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John W. Monroe, Jr.
Emmanuel, Sheppard & Condon
30 S. Spring Street
Pensacola, FL 32502

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ID # 2012701
County: Baldwin
Date: 7/18/22 Time: 10:15 AM

**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND ASSESSMENTS
FOR
HERITAGE LANDING**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, AND ASSESSMENTS ("Declaration") is made on this 18th day of July, 2022, by Garden Street Communities Southeast, LLC, f/k/a Esplanade Communities of Florida, LLC ("Declarant"), and its successors, assigns, and designees:

WHEREAS, Declarant is the sole owner and developer of the Property, which is more specifically described on Exhibit "A";

WHEREAS, Declarant desires this Declaration, the Certificate of Formation, and the Bylaws to be filed in order to protect and maintain the integrity of the design and security of the HOA and its Members' investments;

WHEREAS, Declarant intends to subdivide the Property into a subdivision named **HERITAGE LANDING**; and

WHEREAS, Declarant has caused the incorporation of **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation for purposes of enforcing this Declaration and exercising the functions described herein.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to this Declaration, as well as the Certificate of Formation and Bylaws, and shall be appurtenant to and running with the land, and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the real property set forth above or any part thereof or part added hereto, and their respective heirs, successors, and assigns, as their respective interests may appear.

ARTICLE I DEFINITIONS

The following words when used in this Declaration or any supplemental declaration shall have the following meaning:

"Architectural Review Committee" or "ARC" shall mean and refer to the body also known as **HERITAGE LANDING ARCHITECTURAL REVIEW COMMITTEE**.

"Area of Common Responsibility" shall mean and refer to the Common Area together with those areas and improvements, if any, upon a Lot; the maintenance, repair or replacement of which is the responsibility of the Association. All Common Area, together with easements over Lots and any leased property, shall be Areas of Common Responsibility, provided, however, that the Association shall not be responsible for planting or maintaining grass or shrubs within any easement which crosses a Lot.

"Assessment" shall mean a sum or sums of money payable to the Association, or other Common Area, or to recreational facilities and other properties serving the parcels by the Owners of one (1) or more Lots as authorized in the governing documents, which if not paid by the Owner of a Lot, can result in a lien against said Lot.

"Association" or "HOA" shall mean **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation.

"Association Documents" shall mean, collectively, this Declaration and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto, the Certificate of Formation and any duly adopted amendments, the Bylaws and any duly adopted amendments, and the rules and regulations adopted under the authority of this Declaration, the Certificate of Formation, or the Bylaws.

"Board of Directors" or "Board" shall mean the appointed or elected governing body of the Association, as applicable, having its normal meaning under applicable law; and the Board will have such duties as provided in this Declaration, the Certificate of Formation and the Alabama Nonprofit Corporation Act.

"Builder" shall mean **ADAMS HOMES, L.L.C.**, an Alabama limited liability company, and its successors and assigns. Builder shall have the right to assign any and/or all of its interest as Builder in whole or in part on an exclusive or non-exclusive basis. Such assignment shall be in writing and recorded in the official records of the County in which the Property is located and shall state the specific right or interest being assigned. Builder shall not take or assume any obligations, responsibilities, and/or liabilities related to the actual development of the Subdivision unless Builder specifically accepts such obligations, responsibilities, and/or liabilities in an instrument signed by the Builder and Declarant and recorded in Baldwin County, Alabama, public registry.

"Bylaws" shall refer to the code adopted by the Association for regulating and managing the affairs of the Association, attached to this Declaration as Exhibit "B" and made a part of this Declaration, as amended.

"City" shall mean the City of Foley, Alabama.

"Certificate of Formation" shall mean the document filed with the Alabama Secretary of State, which incorporates the Association under the laws of Alabama and is attached to this Declaration as Exhibit "C" and made a part of this Declaration, as amended. Any reference to "Articles" or "Articles of Incorporation" shall be deemed to refer to the Certificate of Formation.

"Common Area" shall mean all real and personal property, and interests therein, now or hereafter owned by the Association for the common use and enjoyment of the Owners and all areas within the Subdivision, which are or have been dedicated or deeded to the Association or as designated on Plat as Common Area. Specifically included as Common Area are (a) all signage, street lights, lighting, walkways, paths, bicycle and jogging paths or lanes, if any, improvements, landscaped or other areas of common use; (b) storm drains and sewers, stormwater detention ponds, drainage and/or watershed protection areas located within the Subdivision (other than such areas located solely within the boundary lines of any Lot); (c) all utility lines, pipes, ducts, conduits, equipment, machinery, and other apparatus and appurtenances, which are located in or serve any portion of the Common Areas on more than one (1) Lot; and (d) all easements and easement areas within the Subdivision (other than such areas located solely within the boundary lines of any Lot), and any other areas or improvements on or within the Subdivision, which are designated as Common Area by Declarant or the Board from time to time. The designation of any land and/or improvements as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment thereof or any other rights, licenses or benefits therein.

"Common Expenses" shall mean the expenses incurred by or financial liabilities of the Association, together with any allocations to reserves, if applicable, for the common benefit of Members.

"Community" shall mean the real property that is or will be subject to a declaration of covenants, which is recorded in the county where the Property is located. The term "Community" includes all real property, including undeveloped phases (if applicable) together with any approved modification thereto.

"Conservation Area" shall be those indicated on the recorded Plat should any exist.

"County" shall mean and refer to Baldwin County, Alabama.

"Declarant" shall mean **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC, and its successors and assigns. The Declarant specifically reserves the right to assign any and/or all of its interest as Declarant in whole or in part on an exclusive or non-exclusive basis. Such assignment shall be in

writing and recorded in the official records of the County in which the Property is located and shall state the specific right or interest being assigned.

“Design Guidelines” shall mean those ARC Rules and Guidelines if and when published by the ARC as same may adopted and/or amended by ARC from time to time.

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

“HERITAGE LANDING” Subdivision shall mean and refer to all existing properties and additions thereto, which are subject to this Declaration and any supplemental declaration under the provisions hereof.

“Lot” shall mean and include each parcel of land duly recorded and identified by the Plat of the Subdivision intended or designed for the construction thereon of a private single-family residential dwelling unit. Lot shall additionally mean and include each parcel of land described by metes and bounds intended or designed for the construction of private single-family residential dwelling units. Lot shall not include areas of future development for which a subdivision plat has not been recorded.

“Member(s)” or “Membership” shall mean Owner, Declarant(s), and/or Builder(s) of any class who holds ownership in the Association.

“Officer” shall mean a natural person appointed or elected by the Association’s Board of Directors.

“Owner” shall mean and refer to the record Owner, whether one (1) or more persons or entities, of the fee simple title or beneficial use of any Lot situated within the Subdivision but shall not include mortgagees unless the mortgagee has acquired title by foreclosure or deed in lieu of foreclosure.

“Plat(s)” shall mean a recorded subdivision map or plat of the Property, or any part thereof, recorded in the public records of the County in which the Property is located, made subject to the terms hereof. Plats for future phases, if any, for lands annexed to the control of this Declaration shall be as referenced in the recorded annexation document for such future phase.

“Property” shall mean all of the real property described on Exhibit “A,” and any such additional property as may be added by annexation subject to the terms hereof.

“Recorded” shall mean filed for record in the public records of the County in which the Property is located, or such other place as from time to time is designated by law for providing constructive notice of matters affecting title of the Property in the County in which the Property is located.

"Rules" shall mean the rules and regulations promulgated from time to time by the Board in accordance with the Association Documents.

"Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quality and quantity of discharges from the system, as permitted pursuant to applicable law, as amended.

"Structure" shall mean anything or object; the placement of which upon any Lot may affect the appearance of such Lot, including, by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, playhouse, treehouse, swimming pool, fence, recreational equipment, curbing, paving, wall, sign, signboard, onsite sanitary system, dock, gazebo, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot, and any excavation, grading, fill, ditch, diversion, dam, or other thing or device that affects or alters the flow of any waters from, upon or across any Lot.

"Subdivision" shall mean all Property within the areas shown on the Plat(s) of **HERITAGE LANDING**.

ARTICLE II PROPERTY OWNER'S RIGHTS

2.1 General Rights. Each Owner shall have all rights and title of a fee simple owner of real property with respect to any Lot owned and may exercise full proprietary interest therein, subject only to the covenants contained in this Declaration and to any other conditions voluntarily contracted. All easements, reciprocal easement agreements, amendments and supplements to the Declaration, as well as provisions of the Certificate of Formation and Bylaws, shall be construed to be "other conditions voluntarily contracted".

2.2 Common Area Rights. Upon Declarant conveying such Common Area, made up of real and/or personal property, to the Association, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot; provided however, no Owner shall do any act that interferes with the use and enjoyment of the Common Area by all other Owners, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for the use of any recreation facility situated upon the Common Area and to impose reasonable limits upon the number of guests who may use these facilities, hours of use, and any additional

restrictions or limitations of use that may be contained in the Rules adopted by the Association.

(b) The right of the Association to suspend the right to the use of the Common Area by an Owner for any period during which any Assessment against his or her Lot remains unpaid, and for a period not to exceed sixty (60) days for any other infraction of the Association Documents or the Rules, provided that such suspension shall not interfere with such Owner's access to such Owner's Lot.

(c) The right of the Declarant and the Association to grant easements in and to the Common Area for utility services, including cable television, rights in favor of adjacent property Owners, when needed to grant ingress, egress and maintenance easements for access to commonly used or other improvements used by the Owner(s) of said adjacent property or otherwise, and other public uses that benefit the Subdivision as a whole.

(d) The right of the Association to borrow money for the purpose of improving the Common Area or acquiring additional Common Area property; provided, however, the Common Area cannot be mortgaged without the consent of the Owners entitled to cast two-thirds (2/3) of the total votes present and voting, in person or by proxy, at a duly called meeting at which a quorum is present.

(e) The rights of the Association to dedicate, transfer and convey all or any part of its right, title and interest in the Common Area to any public agency, authority, or utility or, subject to such conditions as may be agreed to by the Owners, to any other person for such purposes; provided however, the Common Area cannot be conveyed without the consent of the Owners entitled to cast two-thirds (2/3) of the total votes present and voting, in person or by proxy, at a duly called meeting at which a quorum is present.

(f) Access afforded to police, fire and other public and emergency vehicles.

2.3 Access. Each Owner shall have the right to ingress and egress over and across the Common Area and private rights-of-way, if any, as necessary for access to the Owner's Lot and shall have the right to lateral support for the Owner's Lot.

2.4 Guests and Invitees. Each Owner, subject to the restrictions of the Association Bylaws, may delegate the Owner's right to use and enjoy the Common Area facilities to family members, tenants, social and business invitees, subject to Rules promulgated by the Association.

2.5 Limitation upon Use of Common Area. No Owner may plant, garden or erect or maintain fences, hedges, walls, Structures or other improvements upon the Common Area except those improvements installed by the Declarant in connection with the development of the Property or as approved by the ARC. The Association's Board or Officers may establish reasonable rules

and regulations concerning the use of the Common Area facilities. These regulations shall be binding upon each Owner and the Association may impose reasonable monetary fines and other sanctions for violation of the Rules.

2.6 Existing Property. The real property, which is and shall be held, conveyed and occupied subject to this Declaration, is located in Baldwin County, Alabama, and is more particularly described in Exhibit "A," attached hereto and made a part hereof, and incorporated by reference.

ARTICLE III PROPERTY OWNERS' ASSOCIATION

3.1 Ownership. It shall be mandatory that any Owner shall be a Member of the Association and entitled to the beneficial enjoyment thereof. Ownership of the Lot shall be sole qualification for Membership in the Association, and Membership shall not run to persons who hold an interest in a Lot merely as security for performance of an obligation. When any Lot is owned of record in joint or multiple tenancy, the multiple Owners shall designate, by written notice to the Association, a representative to be the Owner/Member entitled to vote. If no representative is designated by the Owners, the Board may select one (1) of the Owners of record or person exercising beneficial use of the Lot to be the representative for the Lot until one (1) is designated by the Owners, unless the Owners of the Lot cannot agree; in which case, no vote may be cast for that Lot until selected by the Owners.

3.2 Voting. The Association shall have two (2) classes of Membership, Class "A" Members and Class "B" Members, if any, as follows:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of Class "B" Members, if any. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for ownership by Section 3.1 hereof; there shall be only one (1) vote per Lot;

(b) Class "B". Class "B" Members shall be the Declarant and Builder as well as any successor of Declarant or Builder, who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class "B" Member shall be entitled to ten (10) votes per Lot owned; provided however, the Class "B" Membership shall cease and convert to Class "A" Membership on the happening of any of the following events, whichever shall first occur:

- i. Three (3) months after ninety percent (90%) of the Lots in the Community, including all additions pursuant to Section 8.10 herein, that will ultimately be operated by the Association have been conveyed to Class "A" Members; or

- ii. Declarant, in its sole and absolute discretion, elects to terminate its Class "B" Membership by written notice of such election delivered to the Association (whereupon the Class "A" Members shall be obligated to elect the Board and assume control of the Association).

Notwithstanding that there shall be two (2) classes of voting Membership in the Association, voting shall be based upon the votes cast by the Membership as a whole, not on votes cast by or within each class of voting Membership.

From and after the happening of these events, whichever occurs earlier, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each residential Lot in which it holds the interest required for ownership under Section 3.1. hereof. At such time, the Declarant shall call a meeting, as provided in the Bylaws for special meetings, to advise the Membership of the termination of Class "B" status and conduct a turn-over meeting. Declarant's failure to conduct such meeting shall not affect or nullify Declarant's termination of any of its rights or obligations. So long as Declarant has one (1) Lot in the Subdivision, Declarant shall have the right to appoint one (1) Owner to the Board of Directors.

- (c) Owners may vote by proxy, but only on subject matter previously noticed to the ownership as an agenda item.

3.3 **Powers.** The Association shall have such general powers as are necessary to perform the obligations and duties set out in this Declaration, including, but not limited to, buy and convey real property, conduct social activities, enter into contracts, install and maintain irrigation in Common Area, hire a management company, make capital improvements, indemnify Officers and directors, adopt rules and regulations for the general well-being of the Subdivision, levy fines against delinquent Owners and their Lot, and obtain and maintain such policies of insurance as required by the Declaration and such other policies as the Board deems necessary and desirable for the protection of the Association and its Owners. The Association may maintain a working capital and contingency fund and pay taxes and other obligations of the Association and may segregate funds to maintain reserve, trust, or escrow accounts for the Owners to accumulate and preserve funds for anticipated improvements.

3.4 **Annual Meetings.** The annual meeting of the HOA shall be held on the third week of January of each year on a date and at a time and place as set by the Board. The Board also has the power to change the date, time, and place of the meeting for the convenience of the Membership in accordance with the Bylaws.

ARTICLE IV RIGHTS & OBLIGATIONS OF THE ASSOCIATION

4.1 **Maintenance.** The Association shall maintain and keep in good repair the Common Area and the Area of Common Responsibility and, for this purpose, may levy the Assessment

described hereinafter. The Association shall keep the Common Area and Areas of Common Responsibility as originally improved by the Declarant, or as modified with the consent of ARC, and shall keep all common facilities in good repair, in a safe, attractive and orderly condition.

The roads in the Subdivision are publicly maintained roads. However, in the event the Governing Authority, to whom the obligation of maintaining the roads has been dedicated on the Plat, fails to accept the obligations of maintaining said roads, the Association shall assume such obligation.

Furthermore, the HOA shall have the obligation to maintain and keep in good repair the perimeter fence around the Subdivision and the underground irrigation system within the Common Area of the Subdivision, as well as any and all power meters located on the Property, and, for these purposes, may levy the Assessment described hereinafter.

4.2 Enforcement. The Association, the Declarant, and any Owner may enforce the provisions of this Declaration by appropriate means, including, but without limitation to, the employment of legal counsel and the commencement of legal actions. The Association may promulgate Rules for fines against Owners violating the Declaration and/or Rules of the Association in accordance with law. Obligations of the Association are legally enforceable by any Owner and also the Declarant. Failure to enforce any of the covenants, conditions, restrictions, or easements contained herein does not waive the Association's, Declarant's or Owner's right to insist on compliance in the future. In any action to enforce the provisions of this Declaration, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and court costs.

4.3 Utilities. The Association may contract, as a Common Expense, for any or all cable or satellite television distribution, Internet, electricity, water, or electric services and refuse collection for the Lots or the Common Area and Areas of Common Responsibility, but has no obligation to do so, where the price savings on a bulk basis is of such a magnitude that it benefits the Membership as a whole.

4.4 Easements. The Association or Declarant may grant easements, when necessary, for utilities over the Common Area and any portion thereof to serve the Subdivision and any portion thereof. An easement is hereby granted to the Association and retained by Declarant, without any obligation to do so, for the purposes of accomplishing the repairs, maintenance, replacements or any other work necessary to enforce the provision of this Section.

4.5 Damage to Common Area and Owner's Maintenance of Lot. In the event the Board or Officers of the Association determines that any Owner has failed or refused to discharge properly his obligations with respect to the maintenance, repair or replacement of any items for which an Owner is responsible or finds that any Owner, or agent of an Owner or independent contractor of an Owner, is responsible for damage to the Common Area or Area of Common Responsibility, the Association shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair or replacement at the Owner's sole cost and expense, which notice shall set forth with particularity the maintenance, repairs, and replacement deemed

necessary. The Owner shall have fifteen (15) days from the date of mailing the notice by certified United States mail to complete the maintenance, repair or replacement or appear before the Board of Directors to contest its determination. If the Owner fails in this obligation, the Association may provide such maintenance, repair and replacement at the Owner's sole cost and expense, and the cost shall be added to and become part of the Assessment for which the Owner is responsible and shall become a lien against the Lot of the Owner enforceable by the Association, plus all costs of collection, including reasonable attorneys' fees through appeal. Each Owner hereby grants to the Association an easement for the purposes of accomplishing the repairs, maintenance, replacement or any other work necessary to enforce the provisions of this section.

4.6 Enforcement of Duties. Notwithstanding any other provision of this Declaration, the duties of the Association, with respect to levying Assessments sufficient to perform its duties and the duty of the Association to provide maintenance of the Common Area and Areas of Common Responsibility and to enforce the provisions of this Declaration and of its Certificate of Formation and Bylaws and to enforce any other duties imposed upon it by law or contract, are mandatory contractual duties, which shall be specifically enforceable by injunction and by other remedies in legal proceedings that may be brought by any Owner or by Declarant. Further, in the event Declarant should perform certain obligations of the Association, this shall not constitute a waiver with respect to the Association's obligation to perform such duties and, with respect to the right of Declarant and Owners to bring legal proceedings to compel, the Association to perform its duties and reimburse Declarant for cost(s) expended by Declarant in expending such duties. Furthermore, the Association may not diminish or eliminate any obligation of the Association by amendment to its Certificate of Formation or its Bylaws, or by any other method, without Declarant's written consent thereto, so long as Declarant owns any property or additional lands annexed thereto.

4.7 Fines. In addition to all other remedies, in the sole discretion of the Board, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, tenants, or contractors to comply with any covenant, restriction, Rule, regulation contained herein, or rules or regulations promulgated under the Certificate of Formation, Bylaws of the Association, or by the Board, provided the following procedures are adhered to:

(a) Notice. The Association shall notify the Owner of the infraction or infractions at least fifteen (15) days prior to a hearing before the Board. Included in the notice shall be the date and time of the next Board meeting at which time the Owner shall present reasons why fine(s) should not be imposed.

(b) Hearing. The noncompliance shall be presented to the Board after which the Board shall hear reasons why fine(s) should not be imposed. A written decision of the Board shall be submitted to the Owner not later than twenty-one (21) days after the Board meeting.

(c) Appeal. Any appeal process provided by the Alabama Code shall be available to any offending party.

(d) Fines. The fines imposed by the Board may, in its discretion, exceed any amounts set forth in the Alabama Code. The Board may further suspend, for a reasonable time, the rights of the Owner or Owner's guest, tenants or invitees to use Common Area and recreational facilities. Each day a violation continues to exist, it shall be a separate violation without need for additional notices or appeals. The Association shall be entitled to collect the maximum amount permitted hereunder.

(e) Payment of Fines. Fines shall be paid not later than thirty (30) days after notice of the imposition.

(f) Collection of Fines. Fines shall be treated as an Assessment otherwise due to the Association, but no fine shall become a lien against a Lot.

(g) Application. All monies received from fines shall be allocated as directed by the Board.

(h) Nonexclusive Remedy. These fines shall not be construed to be the exclusive remedy and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

4.8 Special Enforcement Rights. Violation of any conditions or restrictions or breach of any covenant contained herein shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land on which such violation or breach exists and summarily to abate and remove, at the expense of the Owner of said land, any construction or other violation that may be or exist thereon contrary to the intent and provision hereof; and the Declarant, its successors and assigns, and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal. The Declarant and/or the Association may impose liens upon the Lot of an Owner for amounts incurred for such abatement and removal, which the Owner fails to pay upon written request.

4.9 Common Area. There will be Common Area(s) for use by all residents and their guests. The Association shall be responsible for the ownership, operation and maintenance of said area.

4.10 Tenant/Rental Approval. Any lease associated with any Property or Lot shall be approved by the Association prior to creation of tenancy. The Owner shall submit such lease and any lease or credit application to the Association. Within fifteen (15) days of receipt of such submission, the Association shall have the sole discretion to approve or deny and accepts no liability for such approval or denial.

4.11 Variances. The Board shall have the right to grant any variances on any action or proposed action that may conflict with this Declaration, so long as such is not in violation of applicable laws. The granting of any such variance shall be on a case-by-case basis and solely at the discretion of the Board. Additionally, the granting of a variance by the Board of Directors shall have no bearing whatsoever on any future variance requests.

4.12 Wall, Fence, and Landscaping. If a wall, fence, entry feature, gate, or landscaping exists around parts of the Subdivision, the Association shall have the responsibility for maintaining this wall, fence, entry feature, gate, and landscaping. As shown on the Plat or separate easement, the Association is hereby granted easements for access to the walls, fences, and landscaping for maintenance purposes. On those Lots that border the walls, the Association shall be responsible for repainting and maintaining the wall, and an easement for access for maintenance, replacement, and repair thereto is hereby reserved to the Association for this purpose. As may be required by the county in which the Property is located, any landscaping buffer required as shown on the Plat may be installed by the Declarant, and maintained and replaced, as needed, by the Association, as a common expense.

ARTICLE V

RESTRICTIONS UPON INDIVIDUAL USE FOR THE COMMON GOOD

5.1 Single-Family Residential Use. No building, Structure, or improvement shall be constructed, erected, altered, placed or permitted to remain on any of the Lots within the Subdivision other than single-family dwellings and appurtenances. As permitted by the Declaration, the Board of Directors may promulgate Rules defining a "single family," and to prohibit occupancy by certain types of felons, who have not had their civil rights restored, and registered sex offenders.

5.2 Lawful Use. No part of the Subdivision may be used for any purpose tending to injure its reputation, disturb the neighborhood or occupants of adjoining property within the Subdivision, constitute a nuisance, nor violate any public law, ordinance or regulation in any way applicable thereto.

5.3 Commercial Use. None of the Lots shall be used in any way directly or indirectly for any business, commercial, manufacturing, mercantile, storing, vending, or any other purpose incompatible with single-family residential use. No business that generates on site visits by customers or suppliers shall be allowed. Nothing in this Section shall be construed to restrict Builder's or Declarant's use or operation of a model home or sales office.

5.4 Maintenance. All buildings and other Structures within the Subdivision, and each portion thereof, shall at all times be properly and well maintained in good condition and repair by the Owner thereof. All landscaping of every kind and character, including shrubs, trees, grass and other plants, shall be neatly trimmed, properly cultivated and maintained continuously by the Owner thereof, in a neat and orderly condition and in a manner to enhance its appearance.

5.5 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering; and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an Owner or tenant first moves into a home or when permanent window treatments are being cleaned or repaired. No security bars shall be placed on the windows of any home without prior written approval of the ARC. No awnings, canopies or shutters shall be affixed to the exterior of a home without the prior written approval of the ARC. No reflective tinting or mirror finishes on windows shall be permitted unless approved in writing by the ARC.

5.6 Parceling. No Lot shall be expanded or divided to accommodate more than one (1) dwelling site per full Lot.

5.7 Design. Any improvements to be constructed onto any Lot will be subject to the written approval of the ARC. The design of said improvements shall be in conformance with the Design Guidelines if and when published (and as may be amended from time to time) by the ARC. Upon written request, sent by certified mail, by Owner for approval of plans and specifications, the ARC will have thirty (30) days to approve or disapprove plans. Failure of the ARC to act within thirty (30) days from receipt of definitive plans of the proposed improvement shall result in the plans being deemed approved. ARC will have exclusive control over exterior design, colors and materials, which can be used in new construction and in repainting/refurbishing, modifying or additions of all improvements built on any Property subject to this Declaration and all additions thereto. The Committee may charge a fee to review plans. The fee shall be established by the Association.

5.8 Roofs; Antennas; Solar Heating. Except as may be allowed by law, no projections of any type shall be placed or permitted to remain above the roof of the building with the exception of one (1) or more chimneys, skylights or vent stacks. No outside television or radio pole or antenna or other electronic device, or solar heating device, shall be constructed, erected or maintained on any building nor on any Property within the Subdivision, or connected in such a manner as to be visible from the outside of any building, except as may be allowed by law and approved in writing by the ARC. Over the air reception devices may be installed as allowed by law. The ARC may, in its sole discretion, grant waivers from the provisions of this paragraph.

5.9 Temporary Buildings and Building Materials.

(a) No shed, tent or temporary Structure and/or building shall be erected, maintained or used on any Property within the Subdivision that is taller than eight (8) feet; such shed, tent or temporary Structure and/or building shall be of like materials and approved by the ARC prior to its construction. Additionally, any shed, tent or temporary Structure and/or building shall only be allowed within the side and back yard setbacks and shall not be visible from the street.

(b) No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be

stored on any Lot, except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to complete the improvement in which same is to be used.

5.10 Garages. All residences shall have a minimum of a two (2) car garage, capable of holding two (2) autos, and Owners may not reduce the size of such garage to any size that would encroach on such dimensions. When garages are not in use by persons, garage doors shall be closed.

5.11 Signs; Mailboxes. No advertising signs or billboards shall be erected on any Lot or displayed to the public on any Lot except a sign of not more than six (6) square feet in area, which may be used solely to advertise the Lot for sale or rent, or standard size street number identification signs. All supports for such signs shall be made of wire or 4"x 4" posts, and no electrical or mechanical devices may power such signs. This restriction shall not apply to signs used to identify and advertise the Subdivision as a whole, nor signs for selling Lots and/or houses during the development and construction period, provided such signs are approved by the ARC. Signs may not be installed for political purposes, nor to embarrass, harass, or offend any Owner of Lots within the Property. All Builder signage must be approved by the Declarant.

5.12 Rubbish. No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any Lot or Common Area within the Subdivision if it renders the Property unsanitary, unsightly, offensive or detrimental to any other Property in the Subdivision. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All service areas and sanitary containers within the Subdivision shall be enclosed in such a manner that the yards, areas, containers and such are not visible from any neighboring property or street. Sanitary containers and bundled trash may be set out for a reasonable period of time before and after scheduled trash pick-up times.

5.13 Clotheslines. Clotheslines are not permitted unless they are completely hidden from view of the Common Area, street, and any neighboring property, and except as permitted in writing by the ARC.

5.14 Oil Tanks; Bottle Tanks; Water-Softening Tanks; Wells & Pumps; Condensers; Wood Piles and Central Air Conditioning Units. All ancillary equipment shall be suitably screened so as to be concealed from view of the Common Area, street, and any neighboring Property. No window and/or wall air conditioning units shall be permitted. All propane gas tanks larger than standard barbecue size must be buried.

5.15 New or Damaged Structures. The erection of a new dwelling or Structure, or the repair of any dwelling or Structure damaged by fire or otherwise, on any Lot shall be completed without unreasonable delay. Should the Owner leave a dwelling or Structure in an incomplete condition for a period of more than one hundred twenty (120) days or should the erection of a new dwelling remain incomplete after a period of two hundred seventy (270) days from the date of the first construction related inspection by the appropriate Governing Authority, the Association after

reasonable notice to the Owner by registered mail, giving the Owner the opportunity to be heard, may remove the Structure from the premises or complete and repair it in a manner deemed appropriate by the Association's ARC, and/or assess a fine of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) per day for every day the repair or erection of the dwelling or Structure remains incomplete after the aforesaid time limits have been reached, unless the Owner can show a defense to the ARC that would support an impossibility defense under Alabama law, and which delay is approved in writing by the ARC. In either event, the expense so incurred shall be a lien against the Lot enforceable in the same manner as other liens. The dwelling or Structure shall not be considered to be complete until, in the opinion of the Board of Directors, both the construction and landscape elements are in compliance with the approved building and landscape plans.

5.16 Fences, Hedges and Landscaping. All fences, hedges, and landscaping plans must receive prior written approval from ARC before implementation. Fencing of the rear and specified portions of the side yards may be allowed on Lots only upon approval of ARC and shall be set back at least ten (10) feet from the front of a dwelling unit and shall not encroach upon any utility easement or right-of-way, nor block any drainage swales. Furthermore, any such fencing shall be no more than six (6) feet in height and shall match—in its style, in its material and in its color—with the Subdivision's perimeter fencing around the Community. In connection with the development of any Lot for residential purposes the construction of improvements thereon, reasonable care shall be used to preserve and retain as many trees as is reasonably possible. No excavation, fill or clear cutting of trees shall be performed in violation of law, or of this Declaration. The Board of Directors may designate certain individuals with authority to enter upon the Property or Lot of an Owner in order to repair and maintain certain items after appropriate notice is given to said Owner and Owner fails to comply. In the event that the Board of Directors takes the action to repair and/or maintain certain items on an Owner's Lot, said Owner shall be assessed the cost of such repair and/or maintenance plus a fifteen percent (15%) charge associated with the repair and/or maintenance.

5.17 Electrical Installations. All service lateral entrance installations, or that portion thereof served by said underground electrical distribution system, shall be installed underground and maintained in accordance with the specifications of the appropriate Governing Authority for such installation.

5.18 Common Area. Nothing herein shall be interpreted as to limit in any way the Declarant's right or Builder's right to use the Common Area and its related facilities for the sales and promotion of properties.

5.19 Swimming Pools; Spas; Basketball Backboards; Trampolines. Above ground swimming pools are not permitted. All pools and spas must have the written approval of ARC prior to installation. No basketball backboards, permanent or portable, are permitted in any location unless approved in writing by ARC. No trampolines are permitted in any location unless approved in writing by ARC.

5.20 Hardship Waiver. ARC is authorized, but not required, to grant hardship waivers to Owners in the event in the ARC's absolute discretion; the strict application of these restrictions presents a bona fide hardship that is not self-imposed.

5.21 Minimum Square Footage of Improvements. Any home on any Lot described herein shall contain, at a minimum, 1,300 square feet of living area. Living area does not include garages, porches (open or screened), terraces, or patios.

5.22 Trailers; Trucks; School Buses; Boats; Boat Trailers. No house trailers, motor homes, mobile homes, school buses, trucks or commercial vehicles, recreational vehicles, off-road vehicles, tandem axle vehicles, motorcycles, campers, habitable motor vehicles of any kind, boats, or boat and other trailers, shall be kept, stored or parked overnight either on any street or on any Lot, except within garages and the garage door closed (if applicable). The foregoing will not be interpreted, construed, or applied to prevent the temporary non-recurrent parking of any vehicle, boat or trailer for a period not to exceed forty-eight (48) hours upon any Lot, driveway or street. Notwithstanding the foregoing, passenger automobiles (including SUVs and light trucks without commercial markings) may be parked in driveways. There shall be no major or extended repair or overhaul performed on any vehicle, boats, or trailers on the Lots. All vehicles, boats and trailers shall have current license plates. If any vehicle, boat, or trailer is in violation of this provision, the Association shall have the immediate right to have the offending vehicle, boat, or trailer towed away at the expense of the Owner thereof, and an easement to enter the Lot is reserved in favor of the Association for this purpose. This Section shall be liberally interpreted to permit the Association or any other party having the right to enforce these restrictions to keep the streets within the Subdivision free from congestion and from the parking, repair, or storage of unsightly or oversize vehicles and other rolling stock which may detract from the character of the Subdivision.

5.23 Livestock and Pets. No animals, livestock, poultry, or pets of any kind shall be raised, bred, or kept on any Lot, except that not more than three (3) household pets per Lot may be kept, provided, however, that no more than two (2) of such pets may be dogs, and provided further that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. For the purposes of this paragraph, pets shall be deemed to constitute a nuisance if they create excessive or disturbing noises, whether by barking or otherwise, or if the pet has shown any violent or aggressive behavior or otherwise poses a danger to the health, safety, or welfare of any person. Animals that have attacked or bitten any person or another person's pet shall constitute a nuisance and shall not be kept on any Lot. All pets must be kept on leashes or within secure enclosures when out of doors. For purposes of this paragraph, invisible electronic fences are not deemed to be fences in compliance herewith. The foregoing expression of specific behaviors that shall constitute a nuisance shall in no way limit the determination that other behaviors also constitute a nuisance. Any pet in violation of this Section shall be brought into compliance within twenty-four (24) hours of notice by the Association, including, but not limited to, the removal of the pet from the Subdivision if the pet has attacked or bitten a person or other person's pet. Maintenance and

keeping of pets on the Property and in any residence may be otherwise regulated in any manner, consistent herewith, by the Rules as may from time to time be established by the Board.

5.24 Offensive Activities. No noxious, offensive, or illegal activities shall be carried on or upon any Lot, nor shall anything be done thereon that is or may become an annoyance or nuisance to the Owners of other Lots in the Subdivision. No nuisance shall be caused, or permitted to exist, by any Owner on, about, or in the vicinity of his Lot or elsewhere in the Subdivision, nor shall there be any use or practice, which is the source of annoyance to residents or which interferes in any way with the peaceful possession and proper use by the residents of the Subdivision Property or any part thereof. All parts of the Subdivision, including each Lot, shall be kept in a neat, clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed by any Owner or by anyone to accumulate, nor shall any fire hazard be allowed to exist. No improper, offensive, or unlawful use shall be made of any Lot, or any part thereof, and all valid laws, zoning ordinances and regulation of all governmental bodies having jurisdiction thereof, and all regulations of the Association, shall be observed.

5.25 Nuisance. It shall be the responsibility of each Owner to prevent the development of an unclean, unhealthy, unsightly, or unkept condition on their Lot. No Lot shall appear to be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, noise or other conditions that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of the surrounding property.

5.26 Drainage. No Owner shall permit any blockage, construction, or landscaping to impede the flow of drainage upon any drainage easement or drainage swale. If a drainage swale is on an Owner's Lot, such Owner is required to maintain any portion of the drainage swale that is on the Owner's Lot.

5.27 Sidewalks. The construction, repair and replacement of the sidewalks shall be the responsibility of each Owner whose Lot adjoins the sidewalk. However, in the event that any sidewalks constructed over the existing water main requires demolition to access said infrastructure by the Governing Authority, the sidewalks shall be replaced at the sole cost of the HOA; and, for this purpose, the HOA may levy Assessments as described in this Declaration.

5.28 Builder and Declarant Exemption. Builder and Declarant are exempt from any and all requirements contained in Article V of this Declaration.

5.29 Short-Term Rentals. No lease associated with any Property or Lot shall be for a time period of less than twelve (12) months.

5.30 Use and Protection of Lakes, Ponds, and Conservation Area. The use of all lakes and ponds, if any exist, shall be subject to rules as adopted by the Association, and shall be maintained by the Association.

The Association and the Declarant do not represent or warrant that any Lot is waterfront, that any Lot has lake access, or that the lakes and water levels will continue to exist in their present forms. Neither the Association, Declarant, nor any agent, Officer or employee of either shall have any liability to any Owner with regard to the augmentation or continued water levels of any lake.

No Structures shall be placed on any of the lakes or ponds by any Owner, and all access to any lake is only permitted through authorized access points created by the Association or other Governing Authorities. The Declarant reserves the exclusive right, but not the obligation, to install improvements to the Common Area, including, but not limited to, docks, boardwalks, piers or boat ramps, which may be placed in the Common Area for the use of all Owners and guests.

5.31 Compliance with Stormwater Facility Maintenance Agreement. Each Owner within the Subdivision at the time of construction of a building, residence or Structure shall comply with the construction plans for the Stormwater Management System facilities approved and on file with the City. No Owner of any property within the Subdivision may construct or maintain any building, residence, or Structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements described in the approved permit, maintenance agreement (attached herein as Exhibit "D") and recorded Plat of the Subdivision, if any exist, unless prior approval is received from the City.

The City has the right to take enforcement measures, including a civil action for injunction and/or fines against the Association to compel it to correct any outstanding problems with the Stormwater Management System facilities under the responsibility or control of the Association.

The Association shall adequately maintain the Stormwater Management System facilities, including pipes, channels or other conveyances built to convey stormwater to the facility, as well as Structures, improvements and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is defined as good working condition, so that these facilities are performing their designed functions.

The Association shall inspect the Stormwater Management System facilities and submit an inspection report annually. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report.

The City, its authorized agents and employees, is permitted to enter upon Property and to inspect the Stormwater Management System facilities whenever the City deems it necessary. The City shall provide the Association copies of the inspection findings and a directive to commence with the repairs, if any are necessary.

5.32 Lot Setback. No residential dwelling unit shall be constructed on any Lot or building site in the Subdivision, which does not conform to the setback lines shown on the recorded Plat; however, an automatic waiver of ten percent (10%) of any setback requirement on the Plat is hereby granted for violations of any setback requirement not exceeding ten percent (10%). The automatic waiver established by this Section has no effect on any setback requirements imposed

by the land development rules and regulations of Baldwin County, Alabama; and appropriate waivers or variances may be required in certain circumstances.

ARTICLE VI DESIGN REVIEW

6.1 Design Approval. No building, Structure, architectural feature or improvement, including, but not limited to, Structures, irrigation systems, landscaping, fencing or hedges (whether for new construction or a modification or addition to existing improvements) shall be erected, constructed, placed or altered on any Lot until the Owner of the Lot shall submit in duplicate, complete plans and specifications for such building, Structure, and/or improvement and a detailed site plan showing its proposed location, and the plan specifications and detailed site plan have been approved in writing by ARC. The approval of said plans and specifications may be withheld not only because of noncompliance with any of the specific easements, covenants, conditions, and restrictions of this Declaration, but also by reason of the reasonable dissatisfaction with the landscaping or grading plan; the proposed location of the Structure with respect to topography and finished grade elevation; the nature of workmanship and materials; the type or use of materials; the color scheme; the finished design, proportions, architecture, style, shape, height, size, style or appropriateness of external design with the existing or proposed buildings, Structures or improvements located or to be located upon the Property (including the heights, kind and appearances of fences, walls, any excavation or fill, change in drainage or terrain, planting, utility installation, and any other physical change or improvement to any Lot); the size, location and materials to be used in the construction of the walks and driveways and the sizes and species of landscaping materials; all of which are included within the definition of "improvements" as such word is used herein. One (1) set of plans and specifications and a detailed site plan as finally approved may be retained by the Declarant or ARC.

Upon completion of any buildings, Structure or improvement in accordance with approved plans and specifications and detailed site plan, no changes, alterations, additions, reconstruction or attachments of any nature whatsoever shall be made to the exterior of the building, Structure and/or improvement or to the Lot, including that portion thereof not actually occupied by the improvements thereon, unless the same are identical to the original work, without prior written approval in the manner above provided.

ARC's approval, disapproval or conditional approval shall be endorsed upon the plans and specifications submitted by the Owner and shall be further evidenced by a written instrument executed and acknowledged by ARC. Such written instrument shall be returned to the Owner.

ARC shall not obviate any reviews or approvals required by government and does not constitute a structural review or review for compliance with building codes or any purpose other than design compatibility with the community, surrounding structures and terrain.

ARC shall have the authority to publish "Design Guidelines," which shall outline guidelines for the design of improvements to be constructed on the Lots. ARC reserves the right to amend these Design Guidelines from time to time.

6.2 Exculpation of Declarant and ARC. Declarant and/or ARC cannot and shall not be held responsible for any loss or damages to any person arising out of the approval or disapproval of plans, designs or construction errors nor shall the Declarant and/or ARC be held responsible for loss or damages to any person arising out of noncompliance with governmental land use and building regulations. The Declarant and/or ARC also shall not be held responsible for any structural fault in design or construction. Neither the Association, ARC, Declarant, or any agent, officer or employee of the Association, ARC, or Declarant shall be liable to any Owner or other for any damages or costs arising in any way out of the approval or disapproval of any plans or applications.

6.3 Design Approval by Declarant. The Declarant reserves the right to maintain exclusive architectural control for new construction in all Common Area, entrance and recreation areas. The purpose of architectural control is to assure that improvements in the Subdivision as a whole will preserve a uniformly high standard of construction that is attractive and harmonious. The basic architectural control for regulation of all Lots is vested in ARC. In addition, to further protect, conserve and enhance the aesthetics of the community, the Declarant itself, until the last Lot is sold, may regulate the appearance of all Common Area improvements and buildings, and Structures if any. The power to regulate vested in the Declarant temporarily and ARC permanently shall include the power to prohibit those improvements, structures, buildings found to be (a) inconsistent with the provisions of this Declaration, or the aesthetic design or quality intended to be created and preserved hereby, or (b) contrary to the best interests of the Subdivision or (c) detrimental to the value and desirability of the Subdivision as a residential community with exclusive, unique and desirable qualities.

6.4 Builder Exemption. Builder shall be exempt from any and all requirements of Article VI.

6.5 Variance. The Declarant shall have the power and authority, in its sole discretion, to grant variances in compliance with the Declaration provided, however, that such variances shall be reasonably consistent with the purpose of the Declaration and shall not materially and adversely affect existing improvements. Whenever, in the exercise of its discretion, Declarant grants a variance, each Owner of a Lot hereby acknowledges that such variance shall constitute a waiver of any conflicting provisions of the Declaration. Each Owner of a Lot appoints Declarant as its true and lawful attorney-in-fact for the limited purpose of consenting to and granting variances.

6.6 Declarant's Right to Appoint. The Declarant shall have the right to sit on and/or appoint the ARC, to remove without cause any person serving on the ARC and shall also have the authority to fill any vacancies on the ARC until such time as all Class "B" Membership terminates. After termination of Class "B" Membership, Declarant may elect one (1) person to ARC, so long as Declarant owns property in the Subdivision. Any person appointed to ARC by Declarant does

not have to be a Member and shall only be removed by Declarant unless otherwise allowed under this Declaration. The ARC shall consist of not less than two (2) and no more than five (5) members. In the absence of a formally appointed committee, the Officers of the Association shall constitute the ARC.

ARTICLE VII PROPERTY OWNERS' ASSESSMENTS

7.1 Purpose. Assessments for Common Expenses provided for herein shall be used for the general purpose of promoting recreation, safety, health, value, and common benefit and enjoyment of the Owners. These general purposes include, but are not limited to, maintaining Areas of Common Responsibility, Common Area, the roads (if privately maintained) and expenses of general operation of the Association in the fashion that may be specifically authorized from time to time by the Board.

7.2 Assessment Lot. For the purpose of establishing and determining Assessments for Common Expenses payable by the Members, Assessment Lots are hereby established as follows:

- (a) Each Lot with a Structure thereon shall be one (1) Assessment Lot.
- (b) Each Lot, without a Structure, shall be one-fourth ($\frac{1}{4}$) of an Assessment Lot.

7.3 Determination of Assessments for Common Expenses and Establishing a Budget. Not less than thirty (30) days prior to the beginning of each fiscal year, the Board shall adopt a budget for such fiscal year, which shall estimate all of the Common Expenses to be incurred by the Association during the fiscal year and covering the estimated cost of operating the Association during the coming year. In determining the budget for any fiscal year, the Board may take into account expenses, Areas of Common Responsibility, Common Area, Lots, and other additional obligations anticipated to be added during the fiscal year, if any. The budget may include a capital contribution or reserve in accordance with the current year's budget. The Board shall then establish the Assessment for Common Expenses, which shall be equal to the total amount to be assessed for Common Expenses pursuant to the budget, divided by the total number of Assessment Lots within the Subdivision. The Association shall then promptly notify all Members, in writing, of the amount, frequency, and due dates of the Assessment for Common Expenses per Assessment Lot or fraction thereof at least twenty (20) days prior to the meeting of the Board at which the budget is adopted. The budget and Assessment shall become effective unless disapproved at the annual meeting by a vote of at least fifty-one percent (51%) of the Members or without a majority vote of the Board. In the event the Board fails to adopt a budget and Assessment as provided herein, the Assessments for the current year shall be continued in full force and effect for the succeeding year.

From time to time during the fiscal year, the Board may modify the budget for the fiscal year. When needed, the Board may amend the budget during a fiscal year and increase the amount of the Assessments by ten percent (10%) without approval of the Members, if it appears that there will be insufficient income to meet the obligations of the Association. If the increase of the

Assessments exceeds ten percent (10%), the Board may make special Assessments for Common Expenses, which shall be levied in the same manner as hereinbefore provided for regular Assessments for Common Expenses and shall be payable in the manner determined by the Board as stated in the notice of any special Assessment for Common Expenses. In the event any Assessments for Common Expenses are made payable in equal periodic payments as provided in the notice, such periodic payments shall automatically continue to be due and payable in the same amount and frequency as indicated in the notice. Notwithstanding the foregoing, in no event shall any Assessment for Common Expenses payable by any Member be due less than ten (10) days from the date of the notification, of such Assessment.

7.4 Transfer of Ownership Fee. Commencing upon the transfer of title from a seller, other than Declarant or Builder, any such transfer shall require the purchaser of such Lot(s) to pay Association TWO HUNDRED AND 00/100 DOLLARS (\$200.00) per Lot transfer fee.

7.5 Creation of Lien and Personal Obligation. Each Owner of any Lot by acceptance of a deed, whether or not it is expressed in the deed, covenants and agrees to pay to the Association:

- (a) Assessments for Common Expenses;
- (b) Special Assessments to be established and collected as hereinafter provided; and
- (c) Specific Assessments. Any and all accrued, liquidated indebtedness of any Owner to the Association arising under any provision of this Declaration, or by contract, express or implied, or because of any act or omission of any Owner or person for whose conduct such Owner is legally responsible, interest at the highest rate allowed by applicable law, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay such indebtedness within thirty (30) days after written demand. This shall include fines levied for the actions of any Owner, or guest, invitee, or family member of such Owner.

All Assessments and costs of collection for delinquent Assessments along with interest on delinquent Assessments, administrative fee for collection, and reasonable attorneys' fees shall be a continuing lien upon the Lot against which the Assessment is made. Each Assessment together with interest, administrative fee, and reasonable attorneys' fees shall also be the personal obligation of each person who is the Owner of the Lot at the time the Assessment is levied. Each Owner shall be liable for his or her portion of each Assessment, and his or her grantee shall be jointly and severally liable for any portion that may be due at the time of conveyance. Assessments shall be paid in the manner and upon the date specified by the Board of Directors and unless otherwise provided by the Board, shall be paid in monthly installments or in one (1) annual payment. Each Lot shall be assessed equally for annual Assessments and special Assessments.

7.6 Special Assessments. In addition to the annual Assessments for Common Expenses authorized above, the Board may levy in an assessment year, a special Assessment for

unanticipated expenses not included within the budget and not reserves, as long as the Declarant is exercising its rights under the provisions hereof not to pay Assessments. Meetings for special purpose of considering special Assessments shall be held only after due notice to the Owners mailed not less than thirty (30) days prior to the date of the meeting.

7.7 Liens or Assessments. All sums assessed against any Lot pursuant to this Declaration, together with interest as provided herein, shall be secured by a continuing lien upon such Lot in favor of the Association. The lien shall be superior to all other liens and encumbrances on the Lot, and shall relate back to the recording of this Declaration and shall be superior to any homestead rights, except for liens of ad valorem taxes and mortgages held by institutionalized lenders. Persons, other than recognized lending institutions, acquiring interests, other than first mortgages, liens or encumbrances, on any Lot after this Declaration has been recorded in the public records shall be deemed to consent to the liens and Assessments of the Association, and the subsequent liens shall be inferior to future liens for Assessments of the Association whether or not prior consent be specifically set forth in the instrument creating such liens or encumbrances.

7.8 Remedies of the Association to Enforce Assessments. Any Assessments that are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) days shall incur an administrative charge for collection in the amount the Board of Directors may determine from time to time. If the Assessment has not been paid within thirty (30) days, the Assessment liens shall commence to include interest on the principal amount at the maximum rate per annum allowed by law from the date first due and payable, plus an administrative charge or late fee as allowed by law, and costs for collection, including a reasonable attorneys' fees and all costs through any appeal. In the event that the Assessment remains unpaid after sixty (60) days, the Association may commence legal action to collect the Assessments or to foreclose its lien. Each Owner by his or her acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring all actions against it personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as liens for mortgages on real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all Owners.

7.9 Date of Commencement of Annual Assessments. Annual Assessments shall commence upon conveyance of the Lot to a Member, other than Declarant and Builder. The annual Assessment shall be payable in the manner and on the schedule the Board of Directors may provide, and if not stated in the budget, shall be on the first of the month, and begin to accrue late fees and interest if not paid within fifteen (15) days after the due date.

7.10 Obligation for Assessments for Declarant and Builder. Notwithstanding anything herein to the contrary, as long as Class "B" Membership exists, Declarant and/or Builder may elect not to pay the Assessments. The Declarant by executing this Declaration, hereby obligates itself to pay any operating expenses (but specifically not including an allocation of capital reserves) incurred that exceed the Assessments receivable from other Members and other income of Association ("Deficit Fund"). In the event Declarant and Builder both elect to Deficit Fund, Declarant and Builder shall divide the Deficit Fund on a proportional basis that is based on the

number of Lots each owns. Upon termination of Class "B" Membership, or in the event Declarant or Builder voluntarily terminate this right to Deficit Fund, Declarant and/or Builder shall be obligated to pay Assessments in accordance with this Declaration.

7.11 Exempt Property. The Assessments, charges and liens created under this Article shall not apply to the Common Area nor shall the Assessments apply to land or easements dedicated to and accepted by local public authority or any land used by a utility company.

ARTICLE VIII GENERAL PROVISIONS

8.1 Run with the Land. This Declaration is to run with the land and shall be binding on all parties and persons claiming under it for a period of thirty (30) years from the date it is recorded after which time it shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of the Owners of the Lots agree to change the covenants in whole or in part and is recorded.

8.2 Amendments. The covenants and restrictions of this Declaration may be amended by an instrument signed by the Board with an attached certification that the amendments have been approved by the required voting percentage at a properly noticed meeting of the Association where the required quorum was present in person or by proxy or with an attached joinder signed by Owners, Declarant, and/or Builder with the required voting interest to approve such amendment.

This Declaration may be amended by a majority vote of those eligible to vote at a properly noticed meeting where a quorum is present. A quorum shall be twenty percent (20%) of the total voting interest of the Association. An Owner must be current on all its Assessments and financial accounting to be eligible to vote.

The Declarant retains the right to amend the Declaration until the sale of the last Lot to comply with any governmental requirement or request, or to correct errors, or any requirement by an institutional lender which commits to make mortgage loans for homes in the Subdivision, without the consent of the ownership, during the period of time before control of the Association is required to be turned over to the ownership. Such amendment by the Declarant shall not prejudice the ownership or diminish the property rights of Owners, nor shall they transfer any of the Declarant's obligations to the Association or to the Owners. Until such time as the last Lot that the Declarant holds for sale in the ordinary course of business is conveyed by the Declarant, it specifically reserves for itself, its successors and assigns the absolute and unconditional right to amend, alter, modify, change, revoke, rescind, or cancel any or all of the restrictive covenants contained in this Declaration or hereinafter included in any subsequent Declaration; provided, however, that no such amendment, alteration, modification, revocation, rescission, or cancellation shall prejudice or otherwise impair the security, rights and priorities of any mortgagee of record as to any of the Lots. All or any portion of the Property may be removed from the lien and operation of this Declaration by an amendment executed by the Declarant for such purposes, provided there are no conveyances of Lots or residential units constructed upon the Property being removed from the lien and

operation of this Declaration. Notwithstanding any other provision in this Declaration, the Certificate of Formation or Bylaws to the contrary, the Board shall have the power to unilaterally amend this Declaration to bring any provisions herein into compliance with any governmental or quasi-governmental statute, rule, regulation, or requirement, or judicial ruling. To the extent legally required, each Owner shall be deemed to have granted to the Association an irrevocable power of attorney, coupled with an interest, for this purpose.

8.3 Indemnification. The Association shall indemnify every officer, director and Owner on ARC and all other members of the ARC, as well as Declarant, against any and all expenses, including reasonable attorney fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors) to which he/she may be made a party by reason of being or having been an officer or director or members of the ARC, at the time such expenses are incurred. The officers, directors and members of the ARC shall not be liable for any mistake of judgment, negligence, or otherwise, except for his or her own individual willful misconduct or nonfeasance. The officers, directors, and members of the ARC shall have no 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 such officers, directors and members of the ARC may also be Owners of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein, shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or members of the ARC may be entitled. The HOA may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

8.4 Eminent Domain. In the event of a threatened taking of a Common Area, the Association shall have a power to take all action with respect to such taking. The Board may act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of taking of less than all the Common Area, the rules as to restoration, replacement of any Common Area and the improvement thereon shall apply as in the case of destruction of improvements upon the Common Area.

8.5 Insurance. The Association shall obtain, to the extent reasonably available and at a reasonable cost, insurance it deems necessary, which may include, but is not limited to, the following policies of insurance:

- (a) fire and extended coverage insurance on all improvements upon the Common Area and Areas of Common Responsibility in the amount of one hundred percent (100%) of the full insurance replacement cost value of the improvements, or as determined by the Board;

(b) general comprehensive public liability insurance against liability to and claims of the public, an Owner of the Association and any other person with respect to liability occurring upon the Common Area or the Areas of Common Responsibility based upon or arising out of the Association's ownership or use of the Common Area or Areas of Common Responsibility. The minimum combined single limits of liability shall not be less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence and ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) in the aggregate. The liability insurance shall name, as separately protected insured, the Declarant, the Association, the Board, the ARC (if economically feasible) and their respective Owners, employees, officers, agents and representatives.

The Association shall furnish the insurance contemplated and any judgment by the Association as to the amount and type of insurance shall be reasonable and shall be made after due deliberation in good faith and based on institutionalized lender's loan guidelines.

8.6 Contracts with Declarant or Third Parties. The Association and Declarant are authorized to enter into mutual contracts for any services the Declarant is capable of providing to the Association. The contract shall be an arm's length transaction subject to such terms and conditions as the parties may agree. Any third-party contract must be capable of being terminated with thirty (30)-days' notice. Agreements with any Association management company shall clearly state any estoppel fees due to the management company for a change of title of a Lot.

8.7 Headings. It is further declared that the headings or titles inserted in the Declaration and any subsequent amendments are inserted solely for the convenience of reference and shall not constitute a part of this Declaration nor shall they affect its meaning, construction or effect.

8.8 Traffic. Traffic in any of the streets and roads or ways in the Subdivision shall be subject to the provisions of the laws of the State of Alabama concerning operation of motor vehicles on public streets. The traffic laws shall operate as restrictive covenants and shall be enforceable by the powers of the Association, as well as applicable law enforcement agencies, including the right to collect reasonable fines for violation thereof. Reasonable speed limits may be designated by the Board and shall be posted in the Subdivision. Only drivers licensed to operate or recognized by the State of Alabama may operate any type of motor vehicle or golf cart on the streets of the Subdivision. The Association is empowered to pass, administer and enforce reasonable rules and regulations for control of traffic and safety. Automobiles and trucks with noisy exhaust systems or excessive emissions shall not be operated in the Subdivision. There shall be no racing whatsoever on the streets. All vehicles parked or driven in the Subdivision shall have a current registration tag on the vehicle. Neither go-carts, motorized scooters nor three (3)- and four (4)-wheel all-terrain vehicles shall be operated within the Subdivision. All vehicles of every kind and nature which are allowed on the streets of the Subdivision, shall be operated in a careful and quiet manner, and with consideration for all Owners of the Community, and in a manner to be expected from a reasonable, prudent person. Vehicles may only be operated in areas designated by the Association for vehicle operation.

THE DECLARANT MAY ELECT TO INSTALL ENTRY/EXIT GATES OR SUCH OTHER TRAFFIC CONTROL DEVICES UPON THE STREETS AS IT MAY, IN ITS SOLE DISCRETION DETERMINE TO BE IN THE BEST INTERESTS OF THE ASSOCIATION AND ITS MEMBERS. THE ASSOCIATION SHALL PAY FOR THE COST OF MAINTENANCE AND REPAIR OF SUCH DEVICES AS PART OF ITS BUDGET PROCESS, AND SUCH DEVICES SHALL NOT BE AN INTERFERENCE WITH ANY EASEMENT HEREUNDER.

8.9 Perpetual Easement. Notwithstanding any provisions of this Declaration or any amendments thereto, no easements in the Common Area for ingress and egress may be terminated; said easements being intended to be perpetual. This will apply regardless of the termination of the restrictive covenants contained in this Declaration and regardless of the termination of the Declaration itself. Furthermore, notwithstanding the termination of this Declaration, the Association's power to make Assessments and its duties to maintain the Common Area and Areas of Common Responsibility shall survive the termination of this Declaration unless the instrument of termination specifically provides otherwise.

8.10 Supplemental Declarations and Additions to Existing Property. Declarant, by its sole and absolute discretion, may file such supplemental declarations as it deems appropriate from time to time, and the same will be amended from time to time as additional phases of the Subdivision are developed, without the necessity of any joinder by the Association or by any Owners in the Subdivision; there is reserved in the Declarant the unrestricted right to grant easements in all roads and Common Area throughout the Property to all Owners of Lots in the Subdivision (including phases to be developed by use of a supplemental declaration). The right of the Declarant to extend all of the benefits of easements, as development proceeds in phases, to all Owners of Lots in the Subdivision, over roads and over other Common Area throughout the existing properties and future additions thereto is absolute and may be exercised at any time and from time to time without the joinder and without the consent of the Association or of any Owner or mortgagee whomsoever. It is likewise intended that notwithstanding the provisions of Section 2.2(e) or of any other provision of the Declaration, neither the Association's consent nor that of its Owners shall be necessary for Declarant to grant utility easements to public utility companies and to governmental units, so long as the easements are over Common Area, Areas of Common Responsibility or over portions of Lots then owned by the Declarant.

As additional phases are developed, they shall be additional properties within the jurisdiction of the Association entitled to the easements granted herein and subject to the restrictions and Assessments set out herein. The additions shall be made by filing of record one (1) or more supplemental declarations with respect to the properties to be subject to this Declaration. A new supplementary filing shall extend the jurisdiction of the Association and the undivided interest in the Common Area and Areas of Common Responsibility to the additional property owners and thereby shall subject the additional property to Common Area easements and Assessments for its just share of the Association's expenses. Each supplemental declaration may contain complementary additions and modifications of this Declaration to reflect the different character, if

any, of the added properties; provided, however, that such supplemental declaration shall not revoke or otherwise amend this Declaration as it applies to the existing Property.

8.11 Severability. If any provision of this Declaration is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Declaration will not be affected or impaired.

8.12 Declarant's Rights. The provisions of this Declaration shall not be applicable to prevent or hinder the activities of Declarant or Builder in developing, marketing, and operating the Community. Additionally, and notwithstanding any other provision of this Declaration, Declarant and its designees or Builder may employ such methods of marketing including signage, parking facilities for models, and operation of sales and construction offices, as deemed appropriate in Declarant's or Builder's sole discretion, and for ingress and egress over the Common Area for this purpose.

8.13 Covenants Running with the Land. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF OTHER APPLICABLE SECTIONS HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF ANY OTHER SECTION HEREOF, IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER THAT WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

8.14 Notices and Disclaimers as to Water Bodies, Preserves, Golf Courses and Sinkholes. NEITHER DECLARANT, BUILDER, NOR THE ASSOCIATION NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE COMMUNITY, EXCEPT (i) AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY OR (ii) TO THE EXTENT THAT OTHER EXPRESSLY APPLICABLE

SECTIONS HEREOF WOULD OTHERWISE APPLY, IF AT ALL. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE COMMUNITY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE DECLARANT, BUILDER, AND ASSOCIATION FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. REGARDLESS OF ANY PRECEPTION OR VERBAL COMMUNICATION PURPORTING TO REPRESENT THAT ADJACENT LAND MAY NOT BE DEVELOPED, DECLARANT, BUILDER, AND THE ASSOCIATION DISCLAIM ANY SUCH PERCEPTION OR COMMUNICATION.

ALL PERSONS ARE HEREBY NOTIFIED THAT, FROM TIME TO TIME, ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE COMMUNITY AND MAY POSE A THREAT TO THE PERSONS, PETS AND PROPERTY, BUT THAT THE DECLARANT, BUILDER, AND ASSOCIATION ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT, FROM TIME TO TIME, SINKHOLES MAY OCCUR ON THE PROPERTIES AND NEITHER THE DECLARANT NOR ANY BUILDER SHALL BE LIABLE OR RESPONSIBLE, IN ANY WAY WHATSOEVER FOR THE DAMAGES CAUSED BY THE OCCURRENCE OF ANY SINKHOLE. OWNERS ARE ADVISED TO OBTAIN INSURANCE FOR PROPERTY DAMAGE TO THEIR DWELLING FOR THIS PURPOSE.

8.15 Attorneys' Fees. In the event of any dispute arising out of the terms of this Declaration, whether or not a lawsuit, arbitration, or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs (including those incurred in any related appeals, post judgement collection proceedings, or bankruptcy proceedings), including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of the recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

8.16 Waiver of Jury Trial. The Association and all Owners agree to waive trial by jury in respect of any dispute and any action on dispute. This waiver is knowingly, willingly, and voluntarily made by both parties, and both parties hereby represent that no representations of fact or opinion have been made by any person or entity to induce this waiver of trial by jury or to in any way modify or nullify its effect. This provision is a material inducement for the parties entering into this Declaration.

8.17 Conflicts. If there is any conflict between this Declaration, the Bylaws, and/or the Certificate of Formation, this Declaration shall govern.

8.18 Disclaimer of Representations or Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ARTICLE IX DISCLAIMER OF LIABILITY OF ASSOCIATION

9.1 Limitation of Liability. Notwithstanding anything contained herein or in the Association Documents neither the Association, Builder, nor the Declarant nor any Officer or employee thereof shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Subdivision including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

(a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof;

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Alabama, Baldwin County and /or any other jurisdiction or the preventions of illegal activity;

(c) any provisions of the Association Documents setting forth the uses of Assessments which are related to health, safety, security and/or welfare shall be interpreted and applied only as limitations of the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety, security or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason;

Each Owner (by virtue of Owner's acceptance of title to their Lot) and each other person or entity having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this Article IX and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this Article IX.

The Common Area and easements contain wetlands, roads and water areas that may present hazards to persons and may contain wildlife and other organisms of danger to children and other persons. All Owners, on behalf of themselves, their families, guests, and invitees, hereby agree that the Association shall have no liability for any activities undertaken by any person on Association lands or Common Area and easements, which result in injury from such natural elements. All Owners, families, invitees and guests agree that any person using such lands does so at his/her own risk. All Owners shall undertake to warn others of such hazards when appropriate.

As used in Article IX, "Association" shall include within its meaning all of the Association's directors, Officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions of this Article IX shall also inure to the benefit of the Declarant and Builder, which shall be fully protected hereby.

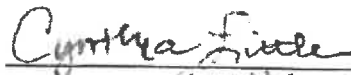
[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the first party has caused these presents to be duly executed in its name and by its manager, on the 12th day of July, 2022.

Executed and declared in the presence of:

GARDEN STREET COMMUNITIES SOUTHEAST, LLC, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC


Print Name: CYNTHIA LITTLE

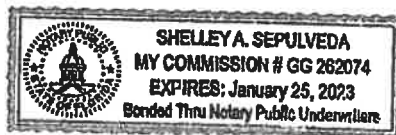

Print Name: Cynthia Little

By: 
William Bryan Adams, Manager

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

I HEREBY CERTIFY that on this 6 day of July, 2022, an officer duly qualified to take acknowledgments, personally appeared **WILLIAM BRYAN ADAMS**, Manager of **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC, who is personally known to me and who did not take an oath.


Notary Public



Exhibits:

- A – Legal Description
- B – Bylaws
- C – Certificate of Formation
- D – Stormwater Facility Maintenance Agreement

**JOINDER
OF
HERITAGE LANDING OF BALDWIN COUNTY
HOMEOWNERS ASSOCIATION, INC.**

HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC., an Alabama non-profit corporation ("HOA"), hereby consents to and joins in this Declaration of Covenants, Conditions, Restrictions, Easements, and Assessments for **HERITAGE LANDING** (the "Declaration") for the purposes of declaring and agreeing that the Property described in the Plat(s) of **HERITAGE LANDING**, recorded in the Public Records of Baldwin County, Alabama, shall remain subject to all the terms, conditions, covenants and restrictions set forth in the Declaration.

This joinder shall be binding upon the parties hereto and their respective successors and assigns.

Signed, Sealed and Delivered

**HERITAGE LANDING OF
BALDWIN COUNTY
HOMEOWNERS
ASSOCIATION, INC.**, an Alabama
non-profit corporation

In our presence as witnesses:

Racey Goe

Print Name:

Racey Goe

Elizabeth Kool

Print Name:

Elizabeth Kool

BY: *Chad Alvarez*

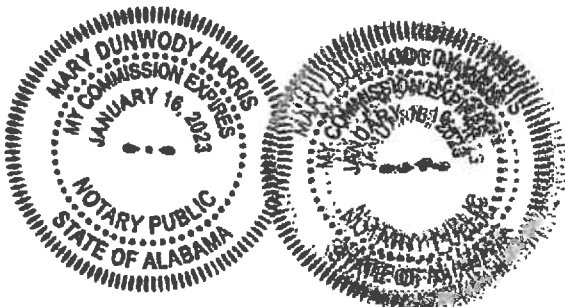
Print Name: Chad Alvarez

Title: President

Date: 3-23-2022

**STATE OF ALABAMA
COUNTY OF Baldwin**

The foregoing instrument was acknowledged before me this 23rd day of March, 2022 by Chad Alvarez as President of **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama non-profit corporation, who ☒ is personally known to me or ☐ has provided _____ as identification.



Mary Dunwoody Harris
Notary Public
My commission expires: Apr. 16, 2023

EXHIBIT A
LEGAL DESCRIPTION

THE LEGAL DESCRIPTION FOR HERITAGE LANDING, ACCORDING TO THE PLAT OF HERITAGE LANDING SUBDIVISION RECORDED IN DEED BOOK S, DEED PAGE 0002842B, INSTRUMENT NUMBER 2008349, OF THE PUBLIC RECORDS OF BALDWIN COUNTY, ALABAMA.

EXHIBIT "B"

BYLAWS OF HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC., AN ALABAMA NONPROFIT CORPORATION

ARTICLE I NAME

Section 1.1 The name of the corporation is **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation (hereinafter referred to as the "Association").

ARTICLE II DEFINITIONS

Section 2.1 For ease of reference, these Bylaws shall be referred to as the "Bylaws". The terms used in these Bylaws shall have the same definition as those set forth in the Declaration of Covenants, Conditions, Restrictions, Easements, and Assessments for **HERITAGE LANDING** (the "Declaration"), to be recorded in the Public Records of Baldwin County, Alabama, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE III MEETING OF MEMBERS

Section 3.1 Annual Meetings. The annual meeting of the Members shall be held on a date, time and at a place to be determined by the Board with due and proper notice thereof as provided in Section 3.3 hereof.

Section 3.2 Special Meeting. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of a majority of the Members of each class.

Section 3.3 Notice of Meetings. Notices of all Board meetings must be posted in a conspicuous place in the community at least forty-eight (48) hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place, written notice of each meeting of Members shall be given, by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least seven (7) days before such meeting, to each Member entitled to vote thereat, addressed to the Members' addresses last appearing on the books of the Association, or supplied by such Member to the Association for the purposes of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, and the purpose of the meeting.

Section 3.4 Quorum. The presence at the meeting of Members of each class entitled to cast votes, or of proxies entitled to cast votes, equal to twenty percent (20%) of each class, shall constitute a quorum for any action except as otherwise provided in the Certificate of Formation,

the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at the meeting, the Members of each class entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 3.5 Proxies. At all meetings of Members of each class, each Member of each class may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

Section 3.6 Vote Required. At every meeting of the Members, the Owner(s) of each Lot, either in person or by proxy, shall have the right to cast the number of votes to which he or she is entitled as set forth in the Declaration. The vote of the majority of the votes cast by those present of each class, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the Declaration, the Certificate of Formation, or these Bylaws, a different vote is required, in which case such express provisions shall govern and control.

Section 3.7 Order of Business. The order of business at all annual or special meetings of the Members of each class shall be as follows:

- A. Roll Call
- B. Proof of Notice of meeting or waiver of notice
- C. Reading of minutes of previous meeting
- D. Reports of Officers
- E. Reports of committees
- F. Election of Officers or directors (if election to be held)
- G. Unfinished business
- H. New business
- I. Adjournment

ARTICLE IV BOARD OF DIRECTORS: SELECTION - TERM OF OFFICE

Section 4.1 Number. The affairs of this Association shall be managed and governed by a Board of Directors composed of not less than three (3) members. The first Board of Directors shall have three (3) members.

Section 4.2 Classes. Each director will be appointed or elected to one (1) of three (3) classes: Class 1, Class 2, or Class 3. Directors will be elected by class to provide for staggered terms. This Section 4.2 shall not apply to Article IV, Section 4.7

Section 4.3 Term of Office. Each member of the Board shall serve for a term of two (2) years until the next annual meeting, or until such time as his or her successor is chosen. The eligibility of a member to be elected for more than one (1) term shall not be abridged, excluding

the initial terms as explained as follows: the initial term for Class 1 director will be for one (1) year, the initial term for the Class 2 director will be for two (2) years, and the initial term for the Class 3 director will be for three (3) years.

Section 4.4 Removal. Any director may be removed from the Board with or without cause, by a majority of each class of the Members of the Association entitled to vote. In the event of death, resignation or removal of a director, his or her successor shall be selected by the remaining members of the Board of Directors and he or she shall serve for the unexpired term of his or her predecessor. This Section 4.4 shall not apply to Board of Directors appointed by Declarant. Only Declarant shall have the right to remove a Board of Director appointed by Declarant.

Section 4.5 Compensation. No director shall receive compensation for any service she or he may render to the Association. However, any director may be reimbursed for his or her actual expenses incurred in performance of his or her duties.

Section 4.6 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 4.7 The First Board of Directors. The first Board of Directors shall consist of three (3) persons who shall be appointed by the Declarant and who, subject to the provisions set forth hereinabove with regard to resignation and death, shall be the sole voting members of the Board of Directors and shall hold office until the termination of Class "B" Membership as set forth in the Declaration.

ARTICLE V ELECTION OF DIRECTORS

Section 5.1 Elections to the Board of Directors shall be by secret written ballot. At such election, the members or their proxies may cast, in respect to each such vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving a majority of the votes cast for that office shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETING OF DIRECTORS

Section 6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3)-days' notice to each director.

Section 6.3 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers. The Board of Directors shall have the power to:

A. Adopt and publish rules and regulations governing the use of the Common Area and Areas of Common Responsibility as well as the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

B. Suspend the voting rights and right to use of the Common Area or Areas of Common Responsibility by a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such right to use of the Common Area or Areas of Common Responsibility may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these Bylaws, the Certificate of Formation, or the Declaration;

D. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

E. Employ a manager, management company, an independent contractor and/or such other employees as the Board deems necessary and to prescribe the duties to be undertaken and the compensation therefor, and authorize the purchase of necessary supplies and equipment and to enter into contracts with regard to the foregoing items or services;

F. Accept such other functions or duties with respect to the property hereunder, including Architectural Control, in addition to maintenance responsibilities, as are determined from time to time to be proper by the majority of the Board of Directors;

G. Delegate to and contract with a financial institution for collection of the Assessments of the Association;

H. To procure and maintain adequate liability insurance on property owned by the Association, and such other insurance, which in the opinion of a majority of the Directors may be necessary or desirable for the Association, the policies and limits to be reviewed at least annually and increased and decreased at the discretion of the majority of the Members of the Board of Directors;

I. To cause the Common Area, Areas of Common Responsibility, and those portions of Lots and dwellings to be maintained in accordance with the Declaration;

J. To prepare and file the appropriate governmental tax returns and in compliance with Revenue Ruling 70-604, the corporation elects to apply excess assessments to help reduce future years Assessments. Therefore, no tax is due on the excess payment.

Section 7.2 Duties. It shall be the duty of the Board of Directors:

A. To cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members of each class, or at any special meeting when such statement is requirement in writing by fifty-one percent (51%) of each class;

B. To supervise all Officers, agents and employees of the Association and to see that their duties are properly performed;

C. To fix the amount of the annual Assessment against each Lot and to send written notice of each Assessment to every Owner subject thereto and in relation thereto, to establish the Annual Budget as provided in the Declaration described hereinabove;

D. To foreclose the lien against any Property for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same, at the election of the Board of Directors;

E. To issue or cause to be issued by an appropriate Officer, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

F. To fix and determine the amount of special Assessments for capital improvements as set forth in the Declaration, to send written notice of each special Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date thereof, and to collect or cause to be collected such sum or sums as are deemed to be due by virtue of said special Assessment.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Officers. The Officers of this Association shall be a president, secretary, and treasurer who shall at all times be members of the Board of Directors.

Section 8.2 Election of Officers. The election of Officers shall take place at the meeting of the Board of Directors which shall immediately follow the adjournment of each annual meeting of Members.

Section 8.3 Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless said member shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 8.4 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

Section 8.5 Standing Committees. The Board shall appoint such standing committees as are required under the Declaration, the Certificate of Formation, or these Bylaws, as well as such other committees as are necessary or desirable from time to time, which committees shall exist for such periods of time, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

Section 8.6 Resignation and Removal. Any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.7 Vacancies. A vacancy in any office may be filled by appointment by a majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

Section 8.8 Duties. The duties of the Officers are as follows:

A. President: The President shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

B. Secretary: The Secretary may act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice

of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as may be required by the Board.

C. Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association along with the President; keep proper books of account; cause a financial report of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE IX COMMITTEES

Section 9.1 The Board of Directors may, at its discretion, create such committees as it sees fit from time to time.

ARTICLE X BOOKS AND RECORDS

Section 10.1 The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Certificate of Formation, and these Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, or such other address as the Board of Directors may from time to time designate, and copies may be purchased at a reasonable cost at such address.

ARTICLE XI ASSESSMENTS

Section 11.1 As more fully provided in the Declaration, except as therein provided, each Member of each class is obligated to pay to the Association annual and special Assessments and reserves, which are secured by a continuing lien upon the Lot against which the Assessment is made and are a personal obligation of the Member of each class.

ARTICLE XII CORPORATE SEAL

Section 12.1 The Association may have a seal in circular form, having within its circumference the words: **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation.

ARTICLE XIII AMENDMENTS

Section 13.1 Requirements to Amend. These Bylaws may be amended at a regular or special meeting of the Members by a vote of fifty-one percent (51%) of each class of the Members present in person or by proxy except as otherwise provided in the Declaration.

Section 13.2 Control of Conflict. In the case of any conflict between the Certificate of Formation and these Bylaws, the Certificate of Formation shall control, and in the case of any conflict between the Declaration, the Certificate of Formation, and/or these Bylaws, the Declaration shall control.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association.

Section 14.2 Indemnification. The Association shall indemnify any Officer or director or any former officer or director to the full extent permitted by law.

Section 14.3 Insurance. The Board of Directors may, but is not required to, elect to carry a policy of officers and directors' liability insurance, insuring the Officers and directors against any claims made against them whatsoever, except claims of willful negligence and misfeasance of office.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, we, the directors of **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation have hereunto set our hands this 15th day of February, 2022 for and on behalf of the Association.


Chad Alvarez, President

CERTIFICATION

I, the undersigned, do hereby certify that I am duly elected and acting Secretary of **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation and that the foregoing Bylaws constitute the original Bylaws of the said Association, as duly adopted at the meeting of the Board of Directors thereof, held on this 15th day of February, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association this 15th day of ~~December, 2021.~~
FEBRUARY, 2022.


Ben Hudnall, Secretary

EXHIBIT "C"

CERTIFICATE OF FORMATION OF HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirement of Title 10A of the Alabama Code, the undersigned have this day voluntarily associated themselves together for the purpose of forming a nonprofit corporation and do hereby certify:

ARTICLE I DEFINITIONS

Section 1.1 For ease of reference, this Certificate of Formation shall be referred to as the "Certificate". The terms used in this Certificate shall have the same definition and meaning as those set forth in the Declaration of Covenants, Conditions, Restrictions, Easements, and Assessments for **HERITAGE LANDING** (hereinafter the "Declaration"), to be recorded in the Public Records of Baldwin County, Alabama, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE II NAME

Section 2.1 The name of this corporation is **HERITAGE LANDING OF BALDWIN COUNTY HOMEOWNERS ASSOCIATION, INC.** (hereinafter the "Corporation").

ARTICLE III PRINCIPLE OFFICE

Section 3.1 The principal office is located at: 26050 Equity Dr., Ste. A,
Daphne, Alabama 36526

ARTICLE IV REGISTERED AGENT

Section 4.1 The individual who is hereby appointed as the initial Registered Agent of this Corporation is:

Name: Chad Alvarez

Address: 26050 Equity Dr., Ste. A, Daphne, AL 36526

ARTICLE V INCORPORATOR

Section 5.1 The Incorporator of the Corporation is:

Name: Chad Alvarez

Address: 26050 Equity Dr., Ste. A, Daphne, AL 36526

**ARTICLE VI
PURPOSE AND POWERS OF THE ASSOCIATION**

6.1 This Corporation does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the residence Lots and Common Areas within that certain tract of Property described in the Declaration. In addition, it is the Corporation's purpose to promote the health, safety, and welfare of the residents within the above-described Property and any additions thereto as may hereafter be brought within the jurisdiction of this Corporation for this purpose to:

- a. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Declaration and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length; and
- b. Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person; and
- c. Fix, levy, collect and enforce payment by any lawful means, all charges or Assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes, or governmental charges levied or imposed against the property of the Corporation; and
- d. Acquire (by gift, purchase or otherwise) own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation; and
- e. Borrow money and, with the assent of a majority, vote at a meeting where a quorum is present, in person or by proxy; and
- f. Dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument has been signed by fifty percent (50%) of each class of Members, agreeing to such dedication, sale or transfer; and
- g. Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area, provided such merger, consolidation or annexation shall have the assent of fifty percent (50%) of each class of Members; and
- h. Maintain, repair, replace, operate and manage the above-described Property and any improvements therein, including the right to reconstruct improvements owned

by the Corporation after casualty and to make further improvements of the Property or to purchase additional property and improvements; and

- i. Enter into contracts for management, insurance coverage, and maintenance and to delegate all of the powers and duties of the Corporation except those the delegation of which may be required by the Declaration to have approval of the Board of Directors or Membership of the Corporation; and
- j. Enforce the provisions of the proposed Declaration, this Certificate, the Bylaws, which may be hereafter adopted, and the rules and regulations governing the use of the Property and the improvements thereon as same may be hereafter established; and
- k. Exercise, undertake, and accomplish all of the rights, duties and obligations that may be granted to or imposed upon the Corporation pursuant to the Declaration; and
- l. Have and exercise any and all powers, rights, and privileges that a corporation organized under Title 10A of the Alabama Code regarding nonprofit corporations may now or hereafter have, or exercise together with all other powers reasonably necessary to effectuate the purpose of the Corporation as set out herein.

6.2 The Corporation is organized and shall be operated exclusively for the purposes set forth above. The activities of the Corporation will be financed by Assessments against Members as provided in the Declaration, and no part of any net earnings of the Corporation will inure to the benefit of any Member.

ARTICLE VII MEMBERSHIP

7.1 The Declarant, to the extent provided in the Declaration, and every person or entity who is a record Owner of a fee or undivided fee interest in any residential Lot, which is subject by the Declaration to Assessment by the Corporation, shall be a Member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any unit, which is subject to Assessment by the Corporation.

ARTICLE VIII ELECTION OR APPOINTMENT OF DIRECTORS

8.1 The manner in which Directors are elected or appointed is set forth in the Bylaws.

**ARTICLE IX
INITIAL OFFICES AND/OR DIRECTORS**

9.1 The affairs of this Corporation shall be managed by a Board of three (3) directors who need not be Members of the Corporation. The number of directors may be changed by amendment of the Bylaws of the Corporation. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

NAME	ADDRESS
Chad Alvarez - President	26050 Equity Dr., Ste. A, Daphne, AL 36526
Ben Hudnall - Secretary	26050 Equity Dr., Ste. A, Daphne, AL 36526
Elizabeth Poole - Treasurer	26050 Equity Dr., Ste. A, Daphne, AL 36526

9.2 The Officers of this Corporation shall be a president, a secretary, and a treasurer, and such other Officers as the Board may from time to time by resolution create.

**ARTICLE X
BYLAWS**

10.1 The Bylaws of the Corporation shall be adopted by a vote of a majority of the Members of the Board. The Bylaws may be amended or altered at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, in the manner and subject to any other condition set forth in the Bylaws.

**ARTICLE XI
DISSOLUTION**

11.1 The Corporation may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of Members as set forth in the Declaration. Upon dissolution of the Corporation other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Corporation was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. This procedure shall be subject to court approval on dissolution pursuant to Alabama Code, Title 10A.

**ARTICLE XII
EXISTENCE**

12.1 The Corporation shall exist perpetually.

**ARTICLE XIII
AMENDMENTS**

13.1 Amendment of this Certification shall require the assent of seventy-five percent (75%) of the entire Membership.

IN WITNESS WHEREOF, for the purposes of forming this Corporation under the laws of the State of Alabama, the undersigned, constituting the Incorporator of this Corporation, has executed this Certificate of Formation, this 11th day of February, 2022.

Michael C. Alvarez
Print Name: Chad Alvarez
Title: Incorporator
Date: 2/11/2022

OATH OF REGISTERED AGENT

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL CODES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATION OF MY POSITION AS REGISTERED AGENT.

Michael C. Alvarez
Print Name: Chad Alvarez
Title: Registered Agent
Date: 2/11/2022

STATE OF ALABAMA
COUNTY OF BALDWIN

I HEREBY CERTIFY that on this day, before me a notary public duly authorized in the State and County above named to take acknowledgments, personally appeared Chad Alvarez to me well known to be the person described in and who executed the foregoing Certificate of Formation, and he acknowledged before me that he subscribed to this Certificate of Formation.

Witness my hand and seal in the County and State aforesaid this 11th day of February, 2022.

Mary Dunwoody Harris
Notary Public

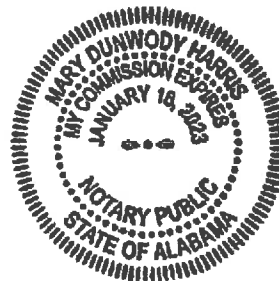


EXHIBIT "D"

City of Foley Stormwater Facility Maintenance Agreement

THIS AGREEMENT, made and entered into this ____ day of _____, 2022, by and between **Heritage Landing of Baldwin County, Inc** hereinafter called the "HOA", and the City of Foley, hereinafter called the "City".

WITNESSETH

WHEREAS, the HOA is the owner of certain real property described on the Plat of Heritage Landing as recorded in the land records of Baldwin County, Alabama, Instrument #**2008349, Slide 2842-B and Slide 2842-C** hereinafter called the "Property".

WHEREAS, the developer, Garden Street Communities Southeast, LLC ("Garden Street"), is proceeding to build on and develop the Property; and

WHEREAS, the Site Plan / Subdivision Plan known as Heritage Landing, hereinafter called the "Plan", which is expressly made a part hereof, as approved by the City, provides for detention of stormwater within the confines of the Property; and

WHEREAS, the City and the HOA, its successors and assigns, agree that the health, safety, and welfare of the residents of Foley, Alabama, require that on-site stormwater management facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management facilities as shown on the Plan be constructed and adequately maintained by the HOA, its successors and assigns,

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management facilities shall be constructed by Garden Street, its agents, contractors, subcontractors, successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The HOA, its successors and assigns, shall adequately maintain the stormwater management facilities. This includes all pipes, channels or other conveyances built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.
3. The HOA, its successors and assigns, shall inspect the stormwater management facility and submit an inspection report annually. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report.
4. The HOA, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management facilities whenever the City deems necessary, and with five (5) business days' notice to the HOA of such inspection. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City shall provide the HOA, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. In the event the HOA, its successors and assigns, fails to maintain the stormwater management facilities in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the reasonable costs of such repairs to the HOA, its successors and assigns. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land described on the Plat of Heritage Landing outside of the easement for the stormwater management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. The HOA, its successors and assigns, will perform the work necessary to keep these facilities in good working

order as appropriate. In the event a maintenance schedule for the stormwater management facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.

7. In the event the City, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, City attorneys' fees, costs and expenses of collection and the like, the HOA, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual direct costs incurred by the City hereunder.

8. This Agreement imposes no liability of any kind whatsoever on the City, and the HOA agrees to hold the City harmless from any liability in the event the stormwater management facilities fail to operate properly. The HOA also agrees to indemnify the City for any alleged liability under this Agreement or in regard to the facilities.

9. This Agreement shall be recorded among the land records of Baldwin County, Alabama, and shall constitute covenant running with the land, and shall be binding on the HOA, its administrators, executors, assigns, heirs and any other successors in interests.

WITNESS the following signatures and seals:

Heritage Landing of Baldwin County Homeowners Association, Inc.

Company/Corporation/Partnership Name (Seal)

By: _____

Chad Alvarez, President

(Type Name and Title)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2022, by Chad Alvarez, as President of Heritage Landing of Baldwin County Homeowners Association, Inc., an Alabama nonprofit corporation.

NOTARY PUBLIC

My Commission Expires: ____

COUNTY OF _____, ALABAMA

Company/Corporation/Partnership Name (Seal)

By: _____

(Type Name and Title)

The foregoing Agreement was acknowledged before me this ____ day of ___, 20 ___, by

NOTARY PUBLIC

My Commission Expires: _____

COUNTY OF _____, ALABAMA

Approved as to Form:

City Attorney _____

Date _____