

STATE OF ALABAMA)

COUNTY OF LEE)

This instrument was prepared by:

Adam Middleton
SMB Land, LLC.
13 N 8th St.
Opelika, AL 36801

2612 258
Recorded in the Above
DEEDS Book & Page
10-28-2020 02:26:11 PM
Bill English - Probate Judge
Lee County, AL
Book/Pg: 2612/258
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**DECLARATION OF PROTECTIVE COVENANTS FOR
CAPE RESERVE SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, SMB Land, LLC (together with its successors and assigns, the “Developer”) has heretofore acquired fee simple title of certain real property (the “Property”) situated in Lee County, Alabama (the “County”), as more particularly described in the map and survey of the Property recorded in Plat Book 43, Page 120, and Plat Book 44, Page 16 in the Probate Office of Lee County, Alabama (the “Subdivision Plat”), which Property is commonly known as Cape Reserve (the “Subdivision”) and which Property has been, or hereinafter will be, subdivided into residential lots as more specifically described on **Exhibit “A”** attached hereto (each a “Lot” and, collectively, the “Lots”); and

WHEREAS, Developer desires to develop the Property into a residential subdivision and to subject the Property and each of the Lots to the protective agreements, conditions, covenants, limitations, restrictions, terms, uses, and other affirmative obligations (collectively, the “Restrictions”) set forth in this Declaration of Protective Covenants (the “Declaration”).

NOW, THEREFORE, Developer hereby does declare and make the Property and each of the Lots included in the subdivision of the Property subject to the Restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement and maintenance of the Property in a desirable and uniform manner suitable in architectural design, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property, any Lot, or any part thereof, and shall be for the benefit of each Owner (as defined below) and shall inure to the benefit of and be binding upon each successor in interest to such Owners thereof.

**ARTICLE I
CERTAIN REFERENCES**

1. The Subdivision shall be governed and controlled by the CAPE RESERVE Homeowners Association, Inc. (the “Association”). The Subdivision and each Lot contained

therein shall be subject to the terms and provisions of this Declaration and the Association's Articles of Incorporation (the "Articles"), Bylaws (the "Bylaws"), and the ARC Guidelines (as defined herein), as each of the same may be amended or modified from time to time. The Articles, Bylaws, and ARC Guidelines are each hereby incorporated by reference, and copies of the foregoing shall be maintained by Developer and made available to each Owner upon reasonable request.

2. Capitalized terms not otherwise defined in this Declaration shall have the meanings ascribed thereto in the Bylaws. For the avoidance of doubt: (a) this Declaration constitutes the "Declaration" as such term is defined and used in the Bylaws; and (b) each Owner of a Lot shall be a Member of the Association, and each such Owner shall have the rights and obligations of a Member under the Articles, Bylaws, and the ARC Guidelines, as applicable. As used herein, the term "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot or other portion of the Property, but shall not include those having such interest merely as security for the performance of an obligation (*e.g.* a mortgagee).

ARTICLE II

TERM AND MODIFICATION

1. These Restrictions shall run with and bind the Property, including without limitation each Lot contained therein, and shall insure to the benefit of and shall be enforceable by the Developer and each Owner of any Lot included in the Property, their respective legal representatives, heirs, successors, and assigns, and each other intended beneficiary hereof that is expressly identified as such herein, for an initial period of twenty (20) years beginning on the date this Declaration is recorded (the "Initial Term"), after which time said restrictions shall automatically be extended for successive periods of ten (10) years each unless and until these Restrictions are terminated in accordance herewith.

2. From the date hereof until the end of the Initial Term, this Declaration and the Restrictions may only be changed, modified, amended, altered, or terminated by a duly recorded written instrument, executed by Developer or Developer's successors and assigns.

3. Following expiration of the Initial Term, this Declaration and the Restrictions set forth herein may be modified, amended or terminated, in whole or in part, by a written instrument that has been: (a) signed and acknowledged by (i) Developer or (ii) the Owners of at least two-thirds (2/3) of the Lots within the Subdivision; and (b) recorded in the Probate Office of the County.

ARTICLE III

ARCHITECTURAL REVIEW COMMITTEE MATTERS

1. **Generally.** The architecture of any dwelling or improvement to be erected on any Lot shall be generally in substantial harmony and conformity with the general prevailing filing type of architecture in the vicinity, with all construction and architectural plans being subject to prior review and approval of the Architectural Review Committee (the "ARC"), as established by the Association's Board of Directors (the "Board"). The ARC will initially consist of three (3) representatives, which representatives shall be chosen by, and shall serve at the pleasure of,

Developer until the date that earliest of the following (the “Transition Date”): (a) twenty (20) years after the date of recording of this Declaration; (b) the date Developer no longer owns any real property within, or contiguous to, the Subdivision (including, without limitation, its common areas); or (c) the date on which Developer, in its sole discretion, may elect in writing to relinquish its right and privilege to change, alter, modify or amend any of the Restrictions, terms, covenants and provisions of this Declaration. After the Transition Date, the members of the ARC shall be designated by the Board. Except as otherwise expressly provided herein or in the ARC Guidelines, the affirmative vote of a majority of the members of the ARC shall be required for, and shall constitute the approval of, any action by the ARC (including, without limitation, the approval or disapproval of any Submission).

2. **Design Guidelines**. Unless and except as otherwise prohibited by this Declaration, the Articles, the Bylaws, or applicable law, the ARC: (a) shall establish its own requirements, procedures, policies, time frames, site standards, building design standards, materials standards, building construction standards, and any other standards that it deems necessary or appropriate (collectively, the “ARC Guidelines”), a copy of which ARC Guidelines shall be made available to the Owners and their representatives upon written request; and (b) may alter or amend such ARC Guidelines as determined necessary or appropriate in the sole discretion of the ARC; *provided, however*, that in no event shall the ARC Guidelines be less restrictive than the other covenants and Restrictions set forth herein. Without limiting the foregoing, the primary purpose of the ARC is to further a proper blending of home and property designs and aesthetics throughout the Subdivision, as determined in the ARC’s sole discretion, and any the ARC is hereby authorized to take any action, and to refuse to take any action, that a majority of the ARC determines in good faith to be in furtherance of such purpose.

3. **ARC Approval Required**. Prior to beginning any construction (including, without limitation, any staking, clearing, excavation, grading, planting or removal of plants, trees, or shrubs) or other site work within the Subdivision (collectively, “Construction”), the Owner of each Lot on which such Construction is to be performed shall submit to the ARC two (2) complete hardcopy sets or one (1) digital copy of all relevant building plans, designs, and other specifications applicable to such Construction (“Plans and Specifications”). Such Plans and Specifications shall be in such form, and shall contain such information, as may be required by the ARC. No Construction is permitted within Subdivision unless: (a) the applicable Plans and Specifications have been approved in writing by the ARC, which approval shall not be valid unless it is signed and dated by a current member of the ARC at the time of such approval; and (b) such Construction is performed and completed in strict compliance with (i) the Plans and Specifications as approved in writing by the ARC, (ii) the ARC Guidelines, and (iii) this Declaration.

4. **Submission Fees**. Subject to the Board’s written approval, the ARC shall have the right, but not the obligation, to assess application fees for each application or other submission made to the ARC (including, without limitation, any Plans and Specification submitted for approval) (each a “Submission”), which fees may be fixed based on the length or complexity of such Submission, or on any other criteria approved by the Board. In the event that any fees are assessed pursuant to this paragraph, no approval of the ARC will be valid unless and until such fees are paid in full.

5. **Review Period.** The ARC shall have thirty-one (31) days to review and respond to each Submission, such thirty-one (31) day period beginning on the date that the ARC provides written confirmation that it has received the Submission. If the ARC does not respond within such thirty-one (31) day period, then the Submission shall be deemed approved. Unless approved by operation of time per the previous sentence, all approvals of Submissions by the ARC must be in writing and be signed and dated by an authorized member of the ARC. dated and signed by an authorized representative of the ARC. The period for the ARC's review of any Submission may be extended for such additional length of time as the ARC deems necessary or appropriate by providing written notice of such extension to the submitting party prior to the expiration of the then-current review period.

6. **No Warranty or Liability from Approval.** The scope of the ARC's review of any Submission will be limited to appearance only, and neither the approval of, nor the setting of any requirement to obtain the approval of, any Submission shall constitute or be construed as constituting any representation or warranty of safety, legality, or architectural integrity by the ARC or any other governing body, each of which shall instead shall be the sole responsibility and liability of the Owner making such Submission. Neither the ARC nor any member thereof shall be liable to the Association or any Owner for any damage, loss of prejudice suffered or claimed on account of the:

- (a) approval or disapproval of any Submission, or any component thereof, whether or not defective or non-conforming;
- (b) construction or performance of any work, whether or not pursuant to any approved Submission; or
- (c) Subdivision of any property within the Subdivision, provided that the ARC has acted in good faith on the basis of the information known to the approving members of the ARC at the time any such Submission is approved.

7. **Selected Reasons for Non-Approval.** The ARC shall have the right to reject or refuse to approve any Submission for any of the following reasons:

- (a) failure of the Submission, or any action or inaction contemplated therein, to comply with this Declaration and the Restrictions herein;
- (b) failure to provide any information required by this Declaration, or otherwise reasonably requested by the ARC, in connection with such Submission;
- (c) discretionary objection to the (i) exterior design, appearance or materials of any proposed structure or improvement included within such Submission or (ii) color scheme, finish, proportions, style or architecture, height, bulk or appropriateness of any proposed structure or improvement contemplated by such Submission;

- (d) incompatibility of any proposed structure or improvement included within such Submission, or use thereof, with any other existing or approved structure or improvement within the Subdivision;
- (e) failure to comply with any other requirements of the ARC, the Subdivision, or any governmental authority or body; and
- (f) any other matter or reason that, in the good faith determination of a majority of the ARC, would render the Submission or any component thereof inharmonious with the general plan of improvement of the Subdivision or any Lot, or the uses thereof.

8. **Notification of Non-Approval.** If the ARC shall disapprove any Submission hereunder, or shall approve the same only as modified or upon the satisfaction of any one or more conditions specified by the ARC, such disapproval or qualified approval shall be accompanied or followed by a statement of the grounds upon which such decision was based. In any event, the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable Submission can be prepared and submitted for approval.

ARTICLE IV

LAND USE; BUILDING CRITERIA; RESTRICTIONS AND COVENANTS

1. **Land Use and Building Type.** Unless otherwise approved by Developer in a signed writing, the Property may only be used for residential and community purposes, and all other purposes and uses are hereby prohibited. Except as otherwise expressly stated in these Restrictions or as otherwise approved by Developer in a signed writing, no building or structure other than one (1) detached single-family dwelling per Lot (each a "Principle Residence"), erected and maintained in accordance with these Restrictions, may be erected within the Property or any portion thereof (including, without limitation, any Lot). For the avoidance of doubt, nothing in this paragraph shall preclude any use of the Property by Developer to the extent otherwise permitted in accordance with this Declaration or approved in writing by the ARC. Notwithstanding anything to the contrary herein, the use of any structure approved by the ARC for any purpose other than the purpose for which it was originally designed and approved shall be a violation of this Declaration.

2. **Building Criteria.**

- (a) **Height Restrictions.** No building shall be erected, altered, placed, or permitted to remain on the Property other than one (1) Principle Residence, which Principle Residence shall not exceed two (2) stories in height in addition to a below-ground basement.
- (b) **Zoning.** All zoning rules, requirements, and other zoning criteria (collectively, the "Zoning Criteria") shall be governed by the county planning commission or equivalent body (the "Planning Commission") for the County in which the Property is located; *provided, however*, that no requests for changes to, or variances from, any Zoning Criteria shall be made without first obtaining the approval of the ARC (as defined herein).

- (c) **Building Setback Requirements**. All setback lines shall be governed by the Planning Commission and the Zoning Criteria in effect at the time of construction of the applicable improvement(s) on the Property, which Zoning Criteria shall be determinative for all applicable purposes. Any request for variance from Zoning Criteria must be approved in writing by both (i) the ARC and (ii) the Planning Commission or equivalent body possessing authority to grant any such variance. Neither the approval of any setback lines, nor the fact that any setback lines are otherwise consistent with the Zoning Criteria, shall be construed to permit the construction of improvements so as to encroach upon any easement or other Lot. For purposes of this paragraph, any eaves, steps, open porches and ornamental planting boxes shall not be considered part of the improvement subject to these requirements; *provided, however*, that no improvement, portion of any improvement, nor any eave, step, open porch, or ornamental planting box is permitted to encroach upon any easement, other Lot, or other portion of the Property except for necessary roof and cave overhangs on Lots with zero lot lines.
- (d) **Common Areas**. Any common area landscaping and any other architectural or landscaping features that have been, or may hereafter be, constructed by the Developer for the general benefit of the Subdivision as a whole (the "Common Areas") will be owned by, and maintained at the sole cost and expense of, the Association. No changes or modifications to any Common Areas are permitted unless approved in writing by the ARC. Each Owner and its permitted guests and invitees shall have the right to use the Common Areas under the direction of such Owner, subject to any applicable rules or regulations adopted by the Association with respect to such Common Areas and/or the use thereof, and further subject to the provisions of the Articles and Bylaws. Any parking area included within the Common Areas is intended to be used by the Owners and their permitted guests and invitees only while they are present and actively utilizing the corresponding Common Areas. Unless agreed to in writing by the Board, overnight parking is prohibited in all Common Areas. Developer shall have the right, but not the obligation, to tow any vehicle parked in the Common Areas in violation of these Restrictions at the vehicle owner's sole cost and expense. The Developer also has a reasonable right of entry to each Lot for necessary inspection, repairs, and maintenance associated with the proper operation of any Common Area.
- (e) **Garages**. All garage doors and doors to outbuildings must remain closed except for when vehicles are actively entering and/or exiting the garage or for reasonable amounts of time to provide for necessary or customary chores while such chores are being actively performed. No garage may be (i) enclosed, (ii) converted to living area, or (iii) otherwise converted or utilized in any manner that prevents such garage from providing off-street parking for a minimum of two (2) motor vehicles.

- (f) **Exterior Surfaces.** All visible exterior wall surfaces, including any portion of the exterior wall surfaces which are above lower roof levels, shall be cement board lap siding, brick, stucco, or natural stone. Vinyl shutters and soffits are also permitted.
- (g) **Color.** Exterior painting shall only be permitted using colors approved in writing by the ARC.
- (h) **Roof Structures.** All major roof structures must have a minimum 7/12 pitch, unless otherwise approved in writing by the ARC. Shingles must architectural and must be of a natural color, slate, or cedar shakes, in each case as approved in writing by the ARC. Unless otherwise approved by the ARC in writing, metal or standing seam roofs are prohibited.
- (i) **Stacks and Vents.** Unless otherwise approved in writing by the ARC, all plumbing stacks or vents shall be connected in the attic space in a manner providing roof penetration of no more than ten (10) inches, and no such plumbing stacks or vents are permitted to protrude through the roof area facing the street.
- (j) **Windows.** All windows must be wood framed, vinyl, or vinyl clad.

3. **Re-subdivision or Partitioning of Lots.** No portion of any Lot, Lot line, building line, or other portion of the Property may be subdivided, re-subdivided, partitioned, or otherwise further modified without the prior written approval of: (a) all applicable government authorities, if any; (b) the ARC; and (c) either (i) the Developer or (ii) the Owner(s) of more than fifty percent (50%) of the Lots.

4. **Outbuildings; Repairs and Subsequent Improvements.** Except for those erected or placed by or at the direction of Developer at the time of, or otherwise in connection with the construction of, the Principle Residence on a Lot, no temporary, moveable, or other non-permanent structure (including, without limitation, any trailer, tent, shack, shed, barn, pole-barn, house, out-house, storage unit or pod, residence, carport, or garage) may be erected or otherwise placed on any Lot or any other portion of the Property at any time unless approved in writing by the ARC. Any additional or subsequent improvements or repairs to the Principle Residence or any improvement of any Lot must use materials, textures, colors, and design elements in keeping with the original design and construction of the Principle Residence and the general design of the Subdivision and shall require written approval by the ARC.

5. **Antennas, Satellite Dishes, Solar Collectors, other Transmission Equipment.** No ham radios or radio transmission equipment which is visible from any street or adjoining Lot is permitted on any Lot. Unless otherwise required by applicable federal law, no communications equipment or satellite dish greater than twenty-two (22) inches in height is permitted on any Lot, and no such equipment or satellite dish (regardless of height) may be installed in any location that is visible from any street or adjoining Lot. All utility meters, measuring devices and similar devices required by utility providers must be located so as to not be visible from any street or adjoining Lot. All utility lines must be underground. No Owner shall erect or use, or grant to any person or

entity the right, license or privilege to erect or use, any overhead wires, poles, antennas, satellite dishes, or other overhead facilities of any kind for electrical, telephone, internet, radio transmission, or cable television service on any Lot (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave that particular area, and except for items permitted in accordance with the preceding sentence of this paragraph). Nothing herein shall be construed to prohibit overhead street lighting fixtures or ornamental yard lighting which is serviced by underground wires or cables. Only solar collectors approved by the ARC may be installed on any Lot, any such solar collectors may be installed so that they shall not be visible from any street. Notwithstanding the foregoing or anything to the contrary herein, the location of any equipment permitted by this paragraph shall be determined at the sole discretion of the ARC.

6. **Wall and Window Air Conditioning Units Prohibited.** No wall and/or window air conditioning units are permitted within any Principle Residence or elsewhere on any Lot unless approved in writing by the ARC.

7. **Privacy Fencing.** Privacy fences must be approved in writing by the ARC and will be subject to the following requirements: (a) all fences must be made exclusively of wood material and shall be properly maintained; (b) all fences must be constructed at a height of six (6) feet; (c) all fence posts must be placed on the interior of the fence, and no fence posts may be placed in any location or manner in which such fence posts are visible from ground-level outside of the fence; and (d) all fences must be stained using "Stone Martin Canyon Brown" colored stain or, in the event such color is discontinued, a substantially identical dark brown color of stain. No standard chain link, wire, vinyl, or other metal fencing of any kind may be constructed anywhere on the Property.

8. **Mailboxes.** Subject to compliance the requirements of the United States Postal Service and other applicable law: (a) each Principle Residence shall have one (1) mailbox; (b) all mailboxes shall be of a common design selected for the Subdivision and approved by the ARC; and (c) each mailbox, and the original design and color thereof, shall be maintained by each Owner in appropriate condition and repair. Without limiting the foregoing, the ARC may establish a required location for all mailboxes and mailbox posts, so long as these specifications comply with the requirements of the United States Postal Service. If mailboxes are required to be purchased by the Association or Developer, any damage or destruction to mailboxes which cannot be adequately repaired will result in the Owner(s) of such Lot being required to purchase a replacement mailbox from the Association or Developer. Each Owner shall cause a mailbox compliant with these Restrictions to be installed on its Lot at the completion of landscaping. Each Owner shall be responsible for all costs pertaining to any mailbox on its Lot.

9. **Signage.** No sign or other advertising devices of any nature (including, without limitation, "for sale" signs, garage sale signs, "no trespassing" signs, or "beware of animal" signs) are permitted on any part of the Property without the prior written approval of the ARC as to color, location, nature, size (which size shall not exceed six (6) square feet), and other characteristics of such signs or devices. Notwithstanding the foregoing or anything to the contrary herein, Developer specifically reserves the right for itself, its successors, agents, representatives, nominees, and assigns, to place and maintain signs (including, without limitation, identifying, informational, and directional signs) in connection with construction, marketing, sale, and rental of Lots, residences,

and other portions of the Property and any improvements thereon, anywhere within the Property. The Developer, the Association, and the ARC shall have a license and the self-help right to enter into and upon any part of the Property for the purpose of installing or removing any signage in accordance herewith, in each case without prior notice to the Owner of such portion of the Property.

10. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or other portion of the Property, except that dogs, cats, and other customary household pets may be kept provided that such pets are at all times: (a) limited to no more than four (4) pets per Principle Residence; (b) kept under reasonable conditions so as not to create a nuisance or otherwise unreasonably disturb others in the Subdivision; (c) kept in a safe and sanitary manner and in compliance with all applicable laws, regulations, ordinances, and other applicable rules pertaining thereto; (d) kept under strict verbal control and on appropriate leashes or within fully-fenced areas at all times while outside of any Principle Residence; (e) used for personal, non-commercial purposes, and are at no time used for breeding or sale; and (f) are kept in a manner that does not endanger or unreasonably threaten the welfare or safety of such pet, or any person, property, or other pet within the Subdivision. Notwithstanding the foregoing, the Restrictions set forth in this paragraph shall not prohibit the keeping of any service animal that a provider of housing is required to permit under applicable law; provided, however, that the keeper of any such service animal shall use its reasonable efforts to comply with the Restrictions of this paragraph to the extent not inconsistent with, or otherwise prohibited by, applicable law.

11. **Windows.** Window treatments shall be limited to blinds or curtains, and in no event may any window be covered or obscured aluminum foil or any other metal or reflective material.

12. **Garbage and Refuse; Oil and Gas Tanks; Swimming Pool Equipment.** No lumber, metal or bulk materials may be kept, accumulated, or otherwise stored on any portion of the Property, except for building materials of a type and quantity needed for the construction or maintenance of any approved structure or improvement on the Property during the reasonable course of such construction or maintenance. No refuse or trash may be kept, accumulated, or otherwise stored except in designated sanitary containers specifically designed for the storage and disposal thereof between scheduled pick-ups. Such sanitary containers may be placed in the open on any day that a pick-up is scheduled to be made, at such place on the Lot as to provide reasonable access to the party making such scheduled pick-up. At all other times, such sanitary containers shall be stored in such manner so as to not be visible from any street adjacent Lot. All oil tanks, bottled gas tanks, and swimming pool equipment must be underground or placed in enclosed or landscaped areas so as to not be visible from any street or adjacent Lot. Notwithstanding the foregoing, the ARC may, to the extent permitted or authorized by the Bylaws or by the Board, adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of any storage or refuse containers permitted within any outdoor portion of the Subdivision and the manner of storage of the same. Furthermore, the Association, at its sole discretion, may require any Owner to provide dumpsters during any construction activities, which dumpsters shall be regularly emptied and promptly removed from the Property following completion of the applicable construction.

13. **Outdoor Burning.** The burning of trash, refuse, or any other material on any Lot is prohibited.

14. **Nuisance; Yard Sales.** No obnoxious, illegal, or offensive activity is permitted on any Lot, nor shall anything be done on any Lot that may be reasonably expected to become an annoyance or nuisance to the Owners of other Lots. Individual yard sales are prohibited. Neighborhood yard sales are permitted but shall be limited to no more than two (2) per calendar year.

15. **Boats; Trailers; Recreational Vehicles.** No boat, boat trailer, house trailer, horse trailer, trailer, camper, motor home, motorcycle, motor bike, or any similar recreational item shall be stored on any Lot for a period in excess of twenty-four (24) hours unless parked in a garage behind closed garage doors, or elsewhere on a Lot so as to not be visible from any street or adjacent Lot. No recreational vehicles or related items may be parked on any street within the Property at any time.

16. **Vehicular Parking.** Vehicular parking on streets in front of residences shall be limited to temporary parking. Parking in the street by any single vehicle for more than six (6) hours in any twenty-four (24) hour period is prohibited. The intent is for all vehicles to be parked in garages and driveways at all times. Each Principle Residence shall have minimum off-street, paved parking for not less than two (2) vehicles. Parking of vehicles in unpaved areas is prohibited at all times.

17. **Commercial Vehicles.** No commercial vehicle or commercial equipment may be parked or otherwise stored on any Lot or street within the Subdivision. The foregoing shall not prohibit the temporary parking commercial vehicles and related commercial equipment during the active conduct of any commercial activity permitted within the Subdivision (including, without limitation, the pick-up or drop-off of commercial deliveries, trash collection, and construction); provided, however, that no commercial vehicle or commercial equipment may be present on any Lot or street within the Subdivision overnight.

18. **Remedies for Commercial and Recreational Vehicle Violations.** Any commercial vehicle, commercial equipment, or recreational vehicle or equipment parked or otherwise stored in violation of the Restrictions contained herein, or any other rules or regulations hereafter adopted by the Association, for more than twenty-four (24) hours may be towed at the sole expense of the owner of such vehicle or equipment, or the at the sole expense of the Owner of the Lot upon which such vehicle or equipment is parked or otherwise stored. The enforcer of the Restrictions set forth in this paragraph (including, without limitation, with respect to any enforcement by Developer, the Association, or the ARC) shall not be liable to the owner of such vehicle or equipment, nor to the respective Lot Owners, for trespass, conversion or otherwise, nor shall the enforcer of these Restrictions be guilty of any criminal or quasi-criminal act by reason of such towing, and neither the removal nor the failure to remove any such vehicle or equipment, nor the failure of the owner of such vehicle or equipment to receive any notice of said violation, shall be grounds for relief of any type. The foregoing remedy is in addition to any other remedy which may exist whether at law or in equity.

19. **Vehicle Maintenance and Repair.** No maintenance or repairs shall be performed on any vehicle on any Lot or street within the Subdivision except in an emergency situation. Notwithstanding the foregoing, all repairs to any disabled vehicle within the Subdivision must be completed, or the vehicle must otherwise be removed from the Subdivision, within four (4) hours

from the time of its immobilization. All vehicles within the Subdivision must have a current and valid tag. Notwithstanding the foregoing or anything to the contrary herein, the Developer, the Association, and the ARC are each hereby expressly permitted to maintain and store any maintenance vehicles or other vehicles owned or utilized thereby at such locations within the Property as such party determines to be reasonable, necessary, or convenient for the general maintenance and upkeep of the Subdivision or the performance of its duties and obligations under this Declaration, the Articles, the Bylaws, applicable law, or otherwise.

20. **Clotheslines; Pipes.** No clothing or any other household fabrics are permitted to be hung or otherwise stored, and no water pipes, gas pipes, sewer pipes, drainage pipes or clotheslines may be installed or maintained, on any Lot so as to be visible from any street or adjacent Lot, except for hoses and movable pipes used for temporary irrigation purposes which shall be maintained and stored in a neat and orderly manner at all times while not in use.

21. **Mining.** The mining, quarrying, drilling, exploration, Subdivision, and/or refinement of or for any oil or other minerals, and all other similar or related activities or operations of any kind, whether occurring above-ground or below-ground, are prohibited throughout the Property.

22. **Maintenance of Improvements; Landscaping.** Unless expressly stated herein as being the responsibility of the Association, each Lot and any improvements thereon (including, without limitation, each Principle Residence), and the internal and external condition and appearance thereof, shall be maintained by the Lot Owner in a manner that is clean, neat, sanitary, and consistent with the aesthetics of the Subdivision. Each Owner's maintenance obligations shall include, without limitation, maintaining a grass height of no more than five (5) inches, pruning bushes and plants, removing weeds, not allowing bare spots to exist in areas that were previously covered with grass, mulch, pine straw, or other landscaping materials, maintaining appropriate paint and stain finishes on each Principle Residence and any other improvements on each Lot, and maintaining, repairing, and replacing the roof and each other component the Principle Residence, and each component thereof, in a prudent manner. Each Owner shall be permitted, upon reasonable notice, to enter the portions of the Property adjacent to such Owner's Lot for the purpose of, but only to the extent necessary in connection with, the maintenance or improvement of such Owner's Lot or improvements thereon. Without limiting the foregoing, each Owner shall be permitted to enter adjacent portions of the Property to the extent necessary for the installation and/or maintenance of any fences, landscaping, and any other improvements or uses to such Owner's Lot as are permitted or required hereunder. The Association shall have the right, but not the obligation, to enter upon any Lot to address any of the aforementioned issues or other issues which violate the general maintenance requirements of the Subdivision, at the sole cost and expense of the applicable Owner; *provided, however*, that the Association shall give the applicable written notice of the action to be taken by, or on behalf of, the Association not less than twenty-four (24) hours' prior to the taking of such action. The costs of any action taken pursuant to the preceding sentence shall be immediately due and payable by the applicable Owner, and each Owner hereby agrees to reimburse and indemnify the Association for (a) one hundred percent (100%) any such out-of-pocket costs or expenses incurred on behalf of such Owner and (b) an additional fifty-percent (50%) of such out-of-pocket costs or expenses incurred on behalf of such Owner in compensation of the Association's labor and general overhead expenses.

23. **Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat and/or on all subsequent subdivision plat(s) that may be recorded for the Subdivision. Such easements include, without limitation, the right of ingress and egress by authorized representatives of the utility providers for which such easements are reserved in connection with the maintenance of the portion of the Property included within such easement. Except for those improvements for which a public authority or utility provider is responsible, if any, the portions of the Property included within any such easements shall be maintained continuously by the Owners of the respective Lots burdened by such easements. Developer further reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, the ARC and the Association, and each of its and their respective designees (including, without limitation, any utility provider or governmental or quasi-governmental entity), representatives, contractors, agents, successors and assigns, to enter upon, across, over, the entirety of the Subdivision and all Property contained therein (including, without limitation, each Lot and Common Area), but specifically excluding the interior portions of any Principle Residence, for each of the following purposes:

- (a) controlling soil erosion, including the grading of and/or the planting of vegetation upon, any Lot or other areas of the Property that may be subject to soil erosion;
- (b) controlling drainage of natural or man-made flow of water, water courses, or waterways, or other water areas within or adjacent to the Subdivision using commercially reasonable means which shall include, without limitation, by changing, modifying, dredging, enlarging, reducing, or otherwise altering the foregoing in any way; and
- (c) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage, and/or waterway maintenance of the Subdivision.

24. **Release of Easements.** Developer reserves the right, in its sole discretion and at any time, to release all or any portion of the Property from the burden, effect, and encumbrance of, or to otherwise define the limits of, any easement granted or reserved under this Declaration.

25. **Outdoor Uses.** No decorative or landscaping rocks, rock gardens, bird baths, ponds, lawn sculptures or ornaments, artificial plantings, children's play equipment, basketball goals, lawn furnishings, or the like, are permitted on any Lot without the written approval of the ARC. No vegetable, herb, or similar gardens are permitted be planted or maintained on any Lot in a manner that is visible from any street or adjacent Lot. Notwithstanding the foregoing: (a) portable basketball goals are permitted but must be stored in a manner so as to not be visible from any street or adjacent Lot at all times while not in active use; and (b) children's play equipment and swimming pools are permitted, but only if placed in the backyard of a Lot which is fully enclosed by a fence, and only if such equipment or pool is not visible from any street or adjacent Lot.

26. **Lighting.** All standards and fixtures must be in conformance with the general appearance of the Subdivision and approved by the ARC (including, without limitation, with respect to the placement, direction, appearance, and coverage area thereof). No security lighting,

pool lighting, or any other lighting is permitted to be positioned at a height, or in any other manner, that would cause the light emitted therefrom to be directed toward any other Lot or that would cause such light to bleed over property lines into adjoining or adjacent Lots.

27. **Business Activities.** No profession or home industry or other commercial venture (including, without limitation, the operation of any school, childcare center, kindergarten, learning center, musical instrument or voice training center, or other educational, vocational, or training facility, in each case without regard to whether such use is for-profit, non-profit, charitable, or institutional) shall be conducted in or on any part of the Property or in any improvements thereon. Notwithstanding the foregoing or anything to the contrary herein: (a) Developer, directly and/or indirectly through one (1) or more of Developer's successors, agents, representatives, nominees, and assigns, shall be permitted at all times to engage in the construction, marketing, sale, and rental of Lots, residences, and other portions of the Property and any improvements thereon, and to engage in any other related activity, whether or not commercial, anywhere within the Property; and (b) the Board, in its sole discretion, may permit the conduct of a profession, home industry, or other commercial venture within a residence located on the Property; *provided, however*, that in each case the Board shall take into consideration the effect upon nearby areas of the Property and the Owners thereof prior to permitting any such profession, home industry, or other commercial venture within the Subdivision. Without limiting the foregoing, in determining such to permit any such uses, the Board shall take into the consideration whether the proposed activity (i) is compatible with a high-quality residential neighborhood, and (ii) will unreasonably and materially interfere with the normal residential use of, or is likely to materially and adversely impact the value of, nearby areas of the Property and the Owners thereof. The Board may withdraw or rescind any approval of any such activity at any time and for any reason, as determined in the Board's sole discretion. Nothing in this paragraph, nor the approval of any activity by the Board, shall be interpreted to authorize or permit any commercial activity which is in violation of any applicable law or regulation (including, without limitation, local ordinances and zoning rules), and the Owner engaging in the applicable activity shall have the sole responsibility for ensuring compliance with, and shall be solely liable for any consequences resulting from any violation, of such law or regulation.

28. **Real Estate or Subdivision Office.** The Developer may, in Developer's sole discretion, use or permit the use of any Lot for the construction of and/or use of a building constructed thereon, as an office, real estate office, and/or model home for the Subdivision, and as such the same shall not be subject to the terms, provisions and requirements of these covenants until such time Developer no longer owns any other Lots, after which time said Lot and any improvement(s) constructed thereon shall be brought into compliance with these Restrictions within a commercially reasonable period of time.

29. **Machinery.** No machinery shall be placed on or operated upon any portion of the Property except such machinery as is normal and usual in the maintenance of a private residence, or except such as is necessary during the original construction of a Principle Residence or a major renovation or improvement thereto, or to any Lot, that is permitted under this Declaration.

30. **Authorized Use Exceptions.** Notwithstanding other provisions herein, each Principle Residence located on a Lot shall be used only as a single-family residence and shall be subject to all other requirements hereunder.

31. **Prohibited Uses.** No person shall, without the written approval of the ARC, do any of the following within the Property: (a) permit the running of animals except when on a leash or within a fully-enclosed backyard; (b) fell any trees or injure or damage any landscaping; (c) interfere with any drainage, utility, access, or other easement; (d) build or assemble any structures, recreational or common facilities, in violation of this Declaration; (e) discharge any liquid or other material other than natural water drainage into any lake, pond, or watercourse; (f) alter or obstruct any lake, pond, or watercourse; (g) interfere with any water control structures or apparatus; (h) swim, fish, or use any boat on any lake, pond, stream, or watercourse; (i) light any fires except in designated areas, if any, designated by permanent signage permitting the same; or (j) swim in any body of water other than a swimming pool.

32. **Notification to Utility Providers.** In order to beautify the Subdivision for the benefit of all Lot Owners and to permit utility providers to install underground utility services to each Principle Residence within the Subdivision, no Owner of any Lot is permitted to commence construction of any Principle Residence or other improvement on any Lot until such Owner: (a) notifies each provider of utilities to the Subdivision that such construction is proposed; (b) grants in writing to said utility providers such rights and easements as are reasonably requested in connection with their construction, operation, maintenance, and removal of the underground service lateral on each Lot; and (c) provides, at such Owner's sole cost and expense and in accordance with all specification furnished by such utility providers, all excavating, trenching, and backfilling which said utility providers request in connection with the installation of the underground service or service laterals on such Lot. To the extent of the interest of the Owner of each Lot, such Owner agrees to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Developer.

33. **Developer's Rights.** This Declaration, and each Restriction contained herein, touches and benefits each of the Lots within the Subdivision and shall run with the land and shall be binding upon each Lot, the Owners and grantees of each Lot, all of the utilities and utility providers referenced herein (whether specifically or generally), and the respective heirs, successors, and assigns of each the foregoing. The Developer expressly reserves the sole and exclusive right and privilege, both for itself and its successors and assigns, to change, alter, modify, or amend any of the terms, covenants and provisions of this Restriction, and to grant a variance or waiver to or from any of the terms, covenants and provisions of this Declaration, without the consent or approval of the other Owners until the earlier of the following events: (a) expiration of the Initial Term; (b) the date Owner no longer owns a Lot or any other portion of the Property; and (c) the date on which Owner, in its sole discretion, may elect in writing to relinquish its right and privilege to change, alter, modify or amend any of the terms, covenants and provisions of this Declaration.

34. **ARC Exceptions.** Notwithstanding anything to the contrary herein, the ARC may, in its sole any final discretion, authorize any one or more of the following (each an "Exception"): (a) the temporary use of any Principle Residence for more than one family; (b) the temporary placement a sign on the Property other than as expressly permitted herein; (c) the placement of temporary structures or improvements on the Property; and (d) any other exception, variance, or other deviation from the restrictions contained in this Declaration (including, without limitation, the Restrictions) or the ARC Guidelines. Any Exception granted hereunder shall be made by the ARC in writing and, unless otherwise excused by the ARC, no Exception will be granted, nor will

any fines or other assessments hereunder be waived, with respect to any action or non-conforming use occurring prior to the granting of the applicable Exception. Any request for an Exception shall be made in a written Submission to the ARC, which request may be approved or denied by the ARC in its unrestricted discretion. The approval or denial of any request for an Exception shall not in any way require or prohibit the ARC from granting any other or subsequent Exception to any person, nor shall the granting of any Exception hereunder be deemed a waiver of any subsequent failure to comply with these Restrictions. Any action or inaction that exceeds the scope of, or is otherwise inconsistent with, any Exception granted by the ARC shall be a violation of these Restrictions.

ARTICLE V **ENFORCEMENT**

1. In the event of a violation or a breach of this Declaration or any of the Restrictions set forth herein by any Owner or its family members, or any of its or their respective tenants, guests, agents, invitees, or representatives, then each other Owner and each other person or entity to whom the benefit of this Declaration inures, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to sue for and recover damages, and to undertake any and all such other action as may be available under this Declaration or applicable law. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising under or in connection with this Declaration shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

2. Each current and future Owner, in accepting a deed or entering into any contract for the purchase of any Lot or other portion of the Property, agrees to be bound by and adhere to this Declaration and the Restrictions contained herein. Any party prevailing against an Owner in any action or proceeding pertaining to, or arising under or in connection with, this Declaration and the Restrictions contained herein, shall be entitled to recover its reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith.

ARTICLE VI **GRANTEE'S ACCEPTANCE AND INDEMNIFICATION AGREEMENT**

1. Each current and future Owner and grantee of any Lot, in accepting any deed or becoming party to any agreement for the purchase of or instrument intended to convey any interest in, any Lot or portion thereof, whether from Developer or any subsequent Owner of any Lot, agrees to:

- (a) accept the same upon and subject each of the provisions of this Declaration (including, without limitation, all of the Restrictions contained herein);

- (b) indemnify, defend, protect, release, and hold harmless Developer and the Association, and its and their respective successors, assigns, and each of their respective agents, directors and employees, from and against any and all damage caused by such Owner, or by such Owner's employees, agents, guests, invitees, licensees, contractors and employees or the contractor, agent or employees, to any roads, streets, gutters, walkways or other aspects of public ways within the Property, including all surfacing thereon, or to any water, drainage or storm sewer line or sanitary sewer lines owned by Developer, the Association, the city or the County, or for which any of the foregoing has responsibility, at the time of such damage;
- (c) indemnify, defend, protect, release, and hold harmless Developer and the Association, and its and their respective successors, assigns, and each of their respective agents, directors and employees, from and against any and all claims and demands by such Owner, any member such Owner's family members, or its or their employees, agents, guests, invitees, licensees, contractors and employees, for damages to property or injury or death, including but not limited to those caused by Developer's or the Association's contributory negligence, which may arise out of or be caused directly or indirectly by such Owner's Lot(s) and/or the use of or construction on said Lot(s) by said Owner, any member of said Owner's family, or any of its or their guests, agents, invitees, licensees, contractors or employees or subcontractors of such contractors, or by any other person whomsoever, or with respect to any lien on such Owners' lot or the foreclosure of such lien by the Association, including with respect to all reasonable costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees); and
- (d) exercise due care in connection with the construction of any improvements on such Lot(s), and to assure that any contractors of such Owner, and any contractors, employees, or subcontractors of such contractors, exercise due care and comply with any and all governmental rules, regulations, codes and ordinances relating to safety, so as to protect the safety and health of the public, and the safety and health of all persons and property.

ARTICLE VII
ASSOCIATION MATTERS; INSURANCE

1. **Security.** To the extent permitted by applicable law, the Association may, but shall not be required to, own and/or provide for the construction and maintenance of an entrance gatehouse, gates, or other security measure for the Subdivision and, if any such gatehouse or other security measure is to be manned, provide the salary for the same. Nothing herein shall constitute or be deemed to constitute a representation, warranty, assurance or promise that the Association, the ARC or Developer will either now or in the future provide any security force or device to provide protection for any Owner or any other person or Property located within the Subdivision. In no event shall the Association, the ARC or the Developer be obligated to provide, or responsible for providing or failing to provide, any security measure or service, nor shall the provision of any

security measure or services for the Subdivision give rise to any obligation to provide, or to continue to provide, the same or any similar security measures or services in the future. Notwithstanding anything to the contrary, in no event shall the Association, the ARC or Developer be responsible or have any liability for any damage, injury or loss caused by or as the result of the provision, or failure to provide, any security measure or service within the Subdivision, regardless of whether such damage, injury or loss was foreseeable or may have been avoided by providing, or providing superior, security measures or services. In no event shall the provision of any security measure or services for the Subdivision give rise to any obligation to provide, or to continue to provide, the same or any similar security measures or services in the future.

2. **Membership, Liability for Assessments and Developer Deficit Funding.**

- (a) Each Owner shall automatically become a Member of the Association, subject to and in accordance with the Articles and Bylaws, and shall be fully and completely bound by all of the terms and conditions of the Articles and the Bylaws as the same may be modified and amended from time to time. Without limiting the foregoing, each Owner shall be obligated to pay any and all applicable Assessments (as defined in the Bylaws) levied from time to time on such Owner's Lot(s), and each Owner shall be subject to the rights of the Association to enforce payment of the Assessment as provided in the Bylaws; *provided, however*, that notwithstanding the foregoing, the Developer shall not be required to pay any Assessments for Lots which Developer owns and which are unoccupied ("Excluded Lots"). All of the terms and provisions of the Articles and the Bylaws applicable with respect to each such Lot and to each Owner thereof, by virtue of being a Member of the Association, are incorporated herein by reference as if set forth herein in their entirety. Each Lot is a "Single Family Residential Lot" as such term is used in the Bylaws. Assessments on individual Lots shall be determined and made on a yearly basis, by (i) compiling the total amount of yearly Association and Subdivision expenses *plus* savings accruals for the Subdivision as determined by the Association and (ii) *dividing* such number by the total number of Lots, excluding any Excluded Lots, within the Subdivision.
- (b) For a period of time commencing on the sale of the first Lot to a homeowner and continuing thereafter for a period of one (1) year thereafter (the "Deficit Period"), Developer shall fund any deficit of the Association. A "deficit" as used in this subparagraph shall be the difference between (i) the sum of all Assessments and other amounts collected by the Association on all Lots during the Deficit Period *less* (ii) the amount of all actual expenditures incurred by the Association and Subdivision during the Deficit Period, in each instance as computed on a cash basis of accounting. During the Deficit Period, Developer may satisfy such deficit obligation through "in-kind" contribution of services, materials, or a combination of services and materials. Developer's satisfaction of its obligations pursuant to this subparagraph shall be at the sole cost and expense of Developer, and Developer shall not be entitled to reimbursement for the satisfaction of such

obligations.

- (c) Upon the expiration of the Deficit Period, Developer shall have the right, but not the obligation, to fund any deficit of the Association as a loan to the Association, and any payment made by the Developer to the Association after the Deficit Period shall automatically be deemed to constitute a loan to the Association. Unless otherwise agreed in a writing signed on behalf the Association and Developer, each such loan shall have a three (3) year term, bear interest at the rate of three percent (3%) per year (compounded daily), and shall require monthly payments of principal and interest necessary to amortize such loan in full at the expiration of the three (3) year term. As soon as practical following the making of any such loan to the Association, the Association shall cause a promissory note evidencing such loan to be executed and delivered to Developer. Each loan and promissory note made pursuant to this subparagraph shall be secured by the Association's right, title, and interest in and to any Property within the Subdivision.

3. **Certain Rights and Remedies.** The provisions of this Declaration, the ARC Guidelines, the Bylaws, the Articles, and any other rule, restriction or regulation applicable to the Property and/or any Owner thereof may be enforced by the Developer, the Board, and/or the ARC through any one (1) or more of the following methods and remedies; *provided, however*, that unless otherwise expressly permitted by this Declaration, the Articles or the Bylaws, the Association shall first provide an Owner with notice of the alleged violation and an opportunity for a hearing regarding the same, each to be provided in accordance with the Bylaws, prior to utilizing or imposing the following methods and remedies against such Owner:

- (a) imposing monetary fines as authorized and approved hereby (including, without limitation, the non-exclusive schedule of monetary fines set forth on **Exhibit "B"** attached hereto) or in writing by the Board, which fines shall be specially assessed against, and shall constitute a lien upon, each Lot owned by the Owner that is responsible for such the violation or breach;
- (b) suspending the responsible Owner's right, if any, to vote as a Member of the Association;
- (c) suspending the right of the responsible Owner to use and/or to permit any other person to use, any the Common Areas or recreational facilities therein; *provided, however*, that in no event shall any such suspension interfere with such Owner's right to access, or quietly enjoy, such Owner's Lot in accordance with the other provisions of this Declaration;
- (d) suspending some or all of the services, if any, provided by or on behalf of the Association to the responsible Owner;
- (e) to the extent permitted by applicable law, exercising any or all self-help rights available to the enforcing party, the cost and expense of which shall

be specially assessed against, and shall constitute a lien upon, each Lot owned by the responsible Owner; and

- (f) filing a suit or alternative legal proceeding, at law or in equity, for any such legal, equitable or other relief (including, without limitation, monetary damages or injunctive relief) that is or may be available to the enforcing party, the costs and expenses of which shall be specially assessed against, and shall constitute a lien upon, each Lot owned by the responsible Owner(s).

4. **Transfer Fees.** In order to further fund the Association, any sale or transfer of any Lot by an Owner to a subsequent purchaser shall be subject to a transfer fee (a "Transfer Fee"), which Transfer Fee shall be no greater than one percent of the "gross selling price" of such Lot (including any improvements thereon) and the Association shall have sole discretion to adjust the amount of each such Transfer Fee within the preceding constraints at any time. For purposes of this Section, "gross selling price" shall mean the total cost to the purchaser of any Lot, excluding any transfer taxes, recording fees, and title fees imposed by any governmental authority with respect to such sale. In the event that any non-cash consideration is provided in connection with any transfer of a Lot, the Association shall have sole discretion to determine the fair market value of such non-cash consideration for purposes of computing the gross selling price. The Transfer Fee shall be due and payable directly to the Association at the closing of such sale. The Transfer Fee shall be treated as an "Assessment" for all purposes of this Declaration and the Bylaws, and the Association shall have the same rights with respect to such Transfer Fee as the Association has with respect to any other Assessment (including, without limitation, the Association's lien rights under the immediately following Section of this Declaration). Notwithstanding the foregoing or anything to the contrary herein, the Association may, in its sole discretion, elect to waive the imposition of the Transfer Fee with respect to any Lot sold by or to the Declarant or the Association.

5. **Liens for Association Assessments.** Each Owner hereby grants the Association a lien upon each Lot and its appurtenances and each Member's interest in the Association to secure the payment to the Association of any and all Assessments assessed and levied against the Lot and/or the Owner thereof, together with any and all charges, including interest and all reasonable attorneys' fees, including appellate attorneys' fees, court costs and other expenses, incurred by the Association in collecting or attempting to collect such Assessments. If any portion of an Assessment or charge remains unpaid for a period of sixty (60) days after the date such amounts were due, then the Association may, by written notice of default sent to the Owner(s) of the Lot, demand payment of all delinquent amounts and charges. If the all amounts due are not paid within ten (10) days after receipt of such notice of default, the Association may file a notice of lien against the Lot in the Office of the Judge of Probate of the County. Each Owner hereby expressly grants to the Association a power of sale for such Lot along with its lien hereunder. The lien provided for herein 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, exchange, hold, lease, mortgage, convey and sell any such Lot so acquired. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot is and shall be subordinate to: (1) all liens for

taxes, bonds, prior assessments, and other levies are superior to such lien pursuant to applicable law and (2) the lien or charge of any first mortgage of record made to a commercial lender in good faith and for value. No Owner of any Lot may escape or avoid responsibility for Assessments by waiver of the use of or enjoyment of any of the Association Property or by the abandonment or non-use of such Owner's Lot(s), or by any other means.

6. **Indemnification.** The Association has agreed to indemnify and hold harmless each and every officer, director and committee or sub-committee member of the Association, including, without limitation, each members of the Board and each member of the ARC (each of the foregoing an "Indemnified Person"), from and against any and all costs and expenses, including attorney's fees and costs, reasonably incurred by or imposed upon any such Indemnified Person in connection with any action, suit or other proceedings to which he or she may be a party, by reason of being or having been an officer, director or committee member of the Association, the Board or the ARC. No Indemnified Person shall be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, willful misconduct or bad faith, with regard to the business of the Association, the Board and/or the ARC. Without limiting the foregoing, no Indemnified Person shall have any personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, except to the extent that they may be a Member of the Association, and the Association shall indemnify and forever indemnify, defend and hold harmless each such Indemnified Person from and against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any such Indemnified Person may be entitled. The Association may, but shall not be required by operation of this Declaration to, maintain insurance coverages of such types and in such amounts as the Board may deem necessary or appropriate in connection with the obligation of the Association to the Indemnified Persons hereunder, and such insurance coverages shall be paid for at the sole cost and expense of the Association.

7. **Individual Insurance.** By virtue of taking title to a Lot subject to these Covenants and Restrictions, each Owner acknowledges that the Association has no obligation to provide any insurance for all, or any portion, of any Lot or other portion of the Property. Each Owner covenants and agrees to obtain and keep in full force in effect for so long as such Owner owns a Lot, the following insurance coverages, each at such Owner's sole cost and expense: (a) a liability insurance policy having a minimum per occurrence limit of \$300,000, which insurance policy shall cover such Owner's Lot and all structures on such Lot at all times; and (b) a property insurance policy in an amount adequate to cover the full replacement cost of Owner's Principle Residence, and all other improvements and other property contained on or within such Owner's Lot. These policies will be solely at the Owner's expense. The Association shall have the right, but not obligation, to acquire the above coverages on behalf of any Owner who does not maintain, or fails to provide written evidence within ten (10) days following written request by the Association for evidence of, the insurance coverages required pursuant to this paragraph, the costs and expenses of which shall be specially assessed against the Lot(s) to which such coverages pertain.

8. **Remedies Cumulative.** All right and remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. If it prevails in any action or remedy taken to enforce the provisions of this Declaration, the Association, the ARC and/or the Declarant, as applicable, shall be entitled to recover from the party against whom enforcement was

sought all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in connection therewith.

9. **No Obligation to Enforce.** Notwithstanding anything to the contrary herein, in no event shall the Association, the ARC or the Developer have any obligation to take action to enforce any provision of this Declaration if the Board determines in good faith that (a) the enforcement or taking of any action seeking the enforcement hereof is likely to be, or be construed as inconsistent with applicable law, (b) that the enforcing party's position is not certain enough to justify taking any enforcement action, or (c) that the risks and costs of seeking enforcement are likely to outweigh the benefits of obtaining enforcement. Any such determination shall not be construed a waiver of the right of the Association, the ARC or the Developer to subsequently enforce, or take action to enforce, the same or any other provision under any circumstances, or preclude the Association from enforcing any other covenant, Restriction or rule hereunder.

ARTICLE VIII **MISCELLANEOUS**

1. **Amendment; Termination.** The Developer expressly reserves the sole and exclusive right and privilege, both for itself and its successors and assigns, to change, alter, modify, amend or terminate, in whole or in part, this Declaration and/or any of the Restrictions, terms, covenants and other provisions hereof, or to grant a variance to or from any of the foregoing, in each case without the consent or approval of any Owner or the Board until the Transition Date. Following the Transition Date, this Declaration and/or any of the Restrictions, terms, covenants and other provisions hereof, may only be changed, altered, modified, amended or terminated, in whole or in part, by a written instrument that has been (a) signed and acknowledged by the Owners of not less than two-thirds (2/3) of the Lots, (b) signed and acknowledged by the Association, and (c) recorded in the Office of the Judge of Probate of the County.

2. **Addition of Property.** At any time prior to the Transition Date, the Developer shall have the right but not the obligation, in its sole discretion without the consent of any Owner the Association, the ARC, or the Board, to add any such additional property to the Subdivision as Developer may determine necessary or desirable, and to subject any such additional property so added to the Subdivision, and the owners thereof, to the terms and conditions of this Declaration, the Articles and the Bylaws, as applicable. Without limiting the foregoing, Developer shall add such additional property to the Subdivision by recording a written instrument declaring that such property is subject to this Declaration, together with any other filings as may be required by applicable law to effect the same.

3. **Property Transfers to Association.** The Developer may, but shall not be required to, transfer or convey to the Association any improved or unimproved real property, any personal property, and/or any leasehold, easement, or other property interest which is or may be subject to the Declaration. The Association shall accept such conveyance, and any such property or property interest so conveyed shall thereafter be common property to be owned and maintained by the Association. The Developer shall not be required to make any improvements or repairs whatsoever to any property conveyed and accepted pursuant to the paragraph. Once a transfer or conveyance of property is made, the Association shall hold indemnity, defend, and hold harmless the Developer and the Board from and against any and all future liabilities associated with Association and such

property or property rights so conveyed.

4. **Absence of Common Scheme.** Notwithstanding anything to the contrary provided herein, it is understood and agreed that this Declaration and the Restrictions set forth herein shall not be deemed to create a common scheme or to restrict any other property now or heretofore or hereafter owned by Developer other than the Lots within the Subdivision which are made subject to this Declaration by the execution, acknowledgment and recordation of this Declaration. For the avoidance of doubt, the foregoing sentence shall not in any way increase Developer's obligations, or impair Developer's rights, under this Declaration.

5. **Constructive Notice and Acceptance.** Every person, entity, trust, estate, association or other holder or acquirer of any right, title and/or interest in or to any Lot, whether or not such interest is reflected in the Office of the Judge of Probate of the County, shall by virtue thereof be conclusively deemed to have constructive notice of this Declaration and to have consented to and agreed to be bound by this Declaration, the Articles, the Bylaws, and each and every covenant, condition, obligation, Restriction, reservation and easement contained or referenced herein or therein, in each case without regard to whether any reference to any of the foregoing is contained in any document or instrument of transfer, if any, pursuant to which such right, title and/or interest in or to such Lot was obtained.

6. **Severability.** Each of the Restrictions is hereby declared to be independent of, and severable from, each and every other of the Restrictions contained herein, and of and from each and every combination of such other Restrictions. Invalidation by any court of any Restriction in this instrument shall in no way affect any of the other Restrictions contained herein or the validity thereof, which other Restrictions shall thereafter remain in full force and effect.

7. **Captions.** The captions identifying the articles, sections, subsections, paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to make or apply to the feminine or the neuter.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Developer has caused this instrument to be duly executed on this the 27 day of October, 2020

DEVELOPER:

SMB Land, LLC

By: 

Name: Nick Howard

Its: CFO

STATE OF ALABAMA)
)
COUNTY OF Lee)

I, the undersigned authority, a Notary Public in and for State and County, hereby certify that Nick Howard, whose name as CFO of SMB Land, 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 the instrument, they as such CFO and with full authority, executed the same for and on behalf of SMB Land, LLC.

Given under my hand and official seal, this 27 day of October, 20 20


NOTARY PUBLIC
My Commission Expires: 8/21/2021

[SEAL]

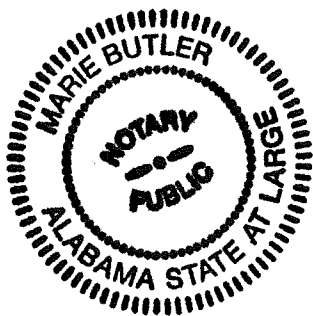


EXHIBIT A
SCHEDULE OF LOTS

Lots 142 through 148 and lots 155-156, Donahue Ridge Subdivision, Phase 5, according to and as shown by that certain plat or record in Plat Book 43, at Page 120 in the Office of the Judge of Probate of Lee County, Alabama.

AND

Lots 159 through 179, Donahue Ridge Subdivision, Phase 6, according to and as shown by that certain plat or record in Plat Book 44, at Page 16 in the Office of the Judge of Probate of Lee County, Alabama.

EXHIBIT B

SCHEDULE OF FINES

Any violation that occurs may result in a fine of up to twenty-five dollars (\$25.00) per occurrence. Any violation that occurs may result in a fine of up to twenty-five dollars (\$25.00) per day for each additional day a violation is not appropriately remedied.

Notes:

- This Exhibit B may be modified or amended at any time by the Board.
- Fines increase by 100% per repeat violation occurring within 1 year of prior violation.
- The Board may increase or impose additional fines, as determined in its sole discretion.
- The Board may waive or decrease any fine, as determined in its sole discretion.
- The imposition or waiver of any fine shall not otherwise limit, impair, or constitute a waiver of any other right or remedy that may be available to the Association.

STATE OF ALABAMA)

COUNTY OF LEE)

This instrument was prepared by:

Adam Middleton
SMB Land, LLC.
13 N 8th St.
Opelika, AL 36801

**BYLAWS
OF
CAPE RESERVE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
THE ASSOCIATION**

Section 1. Identity; Purpose. These are the Bylaws of **CAPE RESERVE HOMEOWNERS ASSOCIATION, INC.**, a nonprofit corporation (the "Association") which was organized under the Alabama Nonprofit Corporation Act (Ala. Code § 10A-3-1 *et seq.* (1975)) by filing the Articles of Incorporation of CAPE RESERVE Homeowners Association, Inc. (as amended from time to time, the "Articles") with the Office of the Judge of Probate of Lee County, Alabama on October 15th, 2020. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of Cape Reserve (the "Subdivision"), pursuant to the Declaration of Covenants, Conditions and Restrictions for CAPE RESERVE recorded in Book 2612, Page 258 (the "Declaration"), having been recorded in the Probate Records of Lee County, Alabama, as the same may be amended from time to time.

Section 2. Defined Terms. As used herein (a) "Declarant" means SMB Land, LLC, an Alabama limited liability company and its successors and assigns, (b) "Board" means the board of directors of the Association, (c) "Director" means each member of the Board, (d) "Declarant Directors" shall mean each Director appointed by Declarant prior to the Transition Date, (e) "Guidelines" means shall mean the Subdivision Design Guidelines approved and adopted by the ARC, as the same may be amended from time to time, and (f) "Assessment" means any charge or other amount levied against or imposed upon any Lot, or upon any Owner of any Lot, by the Association (whether by the Board hereunder or otherwise). Capitalized terms used in these Bylaws without specific definition shall have the same meanings ascribed to such terms (i) in the Declaration, if defined therein, or (ii) in the Articles, if such term is not otherwise defined in the Declaration.

Section 3. Principal Office. The principal office of the Association in the State of Alabama shall be located at 13 N 8th St, Opelika, AL 36801. The Association may have such other offices, either within or without the State of Alabama, as the Board may designate or as the business of the Association may require from time to time.

Section 4. Registered Office. The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be,

identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board.

ARTICLE II MEMBERSHIP; VOTING; MEMBER MEETINGS

Section 1. Membership. The Association shall have one (1) voting class of members. The members of the Association (each a "Member" and collectively the "Members") shall be each record owner (each an "Owner") of fee simple title to each residential lot within the Subdivision (each "Lot"). Each Member is subject to the Declaration and, except as otherwise set forth herein or in the Articles, each Member shall have such rights (including, without limitation, such voting rights) and responsibilities as are more fully set forth in the Declaration. All questions pertaining to membership shall be determined in accordance with the recorded deed and other applicable recorded instruments applicable to each Lot.

Section 2. Annual Member Meetings. The Association may, but shall not be required to, call annual meetings of the Members until such time as the Declarant, in accordance with the terms and provisions of these Bylaws, the Articles, and the Declaration, relinquishes to the Members the right to elect the Board (the "Transfer of Control"), which Transfer of Control shall occur on the date that is the earlier of (a) the date on which the Declarant voluntarily effects such Transfer of Control in a writing signed by Declarant and delivered to the Secretary and (b) the date that is 365 days following the date on which the final Lot within the Subdivision is developed and all improvements to be constructed thereon are substantially completed (such date the "Transition Date"). Notwithstanding the foregoing, the Declarant and each of the Declarant Directors shall have the right, but not the obligation, to call an annual meeting or a special meeting of the Members for any reason at any time prior to the Transition Date; *provided, however*, that notice of any such meeting so called shall be provided to the Members in accordance with these Bylaws. Following the Transition Date, annual meetings of the Members shall be held at such time and such place as may be fixed by the Board from time to time.

Section 3. Special Member Meetings. Following the Transition Date, special meetings of the Members may be called for any legal purpose by (a) the President of the Association, (b) a majority of the Board, or (c) written petition signed by not less than twenty-five percent (25%) of the Members entitled to vote on the business to be conducted at such proposed special meeting. No business may be conducted at a special meeting other than the business listed in the notice of such special meeting. For the avoidance of doubt, no one other than the Declarant shall have the right to call a special meeting of the Members at any time prior to the Transition Date.

Section 4. Place of Member Meeting. The Board may designate any place, within or without the State of Alabama, as the place of meeting for any annual or special meeting of the Members. If no location is designated, the place of the meeting shall be the principal office of the Association.

Section 5. Notice of Member Meetings. Written or printed notice stating the place, day, and time of any meeting of the Members shall be delivered, either personally or by mail, by or at the direction of the President or the Secretary of the Association to each Member entitled to vote on any matter to be presented at such meeting, not less than ten (10) days nor more than sixty (60) days before the date of such meeting. If mailed, the notice of such meeting shall be deemed to be delivered when deposited in the United States Mail addressed to the voting Member at his or her address as it last appeared on the records of the Association, with postage thereon prepaid. Notwithstanding the foregoing or anything to the contrary herein, the Association shall call a special meeting of the Members within one hundred twenty (120) days of the date the Member's are first permitted to elect a Board hereunder.

Section 6. Fixing of Record Date. The Board may fix in advance a date as the record date for the purpose of determining the Members entitled to vote at any meeting of the Members, in which case such record date shall not be less than ten (10) days nor more than sixty (60) days before the date of such meeting. If no record date is fixed for the determination of Members entitled to notice of or to vote at any meeting of the Members, the date on which notice of the meeting is mailed to the Members shall be the record date for such determinations. When a determination of Members entitled to vote at any meeting of the Members has been made as provided in this Section, such determination shall also apply to any adjournment thereof.

Section 7. Waiver of Notice. Any Member shall be deemed to have waived such Member's right to notice of any meeting of the Members if such Member (a) waives such notice in a writing signed by such Member or (b) attends such meeting other than for the express purpose of objecting to the transaction of any business due to lack of proper notice of such meeting in accordance with these Bylaws.

Section 8. Quorum. Unless otherwise expressly provided in these Bylaws, the Articles, or the Declaration, the presence, in-person or by proxy, of Members holding one-third (1/3) of the votes entitled to be cast on the business to be conducted at such meeting shall constitute a quorum at any such meeting of the Members. Notwithstanding the foregoing or anything to the contrary herein, in no event may any business be conducted or action taken at a meeting of the Members prior to the Transition Date without the affirmative approval of a representative of Declarant in attendance, in-person or by proxy, at such meeting. Notwithstanding the earlier withdrawal or departure of any Member(s) initially present at a duly called or held Member meeting at which a quorum is initially present, the Members present at such meeting may continue to conduct business until the earlier of (a) adjournment of such meeting or (b) such time as less than twenty percent (20%) of the votes entitled to be cast on the business to be conducted at such meeting cease to be represented at such meeting.

Section 9. Majority Vote. Approval by a majority of the votes represented at a meeting of the Members at which a quorum is present shall be the act of all of the Members, unless approval by a greater number is required by applicable law, the Declaration, the Articles, or these Bylaws, in which case the approval by such greater number shall be the act of all of the Members.

Section 10. Adjournment of Member Meetings. If any meeting of the Members cannot be held or completed because a quorum is not present, then a majority of the votes present, whether represented in-person or by proxy, may adjourn the meeting to a time not less than ten (10) nor more than thirty (30) days from the date on which such meeting was originally scheduled. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of such time and place of the adjourned meeting shall be given to the Members in accordance with the regular procedures for notice of meetings of the Members.

Section 11. Proxies; Advance Voting. At all meetings of the Members, each Member entitled to vote may cast its votes in person (and, if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of such voting Member) or by proxy. Every proxy shall be in writing specifying the Member(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise stated in the written proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable in writing and shall automatically cease upon conveyance of any

Lot for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy. In addition to the foregoing, the Board may establish rules and regulations to allow for advance voting prior to a scheduled meeting.

Section 12. Voting Rights. The Member or Members owning each Lot, voting as a group, shall be collectively entitled to one (1) vote per Lot, and in no event shall there be more than one (1) vote per Lot, regardless of the number Members owning such Lot. In the case of any Lot having multiple Owners, the Owners of such Lot shall designate which Owner thereof shall be the Member entitled to vote with respect to such Lot in a writing signed by each Owner of such Lot and delivered to the Secretary of the Association. If a writing is not delivered to the Secretary of the Association in accordance with the preceding sentence with respect to any Lot having multiple Owners, then the first such Owner to register with the Association as the Member that will vote with respect to such Lot or, in the absence of such registration, the first such Owner of such Lot to cast a vote with respect to such Lot, shall be the Member entitled to vote with respect to such Lot. The Owner entitled to vote with respect to a Lot having multiple Owners may be changed at any time by designating the same in writing signed by each Owner of such Lot and delivered to the Secretary of the Association. Subject to applicable law, the Board shall have the power to establish additional rules and regulations governing how Member voting may occur.

Section 13. Action without a Meeting. Any action that is required to be taken by the Members at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote on the taking of such action.

Section 14. Conduct of Meetings. The President of the Association shall preside over all meetings of the Members, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted at said meetings, as well as recording of all other business transactions occurring thereafter. The order of business for the annual meetings and other meetings, whenever practical, shall be as follows:

1. Calling of the roll.
2. Evidence of required notice of meeting or waiver of notice.
3. Reading and disposal of any previously unapproved minutes.
4. Reports of officers.
5. Reports of committees.
6. Election of Directors.
7. Unfinished business.
8. New Business.
9. Adjournment.

ARTICLE III BOARD OF DIRECTORS

Section 1. Board of Directors. The business and affairs of the Association shall be managed by or under the direction of the Board. Each member of the Board (each a “Director”) shall be elected or appointed in accordance with these Bylaws and shall serve until such Director resigns, is removed or has its successor appointed and elected, in each case in accordance herewith.

Section 2. Number of Directors; Initial Directors; Eligibility. The Board shall initially consist of the number of Directors determined by the Declarant; *provided, however*, that there shall be not

less than three (3) Directors nor more than twelve (12) Directors. The initial Directors shall be Mitchell Martin, Nick Howard and Adam Middleton. The number of Directors comprising the Board may be increased or decreased at any time by the approval of a majority of the then-current Directors; *provided, however*, that any decrease to less than three (3) Directors or any increase to more than twelve (12) Directors shall require prior, formal amendment of these Bylaws to permit the same. Each Director must be a Member, and no Member may be a Director at the same time that such Member's spouse is serving as a Director; *provided, however*, that the Declarant Directors are not subject to, and are expressly excluded from, the foregoing restrictions of this sentence.

Section 3. Nomination of Directors. Prior to any annual or special meeting at which the Members are entitled to vote on any Director(s), any Member may nominate any other Member as a candidate eligible to be elected as a Director at such meeting by providing written notice of such nomination to the President and Secretary of the Board at least ten (10) days prior to the applicable meeting. For the avoidance of doubt, nominations from the floor are not permitted at any meeting, and any such attempted floor nomination shall be void and of no effect. Any Member who has been nominated as a candidate eligible to be elected as a Director shall, upon written request to the Secretary, be provided with access to the Association's mailing list which list may, at any time prior to the applicable meeting at which Member is eligible to be elected as a Director, be used by such Member to communicate his or her qualifications to, or to otherwise solicit the votes of, the other Members. Notwithstanding anything to the contrary, the provisions of this Section shall not apply prior to the Transfer of Control or to any Declarant Director, each of whom shall be appointed to the Board by Declarant in Declarant's sole discretion.

Section 4. Election of Directors; Term of Election. At all times prior to the Transition Date, Declarant shall have the sole right to appoint and remove the Directors, with or without notice or a meeting. Following the Transition Date, Directors may be elected by a majority of the votes entitled to be cast at any duly called annual or special meeting of the Members at which a quorum is present if the business to be conducted at such meeting, as set forth in the notice of such meeting provided to the Members in accordance with these Bylaws, includes the election of any Director(s). Unless earlier removed by the Declarant, each Declarant Director's term shall automatically expire on the Transition Date. Following the Transition Date, the Board shall be divided into the following three (3) classes, each such class containing as nearly equal of a number of Directors as possible: (a) Class I Directors, each of whom shall serve for a term of one (1) year each; (b) Class II Directors, each of whom shall serve for a term of two (2) years each; and (c) Class III Directors, each of whom shall serve for a term of three (3) years each. The intent of the preceding sentence is to create staggered terms for Directors and, accordingly, following the Transition Date there shall be one (1) Director of each class and, upon any increase or decrease in the number of Directors, the number of Directors of each class shall be allocated as evenly as possible. Any Director, other than a Declarant Director, having served as a Director for six (6) or more consecutive years shall not be eligible for re-election for a period of one (1) year following the end of such Director's most recent term. Notwithstanding the foregoing or anything to the contrary herein, the term of each Director shall end upon the earliest to occur of (a "Disqualifying Event"): (i) the election and commencement of the term of such Director's replacement in accordance with these Bylaws; (ii) such Director's resignation, death, permanent disability or removal as a Director in accordance with these Bylaws; (iii) such Director ceases to be a Member or has a lien on any Lot owned by such Director foreclosed for non-payment of delinquent Assessments or other amounts due or payable to the Association; (iv) the filing of a voluntary petition for bankruptcy by the Director, or the filing of an involuntary petition for bankruptcy against the Director which is not dismissed within thirty (30) days following the filing thereof; or (v) such Director is convicted of, or pleads guilty or no contest to, a felony involving fraud or dishonesty.

Section 5. Removal of Directors; Replacement Directors. Any Director, other than a Declarant Director, may be removed with or without cause by a majority of the votes present at any annual or special meeting of the Members at which a quorum is present if voting on the removal of a Director was

included within the business to be conducted at such meeting as set forth in the written notice of such meeting. Without limiting the foregoing, a Director may also be removed for cause by a unanimous vote of the other Directors (other than the Director to be removed) if such Director (a) has three (3) or more consecutive unexcused absences from any duly called meetings of the Board, or (b) fails to pay any amount due to the Association within thirty (30) days from the date on which such Director receives written demand for payment thereof, other than amounts actively being contested in good faith by such Director. Upon the occurrence of vacancy on the Board (whether due to removal or the occurrence of any other Disqualifying Event) other than a vacancy created by an increase in the number of Directors, the President of the Board shall, in his or her sole discretion, cause such vacancy to be filled by either (i) the affirmative vote of a majority of the remaining Directors to appoint a replacement Member eligible to serve a Director by either, or (ii) by the Members in accordance with these Bylaws at the first annual or special meeting of the Members held after such vacancy arises. Any replacement Director elected or appointed to fill a vacancy in accordance with the preceding sentence shall serve until the earlier of (X) expiration of the predecessor Director's term of office or (Y) the occurrence of a Disqualifying Event with respect to such replacement Director. Any vacancy created by an increase in the number of Directors occurring after the Transition Date shall be filled by the Members pursuant to these Bylaws at the first annual or special meeting of the Members held after such increase has been duly effected in accordance with these Bylaws. Notwithstanding anything to the contrary herein, the Declarant shall have the exclusive right at all times prior to the Transition Date to remove, and to appoint a replacement director for, any Declarant Director.

Section 6. Resignations. Any Director may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall be effective at the time specified in the notice of such resignation, and the acceptance of such resignation shall not be necessary to make it effective. If no effective time for the resignation is set forth in the notice of such resignation, the resignation shall be effective when notice of such resignation is provided to the Association in accordance with this Section.

Section 7. General Powers. The Board shall have all powers and duties necessary for the administration of the Association's affairs and may do all acts not otherwise prohibited by law or by these Bylaws, the Declaration, or the Articles. Without in any way limiting the foregoing, the Board is expressly authorized and empowered to do the following, in each case to the greatest extent permitted by applicable law:

(a) assess reasonable penalties against a Member for any violation of these Bylaws, the Declaration, the Articles, the Guidelines, or any other rules validly adopted by or on behalf of the Association, in each case after such Member is afforded the opportunity to be heard and represented by counsel before the Board with respect thereto ("Penalties");

(b) suspend a Member's right to use facilities or services provided directly through the Association for nonpayment of assessed Penalties to the extent that access to the Member's Lot is not denied;

(c) contract for such insurance coverages on behalf of the Association as are required hereunder, or as the Board may otherwise deem necessary or appropriate;

(d) adopt and publish rules and regulations governing use of Common Areas and facilities of the Association, if any, and the personal conduct of the Members and their guests with respect thereto;

(e) provide or cause to be provided all goods and services required by the Bylaws or by applicable law, or which the Board, in its discretion, deems necessary or appropriate for the

proper upkeep and maintenance of the Association's common areas or facilities, if any, access roads, easements, or other Association property;

(f) adopt a budget and collect an annual Assessment from the Owner(s) of each Lot as authorized by the Declaration, and to render or cause to be rendered statements, when required or useful, of any Assessments which remain unpaid by any such Owner(s);

(g) increase or decrease the amount of any annual Assessment;

(h) initiate, maintain, or defend any cause of action or other legal proceeding involving the Association;

(i) enter into such agreements, easements, and other arrangements on behalf the Association as the Board may determine necessary or appropriate;

(j) retain such attorneys, accountants, and other professional advisors and service providers on behalf of the Association as the Board may determine necessary or appropriate;

(k) designate who shall be authorized to make and sign all contracts, agreements, instruments and other legal documents on behalf of the Association;

(l) to the extent required or permitted under the Declaration and/or the Guidelines, appoint the members of the ARC; and

(m) take such action(s) as the Board determines necessary or advisable in order to enforce the provisions of these Bylaws, the Declaration, the Guidelines, the Articles, and any other Association rules including, without limitation, seeking the remedies specifically provided for herein, therein, or pursuant to applicable law or in equity.

Section 8. Annual Meetings of the Board. An annual meeting of the Board shall be held immediately following, and at the same location as, each annual meeting of the Members, and no notice other than these Bylaws is required to be given with respect thereto; *provided, however*, that a majority of the Directors may in writing agree to hold such annual meeting of the Board at a different location and/or time by providing written notice thereof, which written notice shall be signed by the Directors constituting the majority agreeing thereto, to each of the other Directors.

Section 9. Special Meetings of the Board. Special meetings of the Board may be called (a) by or at the written request of the President of the Association to the Board, (b) by or at the written request of any two (2) or more Directors to the President of the Association, or (c) by a resolution of the Board approved by a majority of the Directors at any other meeting of the Board at which a quorum is present, which resolution shall provide the date, time, and location at which such meeting is to be held.

Section 10. Notice of Board Meetings. Written notice of any special meeting of the Board shall be given at least three (3) days prior thereto by personal delivery or mail to each Director at his or her business address or by electronic mail to an address provided by such Director. If mailed, such notice shall be deemed to be delivered when deposited in the United States Express Mail so addressed, with postage thereon prepaid. If sent by electronic mail, such notice shall be deemed to be delivered upon sending of such electronic mail to the Director's provided address. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends such meeting other than for the express purpose of objecting to the transaction of any business due to lack of proper notice of such meeting in accordance with these Bylaws. Neither the business

to be conducted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 11. Conduct of Board Meetings. The President of the Association shall preside over all meetings of the Board, and the Secretary of the Association shall keep a minute book of each such meeting which shall include, without limitation, a listing of the Directors present, a general description of the business discussed, a record of all resolutions adopted at such meeting, and a record of all other material actions and proceedings taking place at such meeting. The foregoing officers may delegate in writing their respective duties set forth in this paragraph with respect to any meeting of the Board, and the failure of any such officer(s) to attend any meeting of the Board shall not invalidate any business otherwise properly conducted by the Board at a meeting at which a quorum was present.

Section 12. Quorum. Unless otherwise expressly provided in these Bylaws, the Articles, or the Declaration, the presence, in-person or by proxy, of a majority of the Directors shall constitute a quorum at any meeting of the Board. Notwithstanding the earlier withdrawal or departure of any Director(s) initially present at a duly called or held meeting at which a quorum is initially present, the Directors present at such meeting may continue to conduct business so long as any action taken is approved by at least a majority of the Directors required to constitute a quorum for that meeting.

Section 13. Majority Vote. Approval by a majority of the Directors represented at a meeting of the Board at which a quorum is present shall be the act of all of the Directors, unless approval by a greater number is required by applicable law, the Declaration, the Articles, or these Bylaws, in which case the approval of such greater number shall be the act of all of the Directors.

Section 14. Adjournment of Board Meetings. If any meeting of the Board cannot be held or completed because a quorum is not present, a majority of the members of the Board who are present may adjourn the meeting to a time not less than three (3) nor more than thirty (30) days from the date on which such meeting was originally scheduled. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of such time and place of the adjourned meeting shall be given to the Directors in accordance with the regular procedures for notice of meetings of the Directors.

Section 15. Action without a Meeting. Any action that is required to be taken by the Directors at a meeting of the Board, or any other action which may be taken at a meeting of the Board, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote on the taking of such action.

Section 16. Compensation; Loans Prohibited. Unless approved by the Declarant or by a majority of the Members at an annual or special meeting of the Members, no Director shall receive any compensation from the Association for his or her services as a Director. The Association shall be prohibited from making any loan to any officer or Director of the Association.

Section 17. Committees. The Board may designate one or more committees, each committee to consist of one or more of the Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. If a member of a committee shall be absent from any meeting, or disqualified from voting thereat, the remaining member or members present at the meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent

permitted by these Bylaws and applicable law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Association and may authorize the seal of the Association to be affixed to all papers that may require it to the extent so authorized by the Board; *provided, however*, that unless otherwise expressly stated in the written delegation of authority from the Board to the Committee, no such committee shall have the authority of the Board in reference to (a) amending, altering, restating or repealing these Bylaws or the Articles, (b) electing, appointing or removing any member of any such committee or any officer or Director of the Association, (c) adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association, (d) authorizing the voluntary dissolution of the Association or revoking proceedings therefor, (e) adopting a plan for the distribution of assets of the Association; or amending, or (f) altering or repealing any action or resolution of the Board. Except as otherwise set forth herein or unless the Board provides otherwise, at all meetings of such committee, a majority of the then authorized members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board provides otherwise and except as otherwise prohibited by these Bylaws or applicable law, each committee designated by the Board may make, alter, and repeal rules and procedures for the conduct of its business. In the absence of such rules and procedures each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws and applicable law. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or him or her by law.

ARTICLE IV OFFICERS

Section 1. Number. The officers of the Association shall be (a) one (1) President, (b) one (1) or more Vice President(s) (the number thereof to be determined in the discretion of the Board), (c) one (1) Secretary, and (d) one (1) Treasurer, each of whom shall be elected by the Board. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board. Any two (2) or more offices may be held by the same person, except the President and Secretary/Treasurer. Unless separately appointed, the President shall also be the Chairman of the Board, and the Secretary shall also be the Secretary of the Board. An officer need not be a Member. The failure of the Board to elect any officers other than a President, a Treasurer and a Secretary shall not constitute a violation of these Bylaws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of the Members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board may be removed at any time, by the affirmative vote of the Board, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section 4. Vacancies. A vacancy in any office elected because of death, resignation, removal, disqualification or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board, shall in general supervise and control all of the business and affairs of the Association. Unless delegated to another officer in writing, the President shall preside at all meetings of the Members. The President may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed. The President shall perform all duties incident to the office of President and such other duties as may be reasonably prescribed by the Board from time to time.

Section 6. Vice President. In the absence of the President (including, without limitation, any absence resulting from the President's death or from the President's inability or refusal to perform his or her duties) the Vice President (or in the event there is more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the chronological order of their election or appointment) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be reasonably assigned to such Vice President by the President or by the Board.

Section 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the mailing address of each Member which shall be furnished to the Secretary by such Member; (e) have general charge of the transfer books of the Members; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be reasonably assigned to the Secretary by the President or by the Board.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all property of the Association (including, without limitation, all funds, securities, and evidences of indebtedness); (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws and applicable law, (c) keep the financial records and books of account of the Association in accordance with good accounting practices (including, without limitation, all accounts and records of account required to be maintained in accordance with these Bylaws), and (d) in general perform all of the duties as from time to time may be reasonably assigned to the Treasurer by the President or by the Board.

ARTICLE V CONTRACTS, LOANS, CHECKS, DEPOSITS

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; *provided, however*, that all contracts binding the Association must be signed by either (a) two (2) or more officers of the Association or (b) the President of the Association and at least one (1) Director.

Section 2. Loans. The Board of Directors shall have the power to borrow money for the purpose of repair, restoration or maintenance to the common areas and facilities, without direct approval of the membership, *provided, however*, that membership approval must be had if the total amount to be

borrowed exceeds or would exceed ten percent (10%) of the budgeted gross expense for the Association for that fiscal year.

Section 3. Checks, Drafts, Other Payments. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer(s) and/or agent(s) of the Association and in such manner as shall from time to time be determined by resolution of the Board.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select, and the Treasurer shall carry out the Board's reasonable directions in connection with the opening and maintenance of such accounts.

ARTICLE VI BOOKS AND RECORDS

Section 1. Accounting. Accounting and control of Association funds should conform with established AICPA guidelines and principles, which require, without limitation, a segregation of accounting duties, disbursements by check requiring at least two (2) signatures, and cash disbursements being limited to Twenty-Five Dollars (\$25.00) or less. Cash accounts of the Association shall not be commingled with other accounts. Financial reports should be prepared for each regular Board meeting, including both income statements and expense statements. Said statements shall be available for review by each Member upon written request by such Member to the President or Treasurer of the Association, which statements shall be made available at such reasonable times and locations as the Treasurer may reasonably determine. An annual statement reflecting the financial condition of the Association in all material respects shall be completed annually within sixty (60) days following the end of the Association's fiscal year and shall be distributed to each Association member within thirty (30) days thereafter.

Section 2. Fiscal Year; Budget. The fiscal year of the Association shall be the fiscal year unless otherwise changed or fixed by the Board. The Board shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Copies of the budget and proposed Assessments shall be transmitted to each Member not later than fifteen (15) days prior to the start fiscal year for which the budget is made. If the budget is amended substantially, a copy of the amended budget shall be furnished to each Member.

Section 3. Budgeted Expenses. All funds to be expended during the year for the operation, management, maintenance, control and administration of the Association, the Common Areas pursuant to the Declaration, and the operation and working capital of the Association (collectively, the "Common Expenses") shall be held in an account or account(s) created and maintained in accordance with these Bylaws and applicable law for such purposes. Any balance in this fund at the end of each year may be used to pay Common Expenses incurred in any successive year or may be placed in the reserve fund account for the Association, as determined in the Board's sole discretion. All funds to be expended for replacement, acquisition and repair of capital improvements which are a part of Common Areas of the Subdivision shall be held in the reserve fund account for the Association.

Section 4. Member Accounts. A record of account for each Member shall be maintained setting forth the name and address of the Member, the interest percentage in the Common Areas, if any, the amount of each Assessment, the dates and amounts in which the Assessments become due, the amounts paid upon the account and the balance due. For the avoidance of doubt, separate bank accounts are not required to be maintained for purposes of maintaining such records of accounts.

Section 5. General Assessments. The Board shall make an Assessment for recurring Common Expenses to be charged to each Lot, which Assessment shall be established for the fiscal year annually in advance, not later than ten (10) days preceding the fiscal year for which the Assessment are made and shall be due and payable on or prior to the first day of such fiscal year. The Board shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common areas, particularly including private roads, which the Association will be obligated to maintain, and such maintenance funds reserved may, from time to time, be increased or reduced by a majority vote of the Members. The proportionate interest of each Lot Owner in said funds cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Lot even though not expressly mentioned or described in the conveyance thereof. In the event the Association is terminated and voluntarily liquidated, any part of such funds remaining after full payment of all Common Expenses shall be distributed to all Lot Owners on a pro rata basis. The Board also reserves the right, in its sole discretion, to waive any Assessment as may come due from a Lot Owner for special circumstances or for any other reason determined necessary or appropriate by the Board.

Section 6. Special Assessments. The Board may, from time to time, make such other special Assessment for emergencies and other expenditures as determined reasonably or necessary by the Board in its sole discretion. A special Assessment may be made on an individual Lot or a collection of Lots may be, but is not required to be, assessed evenly or pro rata. Notwithstanding the foregoing, the Lot(s) to which any such special Assessment is charged must have (a) received a tangible or perceived benefit from the Association or (b) or have caused a tangible or perceived detriment to the Association, in each case as determined in the Board's reasonable discretion. For the avoidance of doubt, expense does not have to be incurred for a special Assessment to be levied and the reasonable anticipation of a likely or potential future expense is sufficient for the Board to levy a special Assessment on some or all of the impacted Lot(s). The Board determine the necessity, timing, and amount of each special adjustment in good faith. The Board may allow special Assessments to be paid in installments or in any other manner that the Board determines to be necessary or appropriate.

Section 7. Bonds. The Board may, but shall not be obligated to, require the posting of such bonds by or on behalf of any person(s) handling or responsible for the Association's funds. The amount of any such bonds shall be determined by the Board, and the premiums of such bonds shall be paid by the Association.

Section 8. Rules and Regulations and Violation of any Documents. Subject to the terms and conditions of the Declaration, the Board may establish, abolish or amend reasonable rules and regulations concerning the use of the Common Areas. The text of such rules and regulations shall be furnished or made available to the Members. The Board shall have the power, upon violation of the rules and regulations, or upon violation of the terms of the Declaration or Bylaws to impose monetary fines on a Member which shall constitute a lien and shall be enforceable in like manner as provided for Assessments or to suspend for a reasonable period of time either the Member's right to the use of Common facilities within the Common Areas or the Member's right to vote.

Section 9. Compliance with Declaration. Notwithstanding anything contained in these Bylaws to the contrary, the Board shall cause the Association to perform all of Association's obligations set forth in the Declaration. In the event of any conflict between the provisions of the Declaration and the provisions of these Bylaws, the provisions of the Declaration shall control.

Section 10. Usage of Association Funds. The primary usage of funds collected through any Assessment or other sums or charges paid by the Members will be used to meet the obligations of the Association for each calendar year's budget and for such other expenditures as the Board determines necessary or appropriate for the benefit of the Association and/or its Members.

Section 11. Failure to Pay Assessments. In the event any Owner does not pay any Assessment or other sum or charge required to be paid to the Association within sixty (60) days from the due date thereof, the Association may foreclose the lien encumbering the Lot created by nonpayment of such amounts in the same fashion as mortgage liens are foreclosed in the jurisdiction in which the Lot is located; *provided, however*, that sixty (60) days' prior notice of the intention to foreclose shall be mailed, postage prepaid, to the Owner(s) of the applicable Lot and to all persons having a mortgage lien or other interest of record in such Lot as shown in the Association's record of ownership. The Association shall be entitled to the appointment of a receiver, if it so desires and requests. The Association shall have the right to bid on any such foreclosed Lot at a foreclosure sale and to acquire, hold, mortgage, and convey the same. In any such foreclosure action, the lien of the Association shall be subordinate and inferior to tax liens of the State, county, any municipality and any special district, and any first mortgage liens of record encumbering such Lot at the time of the commencement of such foreclosure action by the Association, and the proceeds from any such foreclosure action shall be applied and disbursed as required by applicable law. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment for any Assessment or other sum or charge required to be paid to the Association without waiving the Association's lien securing same. In any action either to foreclose its lien or to recover a money judgment brought by or on behalf of the Association against a Lot Owner, the Association shall be entitled to recover all costs and expenses (including, without limitation, attorneys' fees) incurred in connection therewith.

Section 12. Appeals. Prior to the imposition of any sanction (including, without limitation, the imposition of any fines or other Penalties or the taking of any action(s) permitted to be taken pursuant to Section 11 of this ARTICLE VI) under or in connection with these Bylaws, the Declaration, the Guidelines, and/or any other rules and regulations for Association, the Board or its delegate (such as a management company) shall serve the alleged violator with written notice including (a) the nature of the alleged violation, (b) the sanction proposed to be imposed, (c) a statement that the alleged violator may present a written request within ten (10) days of such notice for a hearing to the Board to dispute the alleged violation, and (d) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within such ten (10) day period. If a timely request for hearing to challenge the violation is not received within such ten (10) day period, then the sanction stated in the notice shall be imposed; *provided however*, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person. In the event of a continuing violation, each day the violation continues beyond the period ending ten (10) days from the date of such notice thereof shall constitute a separate offense, and fines may be thereafter imposed on a *per diem* basis without further notice to the responsible party or parties. In the event of a violation that is not successfully appealed and which recurs within one (1) year from the date of the any prior notice thereof, or communication with respect thereto, hereunder, the Board may impose a sanction without further notice to the responsible party or parties. The Board may adopt a schedule of sanctions for violations of these Bylaws, the Declaration, the Guidelines, and/or any other rules and regulations for Association as the Board determines to be necessary or appropriate in its sole discretion. Proof of any notice made, or required to be made, pursuant to this Section shall be placed with the books and records of the Association, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice.

Section 13. Conduct of Appeals Hearings. If a hearing is requested within the allotted ten (10) day period described in the immediately preceding Section, such hearing shall be held with the one (1) or more Directors or another authorized delegate of the Board (such as the management company), in each case as determined by the Board. Any such hearing may be held via phone or in person as determined by the Board or its delegate provided that the alleged violator shall be afforded a reasonable opportunity to hear and be heard. The Board shall notify the alleged violator(s) and each other responsible party so requesting any such hearing of the time and location of such hearing. If a hearing is timely requested

in accordance with these Bylaws then, prior to the effectiveness of any sanction to be made in connection therewith, proof of proper notice shall that such hearing so requested has been held shall be placed with the books and records of the Association. Notwithstanding anything to the contrary herein, the attendance by the responsible party or parties (or its or their agents or designees) at any hearing contemplated by this Section or the immediately preceding Section shall for any purpose other than objecting to the validity of such hearing shall constitute the waiver of any notice requirements with respect to such hearing. A record of the decision of the Board or its delegate with respect to any such hearing shall be recorded with the books and records of the Association and shall thereafter be binding for all purposes.

ARTICLE VII WAIVER OF NOTICE

Whenever any notice is required to be given to any Member or Director under the provisions of these Bylaws, the Articles, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice..

ARTICLE VIII INDEMNIFICATION

Section 1. Indemnification Against Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in accordance with, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in accordance with, or not opposed to, the best interests the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. In the event of any conflict between the provisions of this Section 1 and the provisions of Section 8 of this ARTICLE VIII, the provisions of Section 8 of this ARTICLE VIII shall control.

Section 2. Indemnification in Bringing Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in accordance with, or not opposed to, the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty or duties to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the

adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. In the event of any conflict between the provisions of this Section 2 and the provisions of Section 8 of this ARTICLE VIII, the provisions of Section 8 of this ARTICLE VIII shall control.

Section 3. Rights to Indemnification. To the extent that a Director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 and Section 2 of this ARTICLE VIII or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Determination of Rights. Any indemnification under Section 1 and Section 2 of this ARTICLE VIII (unless ordered by a court of competent jurisdiction) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard(s) of conduct set forth in Section 1 and Section 2 of this ARTICLE VIII. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by a majority of the Members.

Section 5. Advancing of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this ARTICLE VIII.

Section 6. Other Indemnification Rights Preserved. The indemnification provided by this ARTICLE VIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other provision of these Bylaws, applicable law, written agreement, majority vote of the Members or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 7. Insurance. The Board is hereby authorized, directed, and empowered to purchase and maintain such insurance coverage(s) as the Board determines necessary, appropriate, or desirable in order to insure the indemnification obligations of the Association pursuant to this ARTICLE VIII, and all costs and expenses incurred in connection with the purchase and/or maintenance of any such insurance coverage(s) shall be payable from the funds of the Association.

Section 8. Scope of Indemnification Obligations. Notwithstanding anything to the contrary herein (including, without limitation, the provisions of Section 1 and Section 2 of this ARTICLE VIII): (a) in no event shall the indemnification to be provided by the Association hereunder be greater than the indemnification that the Association is permitted by applicable law to provide; and (b) in the event the Association is permitted by applicable law to provide indemnification to any Director, officer, employee or agent of the Association in excess of the indemnification provided pursuant to the foregoing provisions of this ARTICLE VIII, the Association shall provide such person with such greater indemnification permitted by applicable law (the intent of the foregoing being for the association to indemnify such persons to the fullest extent permitted by applicable law).

**ARTICLE IX
MISCELLANEOUS**

Section 1. **Amendment to Bylaws.** These Bylaws may be amended by proper action of the Board, as long as all legal requirements are complied with; *provided, however*, that (a) the percentage of votes necessary to amend any specific clause or provision hereof shall not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause, and (b) these Bylaws may not be modified in any manner that (i) adversely impacts the rights of the Declarant hereunder (including, without limitation, with respect to Declarant's rights to appoint any Declarant Director) without the express written consent of the Declarant or (ii) reduces or eliminates the indemnification rights of any person pursuant to ARTICLE VIII with respect to any event or conduct occurring prior to the date of such amendment.

Section 2. **Conflicts.** In the event of any conflicts or inconsistencies between the provisions of applicable law, the Articles, the Declaration, and these Bylaws, then the provisions of applicable law, the Declaration, the Articles, and these Bylaws (in that order) shall prevail.

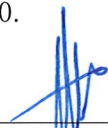
Section 3. **Notices.** Except as otherwise required in accordance herewith, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail with postage prepaid: (a) if to a Member or the Owner of any Lot, to the address to which such Member or Lot Owner has designated in writing and filed with the Secretary or, if no such address has been designated and filed, at the address of the applicable Lot; and (b) if to the Association, the Board, or any individual officer or Director of the Association, then at the principal office of the Association, if any, or at such other address as shall be designated for said entity or individuals on the records of the Association.

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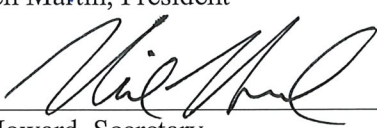
CERTIFICATION

We, the undersigned, acting in our capacities as President and Secretary, respectively, of the Association, hereby certify that the above and foregoing constitutes a true and correct copy of the Bylaws the Association as adopted by its Board , and that all such provisions are in full force and effect and have not been revoked or rescinded, in each instance as of the date set forth below.

This the 27 day of October, 2020.



Mitchell Martin, President

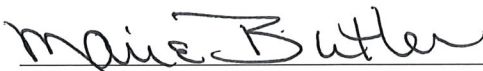


Nick Howard, Secretary

STATE OF ALABAMA)
)
COUNTY OF Lee)

I, the undersigned authority, a Notary Public in and for State and County, hereby certify that Mitchell Martin and Nick Howard, whose names as President and Secretary, respectively, of SMB Land, LLC are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they as such and with full authority, executed the same for and on behalf of SMB Land, LLC.

Given under my hand and official seal, this 27 day of October, 20 20



NOTARY PUBLIC
My Commission Expires: 8/21/2021



I. INTRODUCTION

A. Purpose of Guidelines

These Guidelines (these “Guidelines”) provide an overall framework for the development of CAPE RESERVE Subdivision (the “Subdivision”) in an orderly and consistent manner. Among other things, these Guidelines have been developed to guide the construction and modification of existing homes and other structures within the Subdivision by setting forth certain criteria applicable to designs, styles, materials, colors, locations of improvements, landscaping, signage and lighting within the Subdivision. These Guidelines establish a mandatory review process for proposed construction and modifications within the Subdivision and are intended to preserve and enhance the safety, quality and aesthetics that attract Owners and prospective homebuyers to the Subdivision.

B. Interpretation; Conflicts

To the extent that LEE County (the “County”) and AUBURN (the “City”) ordinances or any other governmental statute, ordinance, code, rule or regulation prohibits, or requires a more restrictive standard than, the standards set forth in these Guidelines and/or the Declaration of Restrictive Covenants for the Subdivision (the “Declaration”), such governmental standards shall control. To the extent that any governmental standard is less restrictive, the Declaration and the Guidelines (in that order) shall control. Notwithstanding the foregoing, to the extent that a variance granted by the ARC in accordance with these Guidelines conflicts with any provision of the Declaration, such variance shall control. Capitalized terms used by not otherwise defined herein shall have the meanings set forth in the Declaration.

C. Preparation and Approval

These Guidelines have been prepared and approved by the Architectural Review Committee (referred to herein as the “ARC” or the “reviewer”). In order to match the needs of the evolving community in which the Subdivision is located, the ARC may, in its sole and final discretion, amend or otherwise modify these Guidelines at any time in accordance the procedures set forth herein.

D. Applicability of Design Review

All plans and materials for new construction or exterior modifications of improvements on an existing home must be approved by the ARC before any related activity begins. Unless otherwise specifically stated in these Guidelines, no structure may be erected upon any property, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place without receiving the prior written approval of the reviewer in accordance with these Guidelines. If any provision of these Guidelines expressly permits an Owner to proceed without prior ARC approval, such permission shall only be effective to the extent that, and for so long as, the Owner strictly with the applicable provision.

Each Owner is responsible for ensuring strict compliance with all aspects of these Guidelines, the Declaration and all applicable laws, and each Owner must be familiar with each of the foregoing.

E. Jurisdiction

Architectural control and design review for the Subdivision shall be handled by the ARC.

**CAPE RESERVE Homeowners Association
Architectural Review Committee
Subdivision Design Guidelines**

The ARC has jurisdiction over those responsibilities delegated to it by the Declaration. Without limiting the foregoing, the ARC has jurisdiction over all architectural and landscaping matters, the review and approval of all plans and specifications impacting the Subdivision, the construction and modification of improvements and all other matters effecting the design and general aesthetics of the Subdivision. The ARC shall be the conclusive interpreter of these Guidelines, shall monitor the effectiveness of these Guidelines, and shall make decisions that are generally consistent with these Guidelines.

II. DESIGN REVIEW PROCESS

A. Review of Modifications

The review of any proposed new, or modification of existing, construction, structure, improvement, landscaping or other feature covered hereby shall require the submission of an Application for Review (an “Application”) to the reviewer. Depending on the scope of the work, the reviewer may require the submission of two (2) copies of some or all of the following:

1. Floor Plans. Showing all Decks, Patios, stoops, retaining walls related to the Principle Residence, trash enclosures, HVAC equipment and utilities, and the screening for same, interior spacing of rooms, and connections to driveways and walkways. Minimum scale of 1/4" = 1'0".
2. Elevations. Showing Front, rear, and side exterior elevations showing building materials and finishes, and indicating the maximum height of the Principle Residence.
3. Roof Plans. Showing slopes, pitches, and gables of all structures on the Lot unless

reflected in any other materials submitted to the reviewer.

4. Exterior Finishes. Showing the exterior color scheme (including samples and color chips, if requested), lighting scheme, and other details affecting the exterior appearance of the proposed work.

5. Landscaping Plans. Showing location of trees, protection of existing vegetation, use of plants, and other landscaping details of the Lot.

6. Other Information. Such other information data, and drawings as may be reasonably requested, including, without limitation, irrigation systems, drainage, lighting, satellite dish placement, landscaping and other features.

B. Review Criteria; Variances

While the Guidelines are intended to provide a framework for construction and modifications, the Guidelines are not all-inclusive. In its review process, the reviewer may consider, among other things, the quality of workmanship and design, harmony of design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation. Reviewer decisions are discretionary and will be based on purely aesthetic considerations. However, no reviewer shall grant approval for any proposed construction or modification that is inconsistent with the Guidelines, unless such reviewer grants a variance.

Variances may be granted in the reviewer’s discretion based on various circumstances (including, but not limited to, topography, natural obstructions, environmental considerations and/or the hardship of compliance). As a matter of clarification, the

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inability to obtain approval from any governmental agency, the inability to obtain any permit or the terms of any financing shall not be considered a hardship warranting a variance. The reviewer shall have the power to grant a variance from strict compliance in such circumstances, so long as the variance does not result in a material violation of the Declaration and is unlikely to cause a material devaluation of any properties within the Subdivision, each as determined in the reviewer's sole and final discretion. No variance shall be effective unless in writing and signed by the ARC committee chairperson. Any variances granted by the reviewer are made on a case by case basis and absolutely no precedent is set by what may or may not be deemed acceptable in a given instance in comparison to another.

Variances with respect to color palettes may be issued at the discretion of the reviewer and the intent is to provide a traditional and cohesive development color scheme. A variance may be granted with respect to any items that are required to match the color of the Principle Residence if, in the reviewer's sole and final discretion, allowing such different colors will create an equivalent or improved appearance.

The ARC may, in its sole discretion, choose to provide lists of "approved materials" that may be installed without requiring an Application or reviewer approval by stating the same.

C. Review Period

Each Application, and the appeal of any decision regarding an Application, shall be approved or disapproved within thirty (30) days of submission of all materials required by the reviewer. Within thirty (30) days of receipt of a complete Application, the reviewer shall respond to applicant. One (1)

set of plans shall be returned to the applicant accompanying the reviewer's decision. The other set of plans shall be retained for the ARC's records. The reviewer's decision shall be rendered in one of the following forms:

1. "Approval" – The Application is approved in its entirety as submitted.
2. "Conditional Approval" – The Application is not approved as submitted, but the reviewer's suggestions for curing objectionable features or segments are noted. The applicant must correct the plan's objectionable features or segments and, if stated in the reviewer's decision, the applicant must resubmit the Application and receive approval prior to commencing the work contemplated thereby.
3. "Disapproval" – The entire Application as submitted is rejected in total. The reviewer will provide comments as to why the Application was denied.

If the reviewer fails to issue a decision within thirty (30) days of receipt of complete Application, full "Approval" shall be deemed given; *provided, however*, that no such "Approval" occurring by operating of time shall permit anything that is inconsistent with the Declaration or the Guidelines, and a "Disapproval" shall instead be deemed to have been given to Application.

D. Appeal

Any applicant shall have the right to appeal a decision of the reviewer by resubmitting such fees, documents and other information as may be the ARC, but such appeal shall be considered only if and when the applicant has modified the work proposed under the original Application or has new information that would, in the reviewer's opinion, warrant reconsideration. If the applicant fails to

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appeal within thirty (30) days following the reviewer's decision, the reviewer's decision is final. The filing of an appeal does not extend any maximum time period for the completion of any new construction or modification.

E. Governmental Approvals

The review and approval of the work contemplated by any Application shall not be a substitute for, or be deemed to infer, compliance with all applicable laws (including, without limitation, all permitting, zoning and similar rules and requirements). EACH OWNER SHALL BE SOLELY RESPONSIBLE FOR OBTAINING ALL PERMITS AND APPROVALS REQUIRED BY ANY GOVERNMENTAL AUTHORITY, AND FOR ENSURING COMPLIANCE WITH ALL APPLICABLE LAWS, AND EACH OWNER SHALL BE SOLELY LIABLE FOR ALL COSTS AND EXPENSES ASSOCIATED WITH DOING, OR FAILING TO DO, THE SAME.

F. Implementation of Approved Plans

All work must strictly conform to the approved Application. If it is determined by the reviewer that work in progress or completed is not in compliance with these Guidelines or any approval issued by the reviewer, the reviewer shall, directly or through the Board, notify the Owner in writing of such noncompliance specifying in reasonable detail the particulars of such noncompliance and shall require such Owner to remedy the same. If the Owner fails to remedy such noncompliance or fails to commence and continue diligently toward achieving compliance within the time period stated in such written notice, then such noncompliance shall be deemed to be in violation of the Declaration and these Guidelines.

1. Time to Commence

If construction on a project for which an Application has been approved is not commenced within twelve (12) months following such approval, such approval shall be deemed withdrawn, and a new Application must be submitted and approved prior to commencing any such work.

2. Time to Complete

The reviewer shall include in any approval a maximum time period for the completion of the approved work. If no maximum time period is specified in the approval, such work shall be completed within thirty (30) days of its commencement. The applicant may, not less than three (3) days prior to the expiration of the maximum time period, make a written request for an extension of such maximum time period which the reviewer may approve or disapprove in its sole and final discretion.

If any work is not completed within the applicable time period for doing so in accordance with these Guidelines, the approval shall be deemed withdrawn, the incomplete work shall be deemed to be in violation of the Declaration and these Guidelines, and a new Application must be submitted and approved prior to completing any such work.

G. Changes After Approval

Any proposed changes to an approved Application must be submitted to, and approved in writing by, the reviewer prior to implementation.

If any governmental authority having jurisdiction requires that changes be made to the work permitted by a previously approved Application, the applicant shall notify the reviewer of such changes and receive

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approval from the reviewer prior to implementing such changes. A secondary review period of ten (10) days is allowed in this specific situation.

H. Enforcement

In the event of any violation of these Guidelines, Stone Martin Builders, LLC (the “Developer”), the CAPE RESERVE Subdivision Homeowners Association, Inc. (the “Association”), the ARC or the Board may take any action set forth in the Bylaws or the Declaration, including the levy of a specific assessment pursuant to the Declaration. The Developer, the Association, the ARC and/or the Board may remove or remedy the violation and/or seek injunctive relief requiring the removal or the remedying of the violation. In addition, the Developer, the Association, the ARC and the Board shall be entitled to recover the costs incurred in enforcing compliance and/or impose a fine against the Owner of the Lot upon which such violation exists.

III. DESIGN STANDARDS

The following design standards set forth in this Section III shall apply to all proposed and existing improvements within the Subdivision unless a variance is granted by the reviewer.

A. Architectural Standards

The exterior of each improvement within the Subdivision must be designed in a manner that is consistent, and in harmony, with the design, quality and location of surrounding improvements and natural features (including, without limitation, the topography and finish grade elevation of the Lot on which such improvement is, or will be, located). Without limiting the foregoing, the landforms, natural contours, local climate

and vegetation and the views of the Lot and any adjacent Lot(s) shall dictate the architectural style, structure and form of each improvement. The reviewer may disapprove an Application if, in the reviewer’s sole discretion, the architectural style, structure, form, roof line, massing, materials, colors or other aspect of the proposed work would be inconsistent with these standards.

B. Utility Lines

All utility lines servicing any structure or feature within the Subdivision (including, without limitation, any Principle Residence, Accessory Structure, Garage, exterior lighting or landscaping feature) must be underground.

C. Storage and Accessory Structures

No temporary or permanently installed storage building, accessory building or similar storage or accessory structure (including, but not limited to, playhouses, treehouses, and garden or tool sheds) (an “Accessory Structure”) may be constructed, installed, placed, replaced, or modified without reviewer approval. Each Accessory Structure shall satisfy the following criteria:

1. The maximum dimensions for an Accessory Structure are ten (10) feet by twelve (12) feet with a maximum 4/12 roof pitch.
2. Each Accessory Structure shall be located in the rear yard (which must be enclosed by an approved privacy Fence) of the Lot behind the Principle Residence, and may not be located (i) within an easement area, (ii) within five (5) feet of any property line (iii) in an area or manner that would unreasonably obstruct any adjacent Owner’s view.

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3. Each Accessory Structure shall be made of wood or cement board siding and shall be of a style and color, and use materials (including, without limitation, roofing materials), that compliment those of the Principle Residence. Accessory Structures made of aluminum, plastic, steel or polycarbonates are prohibited. Without limiting the foregoing, 3-tab shingles and metal roofs are prohibited.

4. The reviewer may consider the topography of the Lot and the location of the Accessory Structure when determining whether or not to grant a variance of this criteria set forth in this Section III (including, without limitation, such criteria relating to size and location).

For the avoidance of doubt, the following shall not constitute "Accessory Structures" for purposes of this Section III.C: (i) detached Garages, which shall be instead be governed by Section III.O; and (ii) play structures (e.g., playsets, playhouses, swing sets, jungle gyms and similar structures) having a maximum height of eight (8) feet or less, a maximum footprint of twenty-four (24) feet or less, and which are not, and which are not required by the manufacturer's installation instructions to be, constructed on a concrete slab, which play structures shall instead be Play Structures governed by Section III.T.

D. Additions and Expansions

No Principle Residence may be constructed, nor may any addition to, or modification or expansion of, any Principle Residence or other existing structure within the Subdivision be made without prior reviewer approval.

E. Air Conditioning Equipment

Unless a variance is granted by the reviewer, no wall or window air conditioning unit may be installed.

F. Satellite Dishes and Antennas

No approval of the ARC is required to install a satellite dish that strictly complies with the requirements set forth in the Declaration. If an applicant demonstrates that placement of a satellite dish in accordance with the Declaration unreasonably interferes with reception, the review shall authorize the placement of such satellite dish in an alternative location. No approval of the ARC is required to install television antennas if (i) installed on the rear pitch of the roof of the Principle Residence and (ii) such antenna is not visible from the street.

No other exterior television, radio, satellite or communication dish or equipment may be located outside of any structure within the Subdivision without prior reviewer approval.

G. Awnings and Overhangs

No awning or overhang may be constructed, installed, placed, replaced, or modified without prior reviewer approval. Any such awning or overhang must be designed to be, and must use colors and materials that are, complementary to the Principle Residence; *provided, however*, that metal awnings are prohibited.

H. Birdhouses, Baths & Feeders

No birdhouses, birdbaths, birdfeeders or any similar features ("Bird Features") or structures may be constructed, installed, placed, replaced, or modified without prior reviewer approval.

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I. Woodpiles and Storage of Fuel

Firewood may only be stored outside if neatly piled in the rear yard of the Lot behind the Principle Residence and must be screened by adequate planting and/or Fencing approved by the ARC so as to be reasonably concealed from view from neighboring Lots, streets and Common Areas. Notwithstanding the foregoing, piles of lumber, metal or bulk materials are prohibited. No above-ground or below-ground tank for the storage of fuel, water or any other substance may be located within the Subdivision.

J. Compost

Unless otherwise prohibited or required by applicable law, composting and compost piles are prohibited within the Subdivision.

K. Decks, Porches Balconies

No deck, porch or balcony ("Decks") may be constructed, installed, placed, replaced, or modified without prior reviewer approval. Decks must be designed and constructed using styles, materials and colors complementary to the Principle Residence. All wooden Decks shall be subject to the Wood Stain Requirements.

Decks must be installed as an integral part of the Principle Residence or Patio area. Decks that unreasonably obstruct or diminish the view or quiet enjoyment of adjacent Owners are prohibited. The construction or installation of a Deck within or over any easement area is prohibited.

Porch swings shall be allowed on Decks, but must be constructed from wood and shall only be placed in areas where the porch swing can be ceiling mounted. No metal swings or hammocks shall be allowed.

L. Pet Runs and Houses

No structure for the care, housing, exercise or confinement of any animal (including, without limitation, any rabbit hut, poultry house, barn, stable, tether, pet run or trolley system) ("Pet Features") may be constructed, placed, installed or modified without prior reviewer approval. All Pet Features must be located in the rear yard (which must be enclosed by an approved privacy Fence) of the Lot behind the Principle Residence.

M. Exterior Lighting

No exterior lighting or related fixtures may be placed or installed outdoors without prior reviewer approval; *provided, however*, that exterior seasonal holiday lighting is permitted during the period beginning on Thanksgiving and ending on January 15 of the immediately following year without prior reviewer approval unless, in the sole discretion of the ARC, such holiday lighting is likely to create traffic congestion, be a nuisance or otherwise interfere with the view and private enjoyment of adjacent Owners. In reviewing any Application involving exterior lighting, the reviewer may take into consideration the visibility and style of such lighting and related fixtures, its location in relation to the Principle Residence of the Owner and each adjacent Owner and the brightness and colors of such lighting. Exterior lights shall be conservative in design and must not exceed the minimum size and brightness necessary for the intended purpose of such lighting. Without limiting the foregoing, all exterior lighting shall be directed towards the Owner's Principle Residence or the ground and shall not exceed 2,000 lumens. Low voltage (e.g., 12 volt) and energy efficient lighting is preferred. Solar lights of any kind are not permitted.

N. Flagpoles

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Stand-alone flagpoles are prohibited. American flags, decorative flags and seasonal flags not exceeding three (3) feet by five (5) feet in size are permitted without reviewer approval, but only if flown below the roof line of the Principle Residence on a removal pole not to exceed five (5) feet in length and attached to a bracket installed on the Principle Residence. Decorative and seasonal flags may only be flown during the week of the holiday or event to which such flag pertains, and only the American flag may be flown year-round. For clarification, flags representing sports teams are prohibited.

O. Garages

The construction or modification of any attached or detached garage or related structure (a “Garage”) is prohibited without prior reviewer approval. Unless a variance is granted by the reviewer, carports and similar unenclosed parking structures are prohibited. Each Garage shall satisfy the following criteria:

1. Each Garage shall be installed on a concrete slab and shall be of a design, style and color, and use materials (including, without limitation, doors, windows, exterior wall materials and roofing materials), that compliment those of the Principle Residence of the Owner and those of surrounding Owners. Without limiting the foregoing, 3-tab shingles and metal roofs are prohibited.
2. Unless approved by a reviewer, no Garage shall (i) exceed the maximum height and roof pitch of the Principle Residence, (ii) be enclosed, (iii) contain, be converted into or otherwise utilized as a living or sleeping area, or (iv) be otherwise converted or utilized in any manner that prevents such Garage from providing off-street parking for a minimum of two (2) motor vehicles.

3. Each Garage shall have closing doors which must not be removed, and which must remain closed except for when vehicles are actively entering and/or exiting the Garage or for reasonable amounts of time to provide for necessary or customary chores while such chores are being actively performed.

P. Gazebos and Greenhouses

No gazebo, greenhouse or similar exterior structure may be constructed, placed, installed or modified without prior reviewer approval. Any such gazebo, greenhouse or similar exterior structure must be an integral part of an approved landscaping plan and must not materially obstruct any adjacent Owner’s view. No metal gazebos or roofs are allowed.

Q. Hot Tubs and Saunas

No outdoor hot tub, Jacuzzi, sauna or spa may be constructed, installed, placed, replaced, or modified without prior reviewer approval. Any such hot tub, Jacuzzi, sauna or spa shall be located in the rear yard (which must be enclosed by an approved privacy Fence) of the Lot behind the Principle Residence, and shall be an integral part of the Deck or Patio area and the rear yard landscaping, as applicable.

R. Latticework

No latticework or a garden trellis may be constructed, placed, installed or modified without prior reviewer approval as part of an approved landscaping plan.

S. Patios Covers or Pavilions

No open or enclosed patio, patio cover, pavilion or similar outdoor feature (each a “Patio”) may be constructed, placed, installed or modified without prior reviewer approval.

Each Patio shall be of a style and color, and shall use materials, that compliment those of the Principle Residence.

T. Children's Play Structures

No children's play structures (e.g., playsets, playhouses, swing sets, jungle gyms and similar structures) other than an Accessory Structure ("Play Structures") that is visible from any street within the Subdivision may be constructed, placed, installed or modified without prior reviewer approval. Play Structures that are consistent with the Declaration and these Guidelines and which are not visible from any street within the Subdivision may be constructed, installed, placed, replaced, or modified without prior reviewer approval.

For clarification, any children's play structure having (i) a maximum height of greater than eight (8) feet, (ii) a maximum footprint greater than twenty-four (24) square feet, or (iii) which is, or which is required by the manufacturer's installation instructions to be, constructed on a concrete slab, shall not constitute a Play Structure for purposes of this Section and shall instead be an Accessory Structure governed by Section III.C.

Play Structures must be constructed primarily from wood (provided that slides, swings, and other minor components that are customarily constructed of metal and/or plastic are permitted) and must comply with the Wood Stain Requirements set forth herein. Unless a variance is granted by a reviewer, Play Structures constructed primarily of plastic and/or metal are prohibited.

Unless otherwise approved by a reviewer, all Play Structures must be located (i) in the rear yard (which must be enclosed by an approved privacy Fence) of the Lot behind the Principle Residence and (ii) inside the

boundary of each side of the Principle Residence and within twenty (20) feet from the rear of the Principle Residence.

Due to the numerous styles and variables related to Play Structures, the ARC has broad discretion to approve or disapprove a proposed Play Structure with or without cause.

U. Trampolines

Trampolines having a diameter of not more than fifteen (15) feet and which are not visible from any street within the Subdivision may be placed in the rear yard (which must be enclosed by an approved privacy Fence) of the Lot behind the Principle Residence without ARC approval.

V. Pools

No swimming pool, wading pool, lap pool, "swim spa" or similar water feature ("Pools") may be constructed, placed, installed or modified without prior reviewer approval.

Pools must be placed in the rear yard (which must be enclosed by an approved privacy Fence) of the Lot behind the Principle Residence and shall be harmonious with, and an integral part of, any Deck, Patio, rear yard area and overall landscaping of the Lot.

Pools that unreasonably obstruct or diminish the view or quiet enjoyment of adjacent Owners are prohibited. Above ground Pools are prohibited.

W. Basketball Goals

No permanent basketball goals (including, without limitation, in-ground basketball goals as well as basketball goals or boards attached to the Principle Residence or any other structure on the Lot) may be

constructed, installed, placed, replaced, or modified unless a variance is granted.

Portable basketball goals may be placed and used within the Subdivision without prior reviewer approval; *provided, however*, that any such portable basketball goal (i) may not at any time be placed in the area between the street and the portion of the Lot running horizontal with the front of the Principle Residence and (ii) is stored in a location that is reasonably inconspicuous while not in use.

X. Roofing

Roof lines, roof gables, roof forms and other major roof structures should be varied to avoid a continuous, single level elevation along the street. Main roof forms should generally have a minimum 8/12 pitch and must be complementary to the overall structure of the Principle Residence and the Lot. In no event shall the pitch of any roof in the Subdivision exceed 14/12 unless a variance is granted. If approved by the reviewer, dormers may exhibit arched, gabled, mansard, or hipped forms.

Roof pitches for accent areas and other non-major roof structures (including, without limitation, porches and stoops) will be reviewed by the ARC on a case-by-case basis; *provided, however*, that a minimum 4/12 pitch shall be required in all instances unless a variance is granted.

Without limiting the foregoing, 3-tab shingles and metal roofs are prohibited

Y. Rooftop Features

No equipment or accessories (including, without limitation, solar equipment and collectors) may be constructed, placed or installed on, or affixed to, any rooftop ("Rooftop Features"), and no such Rooftop

Features may be modified, without prior reviewer approval. Notwithstanding the foregoing, Rooftop Features consisting solely of gutters, gutter guards, flashing and related equipment and accessories may be placed on, or affixed to, rooftops without prior reviewer approval provided that all exposed flashing and surfaces must match, or are painted to match, the approved colors of the Personal Residence or such other approved structure on which they are placed on or affixed to.

Except as otherwise expressly permitted or required by this Declaration, each Rooftop Structure should be of a color that matches or complements the color(s) of the rooftop on which it will be placed or the Personal Residence or other approved structure on which it will be placed.

Solar panels and collectors (i) must be installed so that they shall not be visible from any street, (ii) should have the general appearance of a skylight, and (iii) may require additional landscaping and/or buffering prior to receiving approval.

Z. Siding

No siding may be installed, modified or replaced without reviewer approval; *provided, however*, that existing approved siding may be replaced and maintained using the same approved styles, colors and materials as the existing siding without reviewer approval. For the avoidance of doubt, changing the design, color and/or material of any existing siding is prohibited without prior reviewer approval.

Each Owner shall regularly inspect and maintain all siding and shall repair and repaint the same as necessary and appropriate using the same approved styles, colors and materials as the existing siding.

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The ARC shall have the express right, but not the obligation, to levy special assessments on any Owner that fails to satisfy its maintenance requirements set forth in these Guidelines or the Declaration.

AA. Signs and Advertising Prohibited

No sign or other advertising device of any nature may be constructed, installed, placed or modified anywhere within the Subdivision without prior reviewer approval; except that one (1) temporary "For Sale" or commercial real estate sign having a maximum face surface area of not more than eighteen (18) inches by twenty-four (24) inches may be displayed on a Lot without prior reviewer approval while such Lot, and any improvements thereon, are actively listed, or under contract, for sale.

Any Application involving the display of any sign shall specify the color, location, nature, message, size and other characteristics of the proposed sign. "For Rent," "For Lease," "Beware of Animal" and similar signs are prohibited.

Unless a variance is granted, in no event (i) will the display of more than one (1) job or company identification sign be permitted during the pendency of any approved work or otherwise and (ii) may any sign having a face area greater than six (6) square feet be displayed within the Subdivision.

The reviewer shall have the right, but not the obligation, to disapprove any sign that such reviewer determines, in its sole discretion, to be offensive, obscene, objectionable or otherwise inconsistent with the aesthetics or values of the Subdivision.

BB. Statues

Statues, pedestals, stands and similar yard features (but specifically excluding Bird Features) no taller than five (5) feet may be placed in the rear yard of the Lot behind the Principle Residence in a manner that is not visible from any street within the Subdivision without prior reviewer approval.

No other statues, pedestals, stands or similar yard features may be constructed, installed, placed, replaced, or modified without prior reviewer approval.

CC. Trash Containers

No refuse or trash may be kept, accumulated, or otherwise stored except in designated sanitary containers specifically designed for the storage and disposal thereof between scheduled pick-ups. Such sanitary containers may be placed in the open on any day that a pick-up is scheduled to be made, at such place on the Lot as to provide reasonable access to the party making such scheduled pick-up. At all other times, such sanitary containers shall be stored in such manner so as to not be visible from any street adjacent Lot.

DD. Mailboxes

All mailboxes shall be of a common design selected for the Subdivision and approved and/or provided by the ARC or Developer.

**IV. LANDSCAPING AND SITE
STANDARDS FOR LOTS**

Landscaping is an essential element of the Subdivision's design. Preservation of existing vegetation, and introduction of plants native to the Subdivision's location, must be considered in establishing the landscape design. No changes or modifications to any existing landscaping plans or designs, including any natural

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features, may be made without reviewer approval.

A. Drainage

No changes or modifications may be made the drainage or grading of any Lot without prior reviewer approval. The drainage and grading of each Lot must conform to all applicable laws and requirements.

No changes or modifications to any existing drainage or grading will be permitted if the review, in its discretion, determines that permitting such changes or modifications would be likely to interfere with the established drainage pattern of any other Property within the Subdivision. Owners should use reasonable efforts work with the natural contours of the Lot and seek solutions that minimize the impact of grading with respect to major alterations of existing grades.

For purposes hereof, the “established drainage pattern” shall mean, with respect to the Property, the drainage pattern engineered and constructed by, or on the behalf of, the Developer prior to, or immediately following, the conveyance of the applicable Property to initial Owner, as the same may be modified by any changes or modifications approved by the ARC in accordance with these Guidelines.

Notwithstanding the foregoing, Owners may make minor drainage modifications to their Lot without prior reviewer approval if, and only if, such changes does not (i) materially alter the established drainage pattern of such Lot and (ii) does not in any way alter the established drainage pattern of any other Property within the Subdivision.

Landscape plans shall conform to the established drainage pattern of the

Subdivision, and (i) shall not cause water to drain towards the foundation of any Principle Residence, (ii) shall prevent water from flowing under or ponding near or against the foundation of any Principle Residence and (iii) shall not obstruct water from flowing fully over walkways, sidewalks or driveways into the street.

If applicable, sump pump drainage should be vented a reasonable distance from each property line to reasonably allow for absorption.

The reviewer may, but shall not be required to, require a report from a drainage engineer as part of Application involving any changes or modifications to the landscaping, drainage, grading or established water pattern of any Property within the Subdivision.

B. Retaining Walls

No retaining wall or any other features primarily designed to retain or otherwise support soil laterally (a “Retaining Wall”) may be constructed without prior reviewer approval.

All Retaining Walls must be constructed in a manner designed to withstand overturning forces and shall incorporate weep holes (or equivalent features) to permit the release of water trapped behind the Retaining Wall. Except as approved by a reviewer in order to address erosion or other drainage concerns, Retaining Walls must be located so not to alter any existing drainage patterns.

Timbers and any other Wooden Surfaces of a Retaining Wall shall be subject to the Wood Stain Requirements.

C. Fences and Certain Walls

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No fence or similar exterior barrier or enclosure (a "Fence"), wall or gate of any kind may be constructed, installed, placed, replaced, replaced, or modified without prior reviewer approval. All Fences shall conform to the guidelines attached hereto as Exhibit A.

Unless a waiver is granted, all approved wooden Fences must be installed so that the finished side of such Fence faces outward from the Owner's Principle Residence and so that the side of such Fence containing support rails and other support structures faces the Owner's Principle Residence and in no event may any support rails or other support structures of the Fence temporarily or permanently face away from the Owner's Principle Residence.

Except as otherwise expressly provided in Section IV.C.5 with respect to Corner Lots, no Fence is permitted to be constructed in a manner that extends beyond the installing Owner's property lines, and each Fence must be constructed in a manner that reasonably facilitates the tying into such Fence by adjoining Owners.

In all areas of the Subdivision (other than with respect to any Lots containing garden homes, if any), Fences must tie into the exterior side walls of the rear one-third (1/3) of the Principle Residence (as calculated using the entire length of house, not each side individually); *provided, however*, that the reviewer may optionally require for Fences to tie into the rear corners of the Principle Residence which is the ARC's preferred approach.

1. Approved Materials.

Unless otherwise approved by the reviewer, all Fences must be constructed using dog-eared boards comprised of pressure-treated

pine or cedar wood having dimensions of not less than 5/8 in. x 5-1/2 in. x 6 ft. nor greater than 1 in. x 6 in. x 6 ft. per board and shall be subject to the Wood Stain Requirements.

Each reviewer has the right, but not the obligation, to approve wrought-iron or power-coated aluminum fencing and/or gates on a case-by-case basis, as determined in such reviewer's sole discretion.

2. Reviewer's Authority.

The ARC shall have the right, but not the obligation, to create, revise and/or eliminate from time-to-time a list of pre-approved Fence designs, styles and materials that the ARC may permit to be constructed without reviewer approval.

3. Maintenance of Fences and Barriers.

All Fences, exterior walls, and gates of any kind shall be designed and constructed in a manner that is consistent with the Subdivision's community-wide standards and shall be maintained by each Owner in good repair and consistent with industry standards and in keeping with the designs, colors and other design aspects that were initially approved and applied thereto.

In the event that any Fence, exterior wall or gate of any kind is damaged or destroyed, the Owner of the applicable Lot shall repair, replace or otherwise restore the same to its original condition at such Owner's sole cost and expense.

4. Wood Stain Requirements.

Unless a variance is granted, the requirements of this Section (the "Wood Stain Requirements") shall apply to all unpainted, exterior wooden structures and surfaces (including, without limitation, any

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such Fences, gates, Play Structures, and other exterior walls and surfaces other than the four (4) exterior walls of the Principle Residence) visible from any street within the Subdivision (each, a "Wooden Surface").

Within thirty (30) days following the construction, placement or installation of any Wooden Surface, the Owner shall, at such Owner's sole cost and expense, cause the entirety of such Wooden Surface to be uniformly and completely stained using "Maximum Semi-Transparent Exterior Stain and Sealant in One" in "Stone Martin Canyon Brown" color, or using such other stain or other color approved by the reviewer.

Each Owner shall regularly inspect, maintain and reapply the same type and color of stain to all Wooden Surfaces on an as-needed basis in order to prevent the stain on such Wooden Surface from changing or visibly fading, and to generally keep the appearance of such Wooden Surface consistent with its initial appearance.

The ARC shall have the express right, but not the obligation, to levy special assessments on any Owner that fails to satisfy its maintenance requirements set forth in these Guidelines or the Declaration.

5. Corner Lot Fencing

Lots located on a corner where any two (2) or more streets intersect (a "Corner Lot") have unique configurations that impact, among other things, the locations where Fences may be placed. Accordingly, some Fences located on a Corner Lots may not be able to extend to the property line on any side of such Lot that abuts a street. It is preferable that the Fence be located within the side setback for any side of the Lot that abuts the street. Except as set forth herein, all other provisions of this

Declaration concerning Fences shall be applicable to any Fence on a Corner Lot.

D. Driveways; Paving

No driveway may be constructed, installed, resurfaced, expanded, widened, shortened, redirected or otherwise modified without prior reviewer approval.

No driveway, walkway, Deck, Patio or other portion of any Lot may be paved or otherwise surfaced or resurfaced with any concern or stone-based material or aggregate (including, without limitation, concrete, asphalt, brick, flagstone, stepping stones or pre-cast patterned or exposed aggregate concrete pavers) without prior reviewer approval.

E. Other Landscaping and Planting

No additional landscaping or planting may take place without prior reviewer approval.

Without limiting the foregoing, reviewer approval shall be required prior installing or removing all, or substantially all, of any tree, shrub, grass, bush, hedge, hardscape, landscape bed, flower bed or similar natural or landscaped feature on any Lot. Unless a variance is granted, turf removal is prohibited within the Subdivision and any plant beds or landscaping beds removed the Lot shall be promptly replaced with sod.

The ARC encourages the preservation of existing vegetation, and the introduction of plants native or common to the Subdivision's location. The introduction of any exotic and/or invasive species is strictly prohibited.

F. Party Walls and Party Fences

Each wall, Fence, or portion of any wall or Fence (whether or not complete and/or tied into by any Owner) built as part of the

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original construction of the Subdivision, or which is subsequently constructed by the Developer or adjacent Owners, which separates any two (2) or more adjoining Principle Residences or which otherwise bounds any property line(s) shall constitute a "party wall" or "party fence" and, unless otherwise required or prohibited by applicable law, the following provisions shall apply thereto:

1. All party walls and party fences installed by Developer immediately become the property of the applicable Owner(s) of the Lot(s) bounded thereby, as soon as the applicable Owner(s) take legal possession of such Lot(s).
2. The cost of reasonable repair and maintenance of a party wall or party fence shall be shared, *pro rata*, by each Owner, if any, who shares a property line (other than the sharing of only a corner of a property line) with such wall or Fence.
3. In the event of any dispute arising concerning a party wall or party fence or under the provisions of this Section, such Owners shall negotiate in good faith to resolve such dispute. If the Owners are unable to amicably resolve such dispute themselves, then the dispute shall be submitted to binding arbitration and each impacted Owner party shall appoint one (1) arbitrator. Should any impacted Owner refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator on such Owner's behalf. If the total number of total number of arbitrators appointed is an even number, then the Board shall appoint one (1) final arbitrator so as to have an odd number of votes. The Owners shall then submit their dispute to the arbitrators so selected for decision, and the majority

decision of such arbitrators shall be final and binding on the parties in all respects. Each Owner agrees that the provisions of this Section are in lieu of any rights to litigate such dispute, and each Owner expressly waives its right to any such litigation (*provided*, that the Owners may submit a decision made by such arbitrators to a court of competent jurisdiction for enforcement).

V. CONSTRUCTION GUIDELINES

A. Inspections

The applicant shall schedule and coordinate a review of all construction activities with the reviewer to verify compliance with any approved Application. The reviewer may also perform additional periodic informal inspections to ensure that work is being performed in compliance with the approved Application, the Declaration and these Guidelines. All inspections are for observational purposes only and will not relieve any Owner from any obligations under an approved Application, these Guidelines, the Declaration, the Bylaws or any applicable law.

B. Construction Damages

Any damage any Common Area, landscaping or vegetation, or any other Owner's Principle Residence or other property shall be the sole and exclusive liability of the Owner on whose behalf such work was being performed.

The Association, the Board, the ARC and/or the Developer may levy a special assessment against the responsible Owner for any such damages, and for the costs of repairing any such damages, if the responsible Owner does not promptly repair or remediate such damage upon receiving written notice thereof.

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C. Conduct

Each Owner is responsible and liable for ensuring that its agents, contractors, subcontractors and all others performing work for, or on the behalf of, control the conduct of their employees while working in the Subdivision and that all such parties comply with all applicable laws and rules (including, without limitation, any rule set forth in these Guidelines, the Declaration or the Bylaws). Without limiting the foregoing, loud music, profanity, rude or obscene behavior, and any other unprofessional activity or conduct is strictly prohibited and will not be tolerated. Any person violating this policy may be asked to leave the Subdivision and may be denied access to return at the Board's discretion.

D. Site Cleanliness

All worksites must be maintained in a clean and orderly manner at all times, and all materials must be neatly and orderly stored in an inconspicuous location within the worksite. All construction debris must be cleared at the end of each working day.

**VI. CHANGES AND AMENDMENTS
TO THESE GUIDELINES**

1. The Developer may unilaterally modify or amend these Guidelines in its sole discretion without the consent of any other person or entity (including, without limitation, the ARC, the Board, and/or the members of the Association). Except as set forth in the preceding sentence, these Guidelines may otherwise only be amended approved by the written approval of (i) two-thirds (2/3) or more of the members of the Association and (ii) the Developer.

2. Any modification or amendment to these Guidelines shall be made in writing and may be requested from the ARC.

3. In no way shall any amendment to these Guidelines change, modify, or amend any provision of the Declaration or the Bylaws, as each of the same may be modified or amended from time to time.