

STATE OF ALABAMA
BALDWIN COUNTY

**DECLARATION OF RIGHTS, COVENANTS, RESTRICTIONS,
AFFIRMATIVE OBLIGATIONS AND CONDITIONS FOR**

MYRTLEWOOD

WHEREAS, the undersigned MYRTLEWOOD DEVELOPERS, L.L.C., (hereinafter referred to as ("DECLARANT")) IS THE OWNER OF REAL PROPERTY IN THE County of Baldwin, State of Alabama, described as follows:

Legal Description attached as EXHIBIT A

WHEREAS, said property (hereinafter sometimes called the "Subdivision") has been subdivided into seventy-two (72) residential lots in the manner indicated on attached EXHIBIT B; and

WHEREAS, said Subdivision shall be developed in one phase.

WHEREAS, Developer desires to subdivide and improve the Property and to create thereon a residential subdivision, and to provide for the preservation of the values and amenities in the Subdivision and to thereby advance the general welfare of the community; and to that end to place certain beneficial restrictions upon the Property for the purposes of insuring that it will be used for its intended purposes as set forth herein, and to prevent nuisances and impairment of the attractiveness of the Subdivision, and thereby to secure to the Owner of each Lot the full benefit and enjoyment of his home with no greater restriction on the free and undisturbed use of his Lot than is necessary to insure the same advantages to the other Owners; and

WHEREAS, Developer deems it desirable for the efficient preservation of the values and amenities in the Subdivision to create a nonprofit corporation, which shall have the power to manage, maintain and care for the Common Elements and all other powers and duties set forth herein; and

WHEREAS, for the purpose of exercising said functions, Developer will incorporate under the laws of the State of Alabama, Myrtlewood Property Owners Association, Inc., a nonprofit corporation (the "Association"), which shall be the homeowners association with respect to the Subdivision within the meaning of Sec. 528 of the United States Internal Revenue Code (the "Code"), and the Regulations thereunder;

NOW, THEREFORE, Developer hereby declares that the real estate described in Exhibit "A" attached hereto and made a part hereof, located in Baldwin County, Alabama, shall be subdivided, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE ONE

DEFINITIONS:

As used herein, the following terms shall have the following meanings unless the context otherwise requires:

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:

2007 January -10 3:36PM

Instrument Number 1024059 Pages 20
Recording 60.00 Mortgage
Deed Min Tax
Index DP 5.00
Archive 5.00
Adrian T. Johns, Judge of Probate

1024859

1.1 "Association" means and refers to Myrtlewood Property Owners Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

Unless the context otherwise requires, all references herein to the Board of Directors or the Board, or to the Articles of Incorporation or Bylaws or to the President or the Secretary or any other officer, shall mean, respectively, those of the Association

1.2 "Architectural Review Committee" or "ARC" means and refers to the Committee appointed by the Association to review and approve plans for improvements to the Lots in the Subdivision. No Improvement (as defined herein) shall be commenced, erected, placed, maintained or permitted to remain on any portion of any Lot until plans and specifications in such form and detail as the ARC may deem necessary shall be submitted and approved in writing by the ARC.

1.3 "Common Area" means and refers to all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. No property shall be Common Area until the property is conveyed to the Association.

1.4 "Common Elements" means all portions of the Subdivision other than the Lots and the public street(s) and right(s)-of-way, including, without limitation, the Drainage System and all open spaces, landscaping, and other common areas and facilities in or appurtenant to the Subdivision, and all other property, whether real or personal, from time to time held by the Association for the common benefit and enjoyment of the Owners.

1.5 "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as provided herein.

1.6 "Common Expenses" means expenditures made by or financial liabilities of the Association, including, but not limited to, expenditures made by or financial liabilities of the Association for the maintenance and repair of the public streets and rights-of-way in the Subdivision, and for the management, maintenance, utilities and care of the Common Elements, and the administration and enforcement of the rights, covenants, restrictions, affirmative obligations and conditions set forth in this Declaration, together with any allocations to reserves therefor.

1.7 "Declarant" means and refers to Myrtlewood Developers, L.L.C., an Alabama limited liability company, its successors and assigns.

1.8 "Declaration" means this Declaration of Rights, Covenants, Restrictions, Affirmative Obligations and Conditions applicable to the Subdivision as recorded in the Office of the Judge of Probate of Baldwin County, Alabama, as the same may be amended from time to time.

1.9 "Developer" means Myrtlewood Developers, LLC, an Alabama limited liability company, its successors and assigns of its development rights in respect to the Subdivision.

1.10 "Drainage System" means the storm and floodwater retention or detention areas and drainage system in the Subdivision, including all easements and rights-of-way appurtenant thereto.

1.11 "Improvement" shall mean and include all buildings, roof structures, parking areas, fences, walls, hedges, mass planting, poles, driveways, grading and site preparation work, concrete or asphalt pads, detention areas, parks, swimming pools, signs, utility connections, exterior illumination, changes in exterior color or shape and any new exterior construction or exterior improvement that may not be included in any of the foregoing. Improvement includes original improvements and later changes and improvements, including changes in exterior color.

1.12 "Lot" means and refers to any and each lot included in those plats recorded in the public records and included within the legal description of this declaration.

1.13 "Member" means any Person having membership rights in the Association as provided herein.

1.14 "Municipality" means the municipality, if any, having and exercising subdivision-planning jurisdiction over the Subdivision, or, if the context so requires, an agency of such municipality.

1.15 "Owner" means and refers to the record owner, whether one or more persons or entities, of a fee simple title to any lot that is part of the Subdivision, excluding those having such interest merely as security for the performance of an obligation.

1.16 "Person" means a natural person, corporation, partnership, limited liability company, association, trust, estate, fiduciary, or other legal entity.

1.17 "Planning Commission" means the Baldwin County Planning and Zoning Commission, or, if a municipality has and exercises subdivision planning jurisdiction over the Subdivision, the Planning Commission of the Municipality.

1.18 "Plat" means the Final Plat of the Subdivision, or, if the Subdivision is developed in phases, of each phase thereof, approved by the Planning Commission and recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

1.19 "Property" means the land described in Exhibit "A" hereto and all improvements thereon, and all easements, rights and appurtenances thereunto belonging.

1.20 "Subdivision" means and refers to the land consisting of lots one through seventy-two as shown on the plat recorded on Slide 2315B - instrument 1024697 in the records of the Judge of Probate of Baldwin County.

1.21 "Subdivision Regulations" means the subdivision regulations of the County or Municipality applicable to the Subdivision. All other terms used in this instrument and in the Subdivision Regulations shall have the same meanings herein as in such regulations unless the context of this instrument otherwise requires.

ARTICLE II

CREATION OF SUBDIVISION

2.1 The name of the Subdivision shall be "Myrtlewood". The Property shall be subdivided, laid out and platted in accordance with the Plat approved by the Planning Commission and recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

ARTICLE III

PERMITTED USE

3.1 All Lots shall be restricted to single-family residential use; provided, however, that nothing herein contained shall prohibit an Owner from renting his house, whether on a long-term or short-term basis, as long as it is used exclusively for single-family residential purposes by the tenant; nor shall anything herein contained prohibit an Owner (or his tenant) from maintaining an office or work place in his home or an accessory building if and to the extent permitted by the Subdivision Regulations and applicable zoning ordinances; and provided, further, that until such time as Developer no longer owns any Lot in, or planned for, the Subdivision (including all planned additional phases), Developer shall have the right to maintain a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the Subdivision therein and therefrom. The term "single-family residential use" or any similar term used in this Declaration refers to the character of the dwellings in the Subdivision and not to the number of persons that may own any Lot; provided, however, that no Lot shall contain more than one dwelling.

3.2 No Lot shall be further divided or re-subdivided unless all portions of the Lot are used to increase the size of a Lot or Lots adjacent to the same and, if required, the Planning Commission approves such division or re-subdivision. All expense of obtaining such approval and, if required, amending the Plat accordingly shall be borne by the Owner requesting such approval.

3.3 No trailer home, mobile home, or travel trailer will be permitted as a residence in this Subdivision, and no pre-manufactured or modular home shall be permitted as a residence unless the Architectural Review Committee finds that because of the unique quality and style of the said pre-manufactured or modular home, the same shall not be inconsistent with the Subdivision and shall otherwise be appropriate therefor. The ARC's determination that an item is a pre-manufactured home, modular home, trailer home, mobile home or travel trailer shall be conclusive.

3.4 Travel trailers, recreational vehicles, boats, and commercial vehicles which are the private property of an Owner may be kept on the Owner's Lot only after the residence has been completed and occupied. Such travel trailers, recreational vehicles, boats and commercial vehicles shall be kept only in a closed garage or at the rear of the residence in a manner screened by fence or plantings so as to not detract from the view and enjoyment of other Owners. Such vehicles may not be parked on the streets except while engaged in transporting merchandise or goods to or from a residence in the Subdivision.

No tent, garage, or out-building of any type placed or erected on a lot covered by these restrictions, shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary nature be used for human habitation, without the prior written approval of the Association.

ARTICLE IV RESTRICTIONS

4.1 Buildings. No house or other building or structure shall be erected, altered, placed or permitted on any Lot until the construction plans and specifications have been approved by (i) the Developer, or, (ii) upon termination of the period of Developer control of the Association pursuant to Section 6.7, by the Association, provided, however, that in either such case the Developer or the Association, as the case may be, may waive such requirements at any time and from time to time in general or on a case by case basis, provided that such waiver is in writing and signed by a Manager of the Developer, or, in the case of the Association, by the President or other officer or director authorized by the Board of Directors.

No house or other building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one dwelling and no more than one fully enclosed garage or accessory buildings as shall be incidental to residential use. No barns will be permitted. For the purposes of this subparagraph, a garage attached to any building on a Lot shall not be considered a building or structure separate from that to which it is attached.

The accessory building/structures, if any, on each Lot shall be designed in such fashion as to blend with the design of the house and the surroundings and shall be located so as to minimize visibility from the street. All landscaping of any Lot shall be completed within ninety (90) days from the completion of construction of the house.

No exposed concrete block shall be utilized in the construction of the exterior of any structure. All exposed windows and window units shall be constructed of Painted wood, vinyl or aluminum or such primed and finished metal as may be specifically approved by the ARC. Bright aluminum window frames will not be approved.

Primary roofs must have a minimum pitch of 6/12. Secondary roof may have a pitch of less than 6/12 only if approved by the ARC. Any such secondary roof(s) having a pitch less than 6/12 shall not exceed an aggregate total of more than 30 percent of the total roof area.

No flat, duplex, apartment or other dwelling designed to accommodate more than one family shall be permitted on any Lot.

4.2 Living Area. The living area of each house shall contain not less than:

For Lots 1 through 10 inclusive - one thousand, five hundred (1,500) square feet.

For Lots 11 through 20 inclusive - one thousand, seven hundred (1,700) square feet.

For Lots 21 through 38 inclusive - one thousand, five hundred (1,500) square feet.

For Lots 39 through 54 inclusive - one thousand, seven hundred (1,700) square feet.

For Lots 55 through 72 inclusive - one thousand, five hundred (1,500) square feet.

The total area of the first floor of any house containing more than one story shall not be less than one thousand (1,000) square feet including attached garage and covered porches. In determining the number of stories in any house, the attic and basement, if any, shall not be counted. In determining the living area of any house, carports, garages and open porches shall not be counted.

4.3 Building Set Backs. No part of any building or other structure on a Lot (other than walls and fences permitted under Section 4.6) shall be located closer to any property line of the Lot than the minimum building set back lines shown on the Plat. If the Plat and the plat as amended does not show the building set back lines for a Lot, the minimum set back lines applicable to such Lot shall be 30 feet from the front line of the Lot; 10 feet from each side line of the Lot; and, in the case of the house, 30 feet from the rear line of the Lot, or, in the case of all other structures on the Lot (other than a wall or fence permitted under Section 4.6), 10 feet from the rear line of the Lot. The front line of all Lots shall be the property line adjoining a Subdivision street, or, if a corner Lot, as designated on the Plat. At the discretion of the ARC, small storage buildings may be permitted to 10 feet from the rear lot line.

The foregoing set back lines are the minimum set back lines applicable to each Lot. If the Planning Commission, or any other governmental agency or authority, requires different minimum building set back lines as to any particular Lot, the set back lines applicable to the Lot shall be the greater of (a) those shown on the Plat or as set forth above, as the case may be, or (b) those required by the Planning Commission or such governmental agency or authority.

4.4. Water and Sewer Service. The Owner of each Lot shall be required to connect to and use the central water distribution system and central sanitary sewage disposal system serving the Subdivision, and shall be responsible for paying all connection fees and assessments. No septic tanks will be permitted.

4.5 Secondary Utility Service. Each Owner shall be responsible for the installation, at his expense, of all secondary utility service to his Lot and from area to area on his Lot, all of which shall be underground.

4.6 Walls and Fences. Walls or fences will be permitted in the rear yards of homes, provided that they do not exceed six feet (6') in height and are of "Shadow Box" design as described in Exhibit C attached. The rear yard shall be that portion of the Lot extending from the rear Lot line to the rear most plane of the house, and, in the case of a corner lot, the set back line of the non-fronting street.

4.7 Garages. If there is more than one garage on any Lot, the principal garage must be attached to the house as an integral part of the house. If located on the side of the house, the principal garage may extend toward the front line of the Lot beyond the front of the house, but not closer to the front line of the Lot than is permitted under Section 4.3.

Any additional garage must be located to the rear of the rear most plane of the house, and must be designed in such fashion as to blend with the design of the house. As used herein, "garage" includes, but is not limited to, porte-cocheres and carports.

4.8 Equipment. All heating, ventilation and air conditioning equipment, including, without limitation, compressors, and all gas meters, butane tanks and other mechanical and/or electrical devices on any Lot shall be located to the rear of the front most plane of the house, and shall be visually screened from the street and adjoining Lots.

4.9 Garbage Disposal Containers. Outside garbage disposal containers must be located to the rear of the rear most plane of the house and no closer to any property line of the Lot than the minimum building set back lines applicable to the Lot, and must be in either underground covered receptacles or visually screened from the street and adjoining Lots. All outside garbage disposal equipment and containers shall be kept in a clean and sanitary condition. No Lot shall be used as a dumping area for rubbish of any kind.

No trash or other refuse shall be kept, stored or allowed to accumulate except between scheduled pickups and in accordance with the provisions hereof. If trash or other refuse is to be picked up and carried away on a regular recurring basis, it must be placed in sanitary containers and only on the scheduled pick up date or the night before may be placed on the Lot to provide access to the Person making the pick up.

4.10 Satellite Dishes. All satellite dishes must be located to the rear of the rear most plane of the house and no closer to any property line of the Lot than the minimum building set back lines applicable to the Lot, and must be visually screened from the street and adjoining Lots. No satellite dish may be larger than eighteen inches in diameter unless approved by the ARC.

4.11 Exterior Lighting. Exterior lighting shall be recessed or directed downward and away from neighbors' yards. No lighting shall be located so as to interfere with vehicular traffic or become a nuisance to neighbors by adversely affecting the nighttime environment of adjacent properties.

4.12 Clotheslines. No outside clotheslines shall be permitted at any time unless visually screened from the street and adjoining Lots.

4.13 Signs. No signs of any kind shall be placed or maintained upon any Lot at any time by anyone, including, without limitation, the Owner, a realtor, contractor, or subcontractor, except for the following approved signs of not more than nine (9) square feet:

- (a) one (1) "For Sale" or "For Rent" sign;
- (b) one (1) sign by the builder during the construction period not to exceed one hundred eighty (180) days;
- (c) any sign or signs required to be posted by statute, ordinance, or governmental rule or regulation, or court order;
- (d) any sign which has been specifically approved in writing by the Association.

The Association shall have the right to restrict the size, color, content, location, number and method of display of each approved sign. All "For Sale" or "For Rent" signs shall contain only the Lot or street number, real estate company (and individual agent if desired) and telephone number. All contractor signs shall contain only the Lot or street number, name of the Owner and/or the general contractor, and telephone number. Signs must be placed parallel to the street and may not be displayed from the interior of any house, out building or other structure so as to be visible from the exterior. Nothing herein contained, however, shall prevent the placing or maintenance of any sign or signs of any kind anywhere in the Subdivision by the Developer advertising the Subdivision or its sales activities pertaining to the Subdivision as long as Developer owns a Lot in the Subdivision which has not been previously conveyed to a Person other than the Developer.

4.14 Animals. No bees or other insects, chickens, horses, pigs, cows, sheep, goats or other recreational, farm or large animals of any kind shall be kept or maintained in the Subdivision at any time, temporarily or otherwise. As provided in Section 6.17, the Association may, in its discretion, from time to time adopt and amend reasonable Rules and Regulations pertaining to the kinds and number of pets that an Owner shall be permitted to have in the Subdivision, and the Association is authorized to enforce such Rules and Regulations if and to the extent so adopted by it. All pets that are kept or maintained by any Owner shall be fenced or restrained in such manner that they cannot run loose in the Subdivision, or become an annoyance or nuisance to the neighborhood. No commercial breeding or boarding of animals shall be permitted in the Subdivision.

4.15 Trailers, Trucks, Mobile Homes, Boats and Prohibited Uses. No house trailer, truck (other than a pick-up truck), or mobile home shall be permitted on any Lot, except trucks may be permitted for use during construction and temporary repairs to any building, structure or other improvement on the Lot. Travel trailers, hauling trailers, "habitable motor vehicles", boats and boat trailers must be stored to the rear of the front most plane of the house. No trailer, mobile home, camper, recreational vehicle or other vehicle, or boat shall at any time be used as a dwelling, temporarily or otherwise.

4.16 Basketball Backboards and Other Fixed Play Structures. No basketball goals or backboards or other fixed game or play structures shall be located on any Lot except on the side or rear of the house or garage or unless the same is screened from the street.

4.17 Activities. No trade, business or commercial activities of any kind (other than as permitted by Section 3.1 and the activities of Developer and/or the Owner of a Lot, and their respective contractors and subcontractors, during the construction, repair and maintenance of the improvements on and landscaping of the Lot), or obnoxious, offensive, or illegal activity shall be permitted or conducted upon any Lot or elsewhere in the Subdivision, nor shall anything be done thereon that may be or become an annoyance or a nuisance to the neighborhood or violation of the laws and regulations of the United States of America, the State of Alabama, the County or Municipality, or this Declaration, or the Articles of Incorporation or Bylaws. No junk, inoperable motor vehicles or other unsightly personal property shall be kept or maintained on any Lot or elsewhere in the Subdivision except for minor emergency repairs. Inoperable motor vehicles or those in a state of disrepair shall be made operable or repaired at locations other than within the Subdivision.

4.18 Each Owner's Obligation to Repair. All buildings, structures and improvements on each Lot shall at all times be maintained and kept in a proper and good state of repair by the Owner of the Lot, at his expense. All exposed painted areas of all buildings, structures and improvements on each Lot shall also be kept well painted by

the Owner of the Lot, at his expense. The Owner of a Lot shall, at his expense, keep his grass properly mowed, watered and trimmed and maintain his yard and landscaping in good order and condition free of trash, dead trees and plants, and unsightly debris at all times.

4.19 Adjoining Lots. For the purposes of this instrument, and subject to the approval of the Planning Commission, if required, any Owner having two or more adjoining Lots may combine such Lots. All expense of obtaining such approval shall be borne by the Owner requesting such approval. Thereafter, the combined Lots shall be deemed a single Lot for all purposes hereunder.

4.20 Swimming Pools Swimming pools must be constructed, equipped and maintained in accordance with the requirements of the appropriate city, county and state authorities.

4.21 Beautification and Maintenance of Lots. Appropriate foundation planting shall be established and maintained around front and sides of each dwelling, with a minimum of twenty shrubs and two trees per residence and suitable improved lawn shall be planted and maintained in each square foot of lawn area. All planted materials shall be installed within sixty days following occupancy of the residence, unless this period is extended in writing by the ARC due to delays of adverse weather conditions or other causes beyond the control of the Owner. All lots shall be maintained in a neat, attractive and presentable condition at all times.

The Owner of any lot shall have the duty of and responsibility for keeping the premises, improvements and appurtenances and landscaping in a well-maintained, safe, clean and attractive condition at all times. If, in the opinion of the Declarant, or its assigns or successors, or the Association, any such Owner is failing in this duty or responsibility, then the Declarant or its assigns or successors, or the Association, may give notice of such fact, and such Owner shall within ten (10) days of such notice undertake the care and maintenance required to restore the Lot to a safe, clean and attractive condition. If such Owner fails to fulfill his duty and responsibility after such notice, then the Declarant, or its assigns or successors, or the Association, shall have the right and power to perform such care and maintenance, and the Owner shall be liable for the cost thereof, and said liability shall become a lien upon the property until reimbursed in full.

4.22 Existing Trees: Existing trees shall not be removed from any property line unless they are dead or written permission has received by the lot Owner from the Association.

ARTICLE V

EASEMENTS, COMMON AREA AND PROPERTY RIGHTS

5.1 Easements. The easements shown on the recorded plat, as amended, of the Subdivision are hereby adopted as a part of these restrictions, and all lots in the Subdivision shall be subject to such easements. The Declarant reserves unto itself and its successors and assigns the right to easement, but not the obligation, to construct, install, maintain, repair and replace power, water, gas sewer, telephone, and other utility lines, equipment and facilities and drainage ditches, in, on, over, and under the streets and roads and easements shown on the recorded plat of the Subdivision, and the right and easement, but not obligation, to construct, install, establish, operate, maintain, repair and replace lighting, walls, fences, shrubbery, bushes, trees, and other decorative or screening improvements, in, on, over, and under the property included within all areas designated on said plats as easements on the boundaries of the Subdivision, with full right of ingress and egress to and from said streets and easements across adjoining property; and the Declarant reserves unto itself and its successors and assigns the right to contract generally with others for the doing of any or all of such things and the right to grant unto others such easements right, and privileges as the Declarant may deem appropriate or convenient in connection therewith.

5.2 Common Area. Common Area shall include any and all property designated as Common Area in the Myrtlewood Subdivision plats recorded in the public records of Baldwin County. The maintenance of these areas shall be the sole responsibility of the Myrtlewood Homeowners Association and shall not be the responsibility of the Baldwin County Commission or the City of Foley.

Drainage and utility easements and landscape easements on private property as identified and described in the Myrtlewood Subdivision plats recorded in the public records of Baldwin County, Alabama, and landscape improvements, road signs, fencing, street lights, sidewalks, landscape and irrigation improvements located on dedicated right-of-ways which are not maintained by county or municipal government shall be limited common property with respect to the purpose of the easements and improvements. It shall be within the authority of the Myrtlewood Homeowners Association to maintain the easements and right-of-ways.

5.3 Ownership of Common Property. Ownership of Common Property shall be vested in each Owner of the Lots in a fractional share, the numerator of which is one (1) and the denominator of which is the total number of lots approved and recorded as a part of Myrtlewood Subdivision in the public records of Baldwin County, Alabama, from time to time.

5.4 Owner's Easements of Enjoyment. Every Owner shall have a 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, subject to the following provisions:

(a) the ARC or Association's right to limit park hours and to institute rules, if necessary, for the security of persons and property.

(b) Owners shall have access to limited common property only for the purpose of maintenance as approved by the ARC or the Association.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility pursuant to the written approval of such dedication or transfer by two-thirds of the members.

5.5 Delegation of Use. Any Owner may delegate in accordance with the by-laws his right of enjoyment to the Common Area and facilities to the members of his family or tenants who reside on the property.

ARTICLE VI

ASSOCIATION AND AMENDMENTS

6.1 Formation. Myrtlewood Property Owners Association, Inc. (the "Association"), an Alabama nonprofit corporation, to be formed by Developer, shall be organized and operated to provide for the management, maintenance, and care of the Common Elements in accordance with this Declaration, the Articles of Incorporation and Bylaws, and to administer and enforce the rights, covenants, restrictions, affirmative obligations and conditions set forth herein, for the common good of the Members; and shall have the powers and duties set forth herein and in the Articles of Incorporation and Bylaws.

The Association will be the homeowners association with respect to the Subdivision within the meaning of Sec. 528 of the United States Internal Revenue Code, as amended (the "Code"), and the Regulations thereunder.

6.2 Association's Obligation to Repair. The Association, at its expense, and without any cost or expense to the County or Municipality or any other public body, shall be responsible for the maintenance and repair of the following:

(1) the Common Elements and all easements and rights-of-way within the Subdivision (except the public street(s) and right(s)-of-way after the County or Municipality or other public body assumes the responsibility for the maintenance thereof); and

(2) incidental damage caused to any Lot or the improvements thereon by any work done by the Association. This Section shall not relieve an Owner of liability for damage caused by such Owner, his family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such Person. The cost of repair for any damage so caused by an Owner, his family members, guests, invitees, lessees or licensees shall be a special assessment against the Owner responsible therefor.

6.3 Membership. The membership of the Association at all times shall consist exclusively of all Owners (including Developer as long as it owns a Lot). The Developer shall be deemed to be the Owner of each Lot which has not been conveyed to a Person other than Developer; and shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Lot under this Declaration and the Articles of Incorporation, Bylaws and, if and to the extent adopted, the Rules and Regulations of the Association, as the same may be amended from time to time (collectively the "Governing Documents").

The Association shall have only one class of member. Each Owner shall cease being a member of the Association at the time he no longer owns a Lot. Change of membership in the Association shall be established by recording in the Office of the Judge of Probate of Baldwin County, Alabama, the deed or other instrument establishing record title to a Lot, and the delivery to the Association of a true and correct photocopy of such instrument as recorded, showing all recording data, the Owner designated by such instrument thereby becoming a record Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners shall be subject to and shall comply with all of the provisions of the Governing Documents.

The Members shall not, as such, be liable for the obligations of the Association.

6.4 Meetings. The annual meeting of the Members shall be held on such date and at such time and place as shall be provided in the Bylaws. Failure to hold any annual meeting of the Members at the designated time shall not work a forfeiture or dissolution of the Association.

The President or the Board of Directors may call special meetings of the Members. Special meetings of the Members may also be called by such other officers or Persons or number or proportion of Members as may be provided in the Bylaws. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Member or to any other mailing address designated in writing by such Member and filed with the Secretary. The notice of the meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration, the Articles of Incorporation or the Bylaws, any budget changes and any proposals to levy special assessments or to remove an officer or member of the Board of Directors, provided, however, that if the initial meeting is adjourned, the purpose of the meeting need not be set forth in the notice of any subsequent meeting called for the same purpose and held within sixty (60) days of the initial meeting.

6.5 Quorum. At any initial meeting of the Members, whether regular or special, the presence at the meeting, in person or by proxy, of Members entitled to cast not less than fifty percent (50%) of all the votes shall constitute a quorum. If a quorum is not present at any such meeting, one or more subsequent meetings may be called on not less than ten (10) days written notice of each such subsequent meeting; and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the immediately preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

If a quorum is present at a meeting, the affirmative vote of a majority in interest of the Members represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless a greater number is required by the Act, this Declaration, the Articles of Incorporation or the Bylaws.

6.6 Voting Rights. Each Member in good standing shall be entitled to one vote on each matter submitted to a vote of Members. On all issues decided by a vote of the Members each Owner, including Developer, shall be entitled to one vote for each Lot owned by him. If a Lot is owned by more than one Person, the Owners of the Lot, collectively, shall be considered a single Member, and may designate among themselves by proxy the one of their number entitled to vote for all of them. If only one of the multiple Owners of a Lot is present at a meeting of the Association, he shall be entitled to cast all the votes for that Lot. If more than one of the multiple Owners are present, the votes for that Lot may be cast only in accordance with a written agreement of a majority in interest of the multiple Owners, unless the Bylaws expressly provide otherwise. There shall be a majority agreement if any one of the multiple Owners of the Lot casts the votes for that Lot without protest being made promptly to the person residing over the meeting by any of the other Owners of the Lot.

An Owner may not revoke a proxy given pursuant to this Section except by written notice of revocation filed with the Secretary prior to a meeting or actual notice of revocation to the person presiding over a meeting of the Association.

A proxy shall be void if it is not dated or purports to be revocable without notice. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

6.7 Board of Directors. The activities and affairs of the Association shall be managed by the Board of Directors, provided, however, that the Board shall not exercise any power or authority conferred herein or by the Act or Articles of Incorporation upon the Members.

The Board of Directors may not act on behalf of the Association to amend this Declaration or to elect directors or to determine the qualifications, powers and duties, or terms of office of the members of the Board of Directors, but, except as provided below, the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

The initial members of the Board of Directors named in the Articles of Incorporation shall hold office until the first annual meeting of the Members. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the Bylaws; provided, however, that the Developer may appoint and remove the members of the Board of Directors, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (i) sixty (60) days after all of the Lots in the Subdivision (including all planned additional phases of the Subdivision) have been conveyed to Persons other than Developer (See Article X) or (ii) three (3) years after the first conveyance of a Lot to a Person other than Developer; provided that the Developer may, at its option, voluntarily terminate its control of the Association at an earlier date.

Until the termination of the period of Developer control of the Association, the members of the Board of Directors appointed by the Developer may, but need not be, Owners.

Upon the termination of the period of Developer control of the Association, the Owners shall elect a Board of Directors of at least three members, all of who shall be Owners.

The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

6.8 Allocation of Common Expense Liabilities. Except for assessments for Common Expenses caused by the misconduct of an Owner, his invitees, licensees, employees or contractors, which shall be assessed against such Owner, all Common Expenses shall be assessed ratably against the Owner(s) of each Lot (including Developer as to all Lots owned by it). The amount of each assessment for Common Expense Liabilities allocable to the Owner(s) of each Lot shall be expressed by a percentage relating to each Lot, which shall be determined by multiplying one hundred percent (100%) times a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots in the Subdivision (including all additional phases when added to the Subdivision).

6.9 Obligations of Owners. Each Owner shall, by acceptance of title to his Lot, be conclusively presumed to have agreed to abide by the provisions of the Governing Documents, and to pay, when due, all assessments due by him to the Association, together with interest thereon from the due date at the interest rate, not to exceed the maximum legal rate, set by the Association.

6.10 Liens. The Association shall have a lien on each Lot and the improvements thereon for any unpaid assessments due by the Owner(s) thereof, duly made by the Association, together with interest thereon at the rate aforesaid, and reasonable attorney's fees and costs. Such lien shall be effective from and after the time of recording In the Office of the Judge of Probate of Baldwin County, Alabama of a claim of lien stating the description of the Lot, the name of the record Owner(s), the amount due and the date when due. Such claim of lien shall include only sums that are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction of lien. All such liens shall be subordinate to any lien for property taxes, the lien of any mortgage of record and any other lien recorded prior to the time of recording of the claim of the Association's lien. Such liens may be foreclosed by an action brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The Association shall have the power to bid in the Lot and improvements thereon at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. An action to recover a money judgment for unpaid assessments may be also maintained without waiving the lien securing the same.

All such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and continuing lien upon the Lot and the improvements thereon against which each such

assessment is made. Each such assessment, together with the interest thereon and costs of collection thereof as herein provided, shall also be the personal obligation of any Person who is an Owner of such Lot at the time the assessment falls due, or, in the event there is more than one Owner of any Lot, each and every such Owner shall be personally liable for the entire assessment due for such Lot, said obligation being joint and several.

6.11 Financial Records. The Association shall keep financial records in sufficient detail to enable it to furnish to each Member a statement setting forth the amount of the annual assessment and any unpaid expense or special assessment currently due and payable from such Member; the most recent regularly prepared balance sheet and cash receipts and disbursements statement, if any, of the Association; the current operating budget of the Association; a statement of any unsatisfied judgments against the Association and any pending suit in which the Association is a party; and such other records and information as shall from time to time be required by the Board of Directors. All financial and other records of the Association shall be made reasonably available for examination by any Member or his authorized agents, and such records shall be made available in Baldwin County, Alabama.

6.12 Dealings with Association. With respect to a third person dealing with the Association; the existence of the Association's powers and the proper exercise thereof by the Association may be assumed without inquiry, unless such person has actual knowledge that the Association is exceeding or improperly exercising its powers. A third person shall not be bound to assure the proper application of any funds paid or assets delivered to the Association.

6.13 Annual Assessments. The annual assessment each year shall be fixed by the Board of Directors and shall be payable in annual (or monthly or quarterly installment if approved by the Board of Directors) installments commencing whenever the Board of Directors shall determine it to be necessary or appropriate to provide funds for and/or a reserve for Common Expenses. The Association shall have the authority to make assessments, as shall be fixed and may be changed by the Board of Directors from time to time. If the Board fails to establish a new assessment amount for any year, or to fix the manner in which the same shall be payable, then the Members may establish such.

Within thirty (30) days after making any such assessment, the Board of Directors shall notify all of the Owners of the total amount of such assessment and the amount thereof allocable to each Lot.

6.14 Special Assessments. In addition to the annual assessments, the Association may levy in any year or years, one or more special assessments, applicable to that year only, for the purpose of defraying in whole or in part the cost of any unexpected repair, replacement or improvement of the Common Elements, provided that any such assessment shall have the assent of a majority of all votes cast at a meeting of the Members duly called for such purpose, and at which a quorum of the Members (determined as provided in Section 6.5) is present, in person or by proxy, written notice of which setting forth the purpose of the meeting shall be sent to all Members at least thirty (30) days in advance, provided that if the initial meeting is adjourned the purpose of the meeting need not be set forth in the notice of any subsequent meeting called for the same purpose, and the notice provisions set forth in Section 6.5 shall apply in respect to each such subsequent meeting.

The due date of any special assessment under this Article shall be fixed in the resolution authorizing such assessment.

Notwithstanding the foregoing, if at any time the funds of the Association are insufficient to permit it to adequately provide for the cost of any construction, reconstruction, repair, replacement or improvement of the Common Elements or to enable the Association to perform its obligations hereunder, the Association shall make and collect a special assessment from the Owners in such amount as shall be required to provide sufficient funds for such purpose or purposes and adequate reserves therefor. The Association's obligation to make and collect any such special assessment shall be mandatory and the Developer, or any Owner or Owners, shall each have the right, but not the obligation, to file and prosecute any action or other proceedings against the Association to compel the Association to comply with the requirements of this paragraph and to enjoin it from violating the same.

6.15 Abatement of Violations. The Board of Directors shall, upon written request by any Owner, or upon its own initiative, if it so elects, investigate suspected violations of the provisions of this Declaration, and determine whether a violation exists. If the Board determines that no such violation exists, it shall give written notice of its determination to the complainant Owner, if any, in person or by registered or certified mail, addressed to such Owner at his last known address. Should the Board determine that a violation does exist, it shall give written notice of this determination in person or by registered or certified mail to the complainant Owner, if any, and to the Owner of the

Lot on which, or as to which, such violation exists, addressed to each at his last known address. The Owner of the Lot on which, or as to which, such violation exists shall be allowed thirty (30) days [twenty four (24) hours in the case of a violation of Sections 4.11 through 4.18, inclusive] after the giving of such notice, or such longer period as the Board may deem appropriate, in which to correct such violation. Should the violation not be corrected within such period, the Board and/or any Owner or Owners, shall each have the right, but not the obligation, to prosecute any proceedings at law or in equity against the Person or Persons found by the Board to be violating any of these rights, covenants, restrictions, affirmative obligations and conditions and prevent him or them from so doing, recover damages for such violation, and obtain any other legal or equitable relief to which it, he, or they may be entitled under the circumstances.

The remedies provided for above shall not be exclusive. The breach of the provisions of this Declaration shall give the Association, or any Owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such: defaulting Owner, and the Association shall have a lien for all of the same upon the Lot(s) and improvements thereon of such defaulting Owner.

6.16 Failure of the Association to Insist on Strict Performance: No Waiver. Failure of the Association to insist in anyone or more instances upon the strict performance of any of the provisions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such provisions, but such provision shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any provision hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by a majority of the directors then in office.

Subject to the provisions of the last paragraph of Section 6.14 and except as provided therein, neither the Association, nor its Members, employees or agents shall be liable to any Person for (a) the manner in which the Association exercises or for the Association's failure or refusal to exercise any right or authority herein granted to the Association, whether discretionary or not; (b) the failure or refusal of any other Person to comply with any of the provisions hereof; or (c) the failure or refusal of any Person to enforce the provisions hereof against any other Person.

6.17 Rules and Regulations of the Association. The Association may, in its discretion, and is hereby authorized to adopt and amend reasonable Rules and Regulations relating to the conduct of the Owners and their invitees and aesthetic considerations pertaining to the Subdivision in accordance with the Bylaws, including, without limitation, appropriate Rules and Regulations pertaining to and regulating the kinds and number of pets that an Owner shall be permitted to have in the Subdivision. The Association is hereby authorized to enforce any and all such Rules and Regulations, if and to the extent so adopted by it. A copy of the Rules and Regulations and all amendments thereto (collectively the "Rules and Regulations") shall be furnished by the Board to each Member prior to the time they become effective. All present and future Owners, tenants, occupants, and any Person who uses any part of the Subdivision in any manner, are subject to, and shall comply with the provisions of this Declaration and the Rules and Regulations. The acquisition, rental or occupancy of a Lot or the use of any part of the property in the Subdivision by any Person shall constitute such Person's agreement to be subject to and bound by the applicable provisions of this Declaration and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land comprising the Subdivision and shall bind any Person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by an Owner, an Owner's family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

ARTICLE VII

ARCHITECTURAL REVIEW COMMITTEE

7.1 Establishment and Composition. There is hereby established an Architectural Review Committee ("ARC") which shall consist solely of the Declarant until Declarant turns over control of the Subdivision to the Association in accordance with paragraph 6.7 of the Declaration. The Board of Directors of the Association shall appoint three (3) regular members ("Regular Members") and, at the Board's option, two (2) alternate members ("Alternate Members") of the ARC. The Directors and Officers of the Association may also serve as members of the ARC. Members of the ARC shall serve without salary or pay and none of the members shall be required to be an architect or meet any other particular qualifications for membership other than ownership interest in one of the lots (1 – 72).

Declarant may at any time remove any member of the ARC or replace any member or name a new member in place of any member who has resigned or died. In the event of death, resignation, or removal of one or more members of the ARC, the remaining members shall have full authority to act in the name of the ARC. With respect to all matters, which are, by the terms of this instrument, to be decided by the ARC, the decision of the ARC shall be final and binding on all parties.

The lot Owners shall protect and indemnify the members of the ARC against loss, cost, liability, damage or expense suffered or incurred as a result of actions taken by them in good faith as member of the ARC.

7.2 Function of the ARC No Improvement (as defined herein) shall be commenced, erected, placed, maintained or permitted to remain on any portion of any Lot until plans and specifications in such form and detail as the ARC may deem necessary shall be submitted and approved in writing by the ARC. The ARC shall have the power, but not the obligation, to employ professional consultants to assist it in discharging its duties and shall have the right to charge any applicant a reasonable fee to defray its cost of reviewing such plans and specifications. The decision of the ARC shall be final, conclusive and binding upon the applicant.

7.3 Voting and Status of Alternate Members. Except as otherwise provided herein, a vote or written consent of a majority of the Regular Members of the ARC at a meeting or otherwise shall constitute the act of the ARC. Except as hereinafter provided, Alternate Members shall not be entitled to vote. In the event of absence or disability of one (1) or more Regular Members, the remaining Regular Members, even though less than a quorum, may designate an Alternate Member to act or substitute for the absent or disabled Regular Member for the duration of such absence or disability. The Alternate Member so designated shall be entitled to vote in place of the Regular Member for whom the Alternate Member so substitutes. Notwithstanding the foregoing provision, the ARC is not authorized to act unless at least one (1) Regular Member consents in writing thereto.

7.4 Term of Office. The term of each ARC member shall be for a period of three (3) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed.

7.5 Appointment and Removal. Except as provided below, the right to appoint and remove all Regular Members and Alternate Members of the ARC at any time, with or without cause, shall be, and hereby is, vested solely in the Declarant. At such time as Declarant no longer owns any portion of the property subject to this Declaration or at such time that the Declarant records a waiver of the right herein retained, whichever event occurs first, then the Association shall appoint all Regular members and Alternate Members of the ARC in accordance with the by-laws of the Association.

7.6 Vacancy. Any Regular Member or Alternate Member of the ARC may resign at any time from the ARC by giving written notice thereof to the Declarant or the Association as the situation requires. Vacancies on the ARC, however caused, shall be, except as provided in Section 7.5 of this Article, filled by the Declarant. A vacancy shall be deemed to exist in the case of death, resignation, or removal of any Regular Member or Alternate Member.

7.7 Transfer of Authority to the Association. The duties, rights, powers and authority of the ARC constituted hereby may be assigned at any time, at the sole election of a majority of the Directors of the Association, to the Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ARC as provided herein (and in the by-laws of the Association).

7.8 Address. The address of the ARC shall be the same as the address of the Association, or such other place as may be designated (from time to time) by the ARC by written instrument filed for record in the Office of the

County Clerk of Baldwin County, Alabama, and the last instrument so recorded shall be deemed the ARC's proper address.

7.9 Duties. It shall be the duty of the ARC to receive, consider and act upon all proposals, plans, specifications, complaints, requests for determination, or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration. The ARC, may, but need not, hire specialized consultants and incur reasonable expenses to aid it in reviewing plans and their incidents.

7.10 Meetings. The ARC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 7.3 above, and except as otherwise provided herein, the vote or written consent of a majority of the Regular Members at a meeting or otherwise, shall constitute the act of the ARC. The ARC shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

7.11 Action Without Formal Meeting. The ARC, in accordance with Section 7.3 and 7.11 hereof, may take action without formal meeting by unanimously consenting in writing on any matter that they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the ARC. For the purpose thereof, unanimous written consent shall mean a writing by the Regular Members of the ARC except as the provisions of Section 7.3 may apply.

7.12 Procedure for Submission and Approval by ARC. Submission to and approval by the ARC of proposed Improvements shall be in accordance with the Rules promulgated by the ARC, as authorized by Section 7.14 hereof. If the ARC fails to approve or disapprove any material submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or to give notice of its actions as above required, the ARC's approval shall not be necessary, provided, however, that the failure to approve or disapprove within such thirty (30) days shall not relieve submitting Owners from the obligation to conform the Improvement to the provisions contained in the other Articles of this Declaration.

7.13 Waiver and Estoppel. The approval of the ARC of any plan, specifications or drawings or any materials accompanying same for matters requiring approval of the ARC shall not be deemed a waiver of, or create any right of estoppel against, the ARC's right to withhold approval of any similar plan, drawing, specification or materials subsequently submitted for approval.

7.14 ARC Rules.

(a) The ARC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to implement the purpose of and intent of the provisions of this Declaration. Any conflict between such rule and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules, as in effect from time to time, shall be provided to any Owner requesting the same in writing.

(b) Approval of plans and specifications shall be based on, among other things, adequacy of site dimensions, conformity and harmony of external design and of location with neighboring structures and sites, relation of finish grades and elevation to neighboring sites, conformity to both the specific and general intent of the Declaration and whether they reflect attractive, well-designed, properly proportioned houses of suitable materials, situated on lots landscaped to preserve, protect, and enhance the ecological and aesthetic environments. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ARC may reject them totally or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

7.15 Content of Plans and Specifications. Two sets of plans and specifications prepared by a licensed architect or qualified planner approved by the ARC shall be submitted and approved prior to commencement of construction. Plans and specifications to be submitted and marked approved by the ARC and shall include, as a minimum, the following:

(a) A site plan showing the location of all proposed Improvements, structures, walks patios, driveways, fences and walls and a lot-grading plan. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the Lot contour is contemplated. Lot Owners shall be responsible to set improvements and lot contours at finish grades which are not conducive to damage to the improvements or to the property of other lot owners or to common property;

(b) Exterior elevations, exterior materials, colors, textures and shapes;

- © Landscaping plans including walkways, fences and walls, elevation changes, watering systems; and
- (d) Driveway size.

The ARC may keep a copy of such plans, marked approved by the ARC, and the builder and/or the owner must keep a copy of plans marked approved by the ARC until construction is completed.

7.16 Decisions Conclusive. All decisions of the ARC shall be final and conclusive and no Owner or any other person, association or entity shall have any recourse against the ARC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of any submitted materials, or for any other decision rendered under the authority of this Declaration.

7.17 Liability. Neither the ARC nor any member thereof shall be liable to any Owner or any other person, Association or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any submitted materials, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved materials; (iii) the development of the Lot; (iv) the structural capacity of safety features of any proposed Improvements; (v) whether or not the location of the proposed Improvement on the building site is free from possible hazards from flooding or from any other possible hazards whether caused by conditions occurring either upon or off the Property; (vi) soil erosion causing sliding conditions; any decision made or action taken or omitted to be taken under the authority of this Declaration; or (viii) the execution filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by such member. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ARC, or any member thereof, may, but is not required to, consult with or determine the view of any other Owner with respect to any materials submitted to the ARC.

7.18 Modifications and Waivers. Upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, the ARC may, but is not required to adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Article Seven of this Declaration, or of the ARC rules applicable to any Improvement or use of, in, on or abutting any Lot. Such applications shall contain such information as the ARC may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardships, and that its modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owners of any other Lot. The ARC may decide the matter upon the application and any material or written statements accompanying it, or may allow oral presentations in support of, or in opposition to the application prior to the decision, at its discretion. The ARC shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant and retain one (1) copy in its records.

7.19 Governmental Agency Approval. Nothing in the Declaration shall relieve, or be interpreted as purporting to relieve, any Owner from also securing such approvals, certificates, or permits of any governmental agent or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the ARC may require that a copy of such approvals, certificates, or permits be provided to the ARC as a final condition to any approval, or as additional insurance as to the ARC that the proposed Improvements and uses meet governmental requirements, or for both such purposes.

ARTICLE VIII

ENVIRONMENTAL PERMITS

8.1 Environmental Permits. The Alabama Department of Environmental Management has issued Authorization to Discharge NPDES General Permit #ALR169874, and Construction and Land Disturbance Authorization Plat #S-06017, to the Developer covering the construction of the Subdivision. The Alabama Department of Environmental Management requires that a permit be maintained until all disturbance activity including individual home construction, is substantially complete. At such time as the Developer has substantially completed the Subdivision, or has completed land disturbance activities, and lots remain unimproved or substantially

incomplete, it shall become the responsibility of the Association (if more than five lots remain unimproved) or the Lot Owner (if less than five lots remain unimproved) to acquire permits and monitor storm discharge in accordance with the rules of the Alabama Department of Environmental Management and any other Federal, State or Local governmental agency having jurisdiction.

8.2 Any water detention areas located on a Lot shall be maintained by the individual lot Owner in a manner so as to not impede the purpose of controlling surface water run-off.

ARTICLE IX RESERVATIONS BY DEVELOPER

Until such time as Developer no longer owns any Lot in, or planned for, the Subdivision (including all planned additional phases), Developer reserves unto itself, its successors and assigns,

(a) A right-of-way and easement for ingress and egress and easement for utilities, drainage, maintenance, repairs and other related uses over, along, across and under the easements shown on the Plat for all purposes relating in any manner to the subdividing, developing or aiding in the development of the Subdivision or any parts or parts thereof or additions thereto by the Developer or others.

(b) The right to grant easements and rights-of-way of ingress and egress and for drainage, utilities, maintenance and repairs along, over, across and under the easements shown on the Plat to any person, firm, corporation or entity for use as ingress or egress or for drainage, utilities, maintenance and repairs.

(c) The right to maintain a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the Subdivision therein and therefrom.

(d) The right to amend these covenants and restrictions as provided in Article XII.

The Developer and his assigns, without the consent or concurrence of the Association or any Member may exercise all of the above rights and interests reserved by the Developer.

ARTICLE X ASSIGNMENT OF DEVELOPER'S RIGHTS

Developer may assign any of his rights under this declaration to any bulk purchaser of lots for re-sale, or for construction of homes for sale. A sale to a home builder for speculative construction of homes or to a bulk purchaser for re-sale, shall not be considered a sale for purposes of transfer of control of the Association as described in paragraph 6.7 of this declaration.

ARTICLE XI TERM OF RESTRICTIONS

The rights, covenants, restrictions, affirmative obligations and conditions herein contained shall run with the land and be binding upon all Owners and future Owners, and parties claiming under them, and shall inure to the benefit of and shall be binding upon them, and each of their heirs, executors, administrators, successors and assigns, for a period of twenty (20) years after the date this Declaration is first recorded, after which time the rights, covenants, restrictions, affirmative obligations and conditions herein contained shall automatically be extended for successive periods of five (5) years each, unless at the end of the first twenty-year period or at any time thereafter, by the vote of Owners of two-thirds of the Lots then in the Subdivision it is agreed to terminate or change the provisions of this

Declaration, in whole or in part, said termination or change to be signed by the President and attested by the Secretary of the Association, or by a majority of the then Owners, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama. Should any provision, clause, restriction, limitation or condition of this instrument be declared unenforceable, illegal, against public policy, or inconsistent with or contrary to the laws or Constitution of the State of Alabama or the United States of America by any court of competent jurisdiction, or by legislative enactment of the State of Alabama or the United States of America, every remaining provision, clause, restriction, limitation, or condition contained herein not affected by such judicial or legislative declaration, decision, or act shall be and remain in full force and effect.

The rights, covenants, restrictions, affirmative obligations and conditions set forth in this Declaration shall not operate as a cloud upon the title of any Lot, nor shall the breach thereof forfeit the title to any Lot of the Owner violating the provisions of the Declaration, but any Owner shall have the right to enforce the provisions hereof against any Person violating the same by appropriate proceedings in a court of competent jurisdiction.

In addition, the Association and any Owner or Owners of any part of the property hereby restricted shall each have the right, but not the obligation, to prosecute any proceedings at law or in equity against any person or person violating any of these restrictions and prevent him or them from so doing, recover damages for such violation, and obtain any other legal and equitable relief to which it, he or them may be entitled under the circumstances, including, without limitation, reasonable attorneys' fees and all other costs of suit.

The Association may waive any of the forgoing restrictions in any case in which it deems such waiver to be appropriate, but neither such waiver, nor the failure of the Association to enforce any restriction in a particular case or cases shall constitute a waiver of or affect the enforceability of any such restriction in any other case.

The forgoing restrictions shall run with the land and shall be binding upon all lot Owners, and upon all parties and persons claiming under or through them, each of whom shall, by virtue of his acceptance of acquisition of title or other interest, accept and agree to be bound by and to abide by all terms and provisions of this instrument, all of which shall be and remain in full force and effect until January 1, 2027, and thereafter, unless before such date the ARC or the adult record Owners of at least 60% of the lots in the Subdivision, or unless on or after such date ARC or the adult records Owners of a majority of the lots in the Subdivision (excluding in both instances mortgagees and holders of vendors liens), shall by instrument in writing annul, amend, or modify such restrictions in whole or part; provided, however, that no modification or amendment shall place an additional burden or restriction on any lots in the Subdivision the Owners of which (including in this instance mortgagees and holders of vendors liens) do not join in such modification or amendment.

ARTICLE XII

ADDITIONS AND AMENDMENTS

Until the time when control of the Subdivision is transferred to all Owners as provided above, Developer may, by written instrument duly recorded, at any time amend this Declaration, and any amendments thereto, by filing the same of record in the Office of the Judge of Probate of Baldwin County, Alabama, provided, however, that no such amendment shall permit the improvement, use or occupancy of any Lot for other than single-family residential purposes, except as expressly provided in Section 3.1, and no Owner of any Lot previously sold by Developer (whether or not then owned by the original purchaser) shall be bound by any such amendment to Sections 4.11 through 4.18, inclusive, or to Sections 6.2, 6.9 or 6.17, if it adversely and materially affects his use and enjoyment of his Lot. After control of the Subdivision is transferred to all Owners as provided in Section 6.7, the Owners (including Developer if it is still an Owner) of a majority of the total Lots in, or planned for, the Subdivision (including all planned additional phases) may, by written instrument duly recorded, as aforesaid, exercise the foregoing right of amendment subject to the foregoing restrictions; provided, however, that if Developer voluntarily relinquishes control of the Association in writing, no such amendment shall restrict any of the rights of Developer reserved in this Declaration, other than the right of control of the Association, as long as Developer owns any Lot in, or planned for, the Subdivision (including all planned additional phases).

The provisions of this Declaration shall not be altered, changed, amended, repealed or circumvented by any provisions of any of the other Governing Documents. In the event of any conflict between the provisions of this Declaration and any of the other Governing Documents, the provisions of this Declaration shall govern.

ARTICLE XIII MISCELLANEOUS

13.1 Successors. Deeds of conveyance of any Lot within the Subdivision must contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all of deeds, by becoming an Owner of any Lot within the Subdivision, each such Owner, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, binds himself or itself, and such heirs, personal representatives, successors, transferees, and assigns, to all the provision restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

13.2 Captions and Headings. The captions and headings in this Declaration are for convenience only, and are not to be considered as defining or limiting in any way the intent of the provision hereof or thereof.

ARTICLE XIV SEVERABILITY

Should any provision, clause, restriction, limitation or condition of this instrument be declared unenforceable, illegal, against public policy, or inconsistent with or contrary to the laws or Constitution of the State of Alabama, or the United States of America, every remaining provision clause, restriction, limitation or condition contained herein not affected by such judicial or legislative declaration, decision, or act shall be and remain in full force and effect. None of the foregoing restrictions shall operate as a cloud upon the title to any of the properties to which such restrictions relate, nor shall any breach thereof cause a forfeiture of title.

IN WITNESS WHEREOF, Myrtlewood Developers, LLC, a limited liability company, has cause these presents to be executed by Oswald H. Lipscomb, its Manager, he being thereunto duly authorized, on this the 10th day of January 2007.

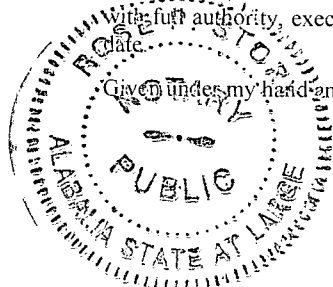
Myrtlewood Developers, L.L.C., an Alabama
Limited Liability Company

By: Oswald H. Lipscomb
Manager : Oswald H. Lipscomb

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned Notary Public in and for said State and County, do hereby certify that Oswald H. Lipscomb whose name as Manager of Myrtlewood Developers, L.L.C., a limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal, this the 10th day of January 2007.



Rose P. Story
Notary Public

My Commission Expires April 9, 2008

"EXHIBIT A"

TO

**DECLARATION OF RIGHTS, COVENANTS, RESTRICTIONS,
AFFIRMATIVE OBLIGATIONS AND CONDITIONS FOR
MYRTLEWOOD**

Legal Description:

"COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 7 SOUTH, RANGE 3 EAST, BALDWIN COUNTY, AL; THENCE S00°00'00"E, 40.09 FEET TO A POINT ON THE SOUTH R/W OF COUNTY ROAD NO. 24 (80' R/W); THENCE ALONG SAID R/W S89°55'40"W, 39.91 FEET TO AN IRON PIN; THENCE CONTINUING ALONG SAID R/W S89°53'59"W, 623.34 FEET TO AN IRON PIN AND THE POINT OF BEGINNING; THENCE S01°53'20"E, 341.03 FEET TO AN IRON PIN; THENCE N88°46'15"E, 302.42 FEET TO AN IRON PIN; THENCE S00°00'00"E, 948.40 FEET TO AN IRON PIN; THENCE N89°43'29"W, 971.73 FEET TO AN IRON PIN; THENCE N00°00'00"E, 1277.08 FEET TO AN IRON PIN ON THE SOUTH R/W OF COUNTY HIGHWAY 24; THENCE ALONG SAID BEGINNING. SAID TRACT OF LAND CONTAINING 26.169 ACRES, MORE OR LESS." DESCRIPTION COPIED FROM PLAT PROVIDED THIS FIRM BY OTHERS.

Subdivision Plat:

