, Phase One (Creek Stone Section), a subdivision of record in Town Plat Book 29 at Page 53 in the Office of the Judge of Probate of Lee County, Alabama; and

WHEREAS, Creekstone Subdivision, Phase Two, a subdivision of record in Town Plat Book 29, at Page 174 and Creekstone Subdivision, Phase Three, a subdivision of record in Town Plat Book 30, at Page 99 in the Office of the Judge of Probate of Lee County, Alabama, have been subjected to said Restrictive Covenants; and

WHEREAS, the undersigned, constituting a majority of the owners and holders of lots, tracts and parcels of said subdivision desire to amend such Restrictive Covenants as hereinafter provided,

NOW, THEREFORE, the parties hereto agree as follows:

1. The Restrictive Covenants of South Lake Subdivision, Phase One (Creek Stone Section) are hereby amended as provided;

1.2 Home Builder is hereby deleted in its entirety and in its place and stead is the following:

1.2 Home Builder. The term "Home Builder" with initial capital letters refers to any person or legal entity licensed as such by the State of Alabama and approved by the Developer to construct a dwelling or structure on a specific lot in South Lake Subdivision, Phase One, Creekstone Subdivision, Phase Two, and Creekstone Subdivision, Phase Three.

5.05 Approval of Plans and Specifications (a), (b), (c), and (d) are hereby deleted in their entirety and in their place and stead is the following:

5.05 Approval of Plans and Specifications

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the Development, and to protect and promote the value of the Property, the Lots, the Dwellings, and all improvements thereon, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Dwelling by an Owner which affect the exterior appearance of any Lot or Dwelling unless the plans and

specifications therefore have been submitted to and approved by the ACC in accordance with the terms and provisions of Section 5.05(b) below. Without limiting the foregoing, the construction and installation of any Dwellings, sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants quarters, or any other outbuildings, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Dwelling or improvements, unless the plans and specifications for the same have been submitted to and approved by the ACC in accordance with the terms and provisions of Section 5.05(b) below. Any property Owner that either directly or through his Agent or contractor violates this provision is subject to being enjoined through the courts for specific performance of this provision and a minimum fine of \$5,000.00 per day for each day the violation continues after notification is delivered to the Owner.

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

(i) One (1) copy of a foundation plan, floor plans, and exterior elevation drawings of the front, back, and sides of the Dwelling to be constructed on the Lot.

(ii) One (1) copy of written specifications and, if requested by the ACC, samples indicating the nature, color, type, shape, height, and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing, and other materials to be utilized on the exterior of the Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves, and cornices on the exterior of such Dwelling.

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

(c) The copy shall be returned to the Owner submitting the same marked approved, approved with conditions and requirements as noted, or disapproved. Notwithstanding anything provided herein to the contrary, any Owner may make interior improvements and alterations within the Owner's Dwelling that do not affect exterior appearance all without the necessity or requirement that ACC approval or consent be obtained.

(d) The ACC shall have the right to disapprove any plans specifications upon any ground which is inconsistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any improvement or any other matter which, in the sole judgment of the ACC, would render the proposed improvement inharmonious with the general plan of development contemplated for the Development. The ACC shall have the right to approve any submitted plans and specifications with conditions or Stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling.

**5.07 Construction Without Approval** is hereby deleted in its entirety and in its place and stead is the following:

**5.07 Construction Without Approval** If (a) any Improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot or dwelling without ACC approval of the plans and specifications for the same or (b) the ACC shall determine that any approved plans and specifications for any Improvements for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ACC shall have the right to exercise any of the rights and remedies set fourth in Section 5.13 below.

**5.09 Subsurface Conditions** is hereby deleted in its entirety.



6.04 Building Setbacks (b) is hereby deleted in its entirety and in its place and stead is the following:

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above. Steps, stoops, overhangs, and porches shall not be deemed a part of the Dwelling for the purpose of determining building setback areas pursuant to this Section 6.04

6.09 Landscaping (a) and (b) are hereby deleted and in their place and stead is the following:

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ACC for approval pursuant to the provisions of Section 5.06 above. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers, and natural environment, including natural drainage channels, which exist on such Lot.

(b) All frontage and side yards of each Lot shall, unless approved by the ACC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with a mixture of BMP grass or Bermuda grass. All areas not sodded shall be seeded.

6.10 Roofing is hereby deleted in its entirety and in its place and stead is the following:

**6.10 Roofing.**

(a) The ACC shall have the right to establish specific requirements for the pitch of any roof with a minimum of 5" on 12" for the main body of a house. Minor portions of the roof below a 5" or 12" pitch shall not be a violation of this section.

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

(c) No plumbing or heating vents, stacks, and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks, and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and (ii) to the extent practicable, not be visible from any street.

6.11 Exterior Lighting is hereby deleted in its entirety.

6.12 Exterior Materials and Finishes (a) and (d) are hereby deleted in their entirety and in their place and stead is the following:

(a) Approved exterior building material finishes for any Dwelling shall include brick, stone, stucco, synthetic plaster (e.g., dryvit), staining, preprinted aluminum trim and such other materials as may be approved by the ACC. The ACC may approve the use of Hardy Board, Wood or Vinyl Siding for the sides and rears of the houses. All wood surfaces utilized on the exterior of any Dwelling shall be painted or approval of cedar shakes, natural or stained. Stained wood shall not be permitted unless approved by the ACC. However, the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of exterior doors. Prohibited exterior finish materials shall include particle board, plywood, simulated brick, and any other materials as the ACC may from time to time determine.

(d) No concrete, concrete block, or cinder block shall be used as an exposed building surface above the first floor elevation; any concrete, concrete block, or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, or wood, etc.).

6.14 Garages (a) is hereby deleted in its entirety and in its place and stead is the following:

(a) A minimum of a one (1) car garage with doors will be required for each Dwelling. Garage doors shall be constructed of such materials as are approved by the ACC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ACC.

6.15 Fences is hereby deleted in its entirety and in its place and stead is the following:

6.15 Fences. All fences fronting or abutting a street must be a 6 foot shadowbox design naturally stained wood. The ACC shall approve all fences or comparable fencing products. Specifications for approved fencing may be obtained from the ACC. Where a solid fence is desired the reverse face must have a shadowbox or solid face as well.

6.17 Mailboxes is deleted in its entirety and in its place and stead is the following:

6.17 Mailboxes. Only one (1) mailbox shall be allowed on any Lot or Dwelling unless other requirements are mandated by the United States Postal Service. All mailboxes shall be of the type, design, color, and location as may be approved by the ACC. Other than the Lot or Dwelling number, no mailbox shall have any other inscription, painting, ornament or artistry. In lieu of mailboxes, the Association may provide within any of the Common Areas a kiosk or community mail center.

6.18 Utility Meters and HV AC Equipment is hereby deleted in its entirety.

6.19 Satellite Dishes and Antennae is hereby deleted in its entirety and its place and stead is the following:

6.19 Satellite Dishes and Antennae. Satellite dishes shall be approved by the ACC and must not be in the front of a dwelling and must be located at least 10 feet behind the front corner of the dwelling.

6.20 Driveways and Sidewalks is hereby deleted in its entirety and in its place and stead is the following:

6.20 Driveways and Sidewalks. All driveways and sidewalks for each Lot or Dwelling must be constructed of concrete and constructed as the dwelling is constructed. All sidewalks must be 4 feet in width. All lots must have a driveway and appropriate sidewalks to the house entry.

6.24 Recreational Vehicles and Machinery and Equipment (a) is hereby deleted in its entirety and in its place and stead is the following:

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized cars and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be permitted stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored, and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling.

6.25 Signage is hereby deleted in its entirety and in its place and stead is the following:

6.25 Signage. No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ACC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ACC. Notwithstanding the foregoing (a) the restrictions set forth in this Section 6.25 shall not be applicable to Developer or Builder during initial home sale period, or to any signs erected pursuant to Section 6.28(c) below and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 3.05 above.

6.28 Construction of Improvements (a) (b) (c) and (d) are hereby deleted in their entirety and in their place and stead is the following:

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material as much as practical, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street, and (iii) all construction trash, debris, and rubbish on each Lot shall be properly disposed of outside the Development at least weekly. Used

construction materials may be burned on-site so long as such burning does not create a nuisance to other Owners or violate the laws, ordinances, codes, statutes, rules, or regulations of any applicable Governmental Authority. In no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling, or any other portion of the Development. No Owner shall allow dirt, mud, gravel, or other substances to collect or remain on any street. Reasonable efforts should be taken to minimize dirt and mud tracking from construction vehicles.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, material-men, and suppliers shall not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.06 above, are to be preserved. All erosion control systems must be properly maintained.

(c) Up to two (2) signs, in size and color approved by the ACC, may be posted on a Lot at a height not to exceed three (3) feet from the ground level, advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ACC approval. The location of such signage shall be established by the ACC but in no event shall any signage authorized by this Section 6.28 or which may be approved by the ACC be attached, nailed, or otherwise adhered to any tree or other plant life on a Lot. Signage in windows for houses under construction and oversized signage for model homes may be approved by the ACC upon request.

(d) Other than required by the needs of the Developer, no construction trucks, equipment, or machinery, including any trailers used for the transportation of construction equipment or machinery shall be parked overnight on any streets or roads within the Development. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction

materials, and all trash, debris, and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean condition.

2. In all other respects such Restrictive Covenants, except as hereby amended, are ratified and affirmed.

This the \_\_\_\_ day of \_\_\_\_\_, 2008.

PRESTON HOLDINGS, LLC  
By JEDD HOLDINGS, L.L.C.,  
ITS MANAGER

By: \_\_\_\_\_  
FRED D. PEAK, MANAGER OF JEDD  
HOLDINGS, L.L.C.

STATE OF ALABAMA  
COUNTY OF LEE

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Fred D. Peak whose name as Manager of Jedd Holdings, L.L.C. which is the sole member and manager of Preston Holdings, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument and with full authority and power executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2008.

(Notary Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_