

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
ROCK CREEK, A Planned Unit
Development, Phase One

TABLE OF CONTENTS

I.	DEFINITIONS	
II.	MUTUALITY OF BENEFIT AND OBLIGATION	
III.	PROPERTY RIGHTS AND EASEMENTS	
	3.1	Owner's Easement of Enjoyment
	3.2	Delegation of Use
	3.3	Common Property
	3.4	Drainage Easements
	3.5	Grading
	3.6	Easements for Utility
	3.7	Easement for Governmental, Health, Sanitation and Emergency Services
	3.8	Easements for Encroachment
	3.9	Declarant's Reserved Easement
	3.10	H/M Partners Golf Club and Country Club
	3.11	Easement for Golf Ball Retrieval
IV.	ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL	
	4.1	Architectural Committee
	4.2	Approval Required
	4.3	Basis for Disapproval of Plans
	4.4	Retention of Copy of Plans
	4.5	Rules of Architectural Committee; Effect of Approval and Disapproval; Time for Approval
	4.6	Certificate of Compliance
	4.7	Inspection and Testing Rights
	4.8	Waiver of Liability
V.	ZONING AND SPECIFIC RESTRICTIONS	
VI.	SITE DEVELOPMENT	
	6.1	Site to be Staked Prior to Tree Cutting
	6.2	Erosion Control
	6.3	Utility Lines and Appurtenances
	6.4	Connection Points for Utility Service Lines
	6.5	Sanitary Sewer Service Lines
	6.6	Landscaping
	6.7	Colors; Architectural Styles
	6.8	Exterior Lighting
VII.	GENERAL COVENANTS AND RESTRICTIONS	
	7.1	Permitted Uses and Structures
	7.2	Business Use

This document fully incorporates the
following Amendments:

03/31/2003

02/15/2005

The following Amendments are NOT
incorporated in their entirety as
they only add additional phases to
Rock Creek. Requirements related
to the architectural requirements
for these additional phases can be
found in the governing document

Architectural Design Requirements.

11/15/1993

12/02/1993

05/13/1994

04/04/1995

12/15/1995

11/05/1996

DISCLAIMER

**This document is only intended as a
convenience for users. The original
document and original
amendments thereto must be used
in any legal determination.**

- 7.3 Leasing
- 7.4 Minimum Dwelling Area
- 7.5 Minimum-Building Setback Lines
- 7.6 Subdivision of Lot and Time Sharing
- 7.7 Adjoining Lot Ownership
- 7.8 Use of Common Property
- 7.9 Parking and Vehicular Restrictions
- 7.10 Driveways
- 7.11 Preservation of Trees, Topography and Vegetation
- 7.12 Accumulation of Refuse or Noxious Activity
- 7.13 Fences, Walls, Hedges and Ornamental Structures
- 7.14 Mail or Newspaper Boxes
- 7.15 Artificial Vegetation, Exterior Sculpture, and Similar Items
- 7.16 Animals and Pets
- 7.17 Signs
- 7.18 Temporary Structures
- 7.19 Pipes
- 7.20 Wall and Window Air Conditioning Units
- 7.21 Clothes Lines
- 7.22 Chimney Flues
- 7.23 Carports and Garages
- 7.24 Play Equipment, Strollers, Etc.
- 7.25 Energy Conservation Equipment
- 7.26 Oil or Gas Tanks, Pools, Swimming Pool Equipment
- 7.27 Outside Installations
- 7.28 Irrigation
- 7.29 Wells and Drainage
- 7.30 Storm Precautions
- 7.31 Window Coverings, Etc.
- 7.32 Mineral Operations Prohibited
- 7.33 Firearms
- 7.34 Golf Carts
- 7.35 Insurance Rates
- 7.36 Completion of Construction
- 7.37 Occupants Bound
- 7.38 No Discrimination
- 7.39 Disclosure

VIII. WATERFRONT AREAS AND WATERWAYS

IX. MEMBERSHIP AND VOTING RIGHTS

- 9.1 The Association
- 9.2 Membership
- 9.3 Voting Rights
- 9.4 Rules and Regulations
- 9.5 Implied Rights
- 9.6 Self-Help
- 9.7 Right of Entry
- 9.8 Contracts
- 9.9 Assignment
- 9.10 Board of Directors

- 9.11 Bylaws
 - 9.12 Availability of Records
 - 9.13 Indemnification
 - 9.14 Reserve Fund
- X. COVENANTS FOR MAINTENANCE
 - 10.1 Association's Responsibility
 - 10.2 Owner's Responsibility
- XI. COVENANT FOR MAINTENANCE ASSESSMENTS
 - 11.1 Purpose of Assessments
 - 11.2 Creation of the Lien and Personal Obligation of Assessments
 - 11.3 Computation of Assessments
 - 11.4 Maximum Annual Assessment
 - 11.5 Special Assessments for Capital Improvements upon Common Area
 - 11.6 Notice and Quorum for any Action Authorized Under Sections 11.3, 11.4 and 11.5 Above
 - 11.7 Uniform Rate of Assessment
 - 11.8 Date of Commencement of Annual Assessments: Due Dates
 - 11.9 Lien for Assessments
 - 11.10 Effect of Nonpayment of Assessments: Remedies of the Association
 - 11.11 Capital Budget and Contribution
 - 11.12 Subordination of the Lien to Mortgages
 - 11.13 Capitalization of Association
 - 11.14 Assessment by Declarant
- XII. PARTY WALL
 - 12.1 General Rules of Law to Apply
 - 12.2 Sharing of Repair and Maintenance
 - 12.3 Damage and Destruction
 - 12.4 Weatherproofing
 - 12.5 Right to Contribution Runs with Land
 - 12.6 Arbitration
- XIII. INSURANCE AND CASUALTY LOSS
 - 13.1 Association Insurance
 - 13.2 Individual Insurance
 - 13.3 Disbursement of Proceeds
 - 13.4 Damage or Destruction
 - 13.5 Repair and Reconstruction
- XIV. NO PARTITION
- XV. CONDEMNATION
- XVI. ANNEXATION OF ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION
 - 16.1 Annexation Without Approval of Class A Membership
 - 16.2 Amendment
 - 16.3 Modification
 - 16.4 Mergers, Combinations or Consolidations
- XVII. AMENDMENT

XVIII. MORTGAGEE RIGHTS

- 18.1 Notices of Action
- 18.2 No Priority
- 18.3 Notice to Association
- 18.4 Applicability of this Article
- 18.6 Failure of Mortgagee to Respond

XIX. DECLARANT'S RIGHTS

- 19.1 Transfer of Rights
- 19.2 Legal Description Modifications
- 19.3 Right of Approval

XX. MISCELLANEOUS

- 20.1 Unrestrictive Right of Transfer
- 20.2 No Restrictions on Mortgaging
- 20.3 Grantee's Acceptance
- 20.4 Indemnity for Damages
- 20.5 Severability
- 20.6 Captions, Gender, and Grammar
- 20.7 Effect of Violation on Mortgage Lien
- 20.8 No Reverter
- 20.9 Duration
- 20.10 Enforcement
- 20.11 Certificate of Violation
- 20.12 Interpretation by Association
- 20.13 Estoppel Certificate
- 20.14 Assignment by Association
- 20.15 No Waiver
- 20.16 Deviation

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

STATE OF ALABAMA:
COUNTY OF BALDWIN:

This DECLARATION made on the date hereinafter set forth by H/M PARTNERS, an Alabama general partnership, hereinafter referred to as "DECLARANT".

RECITALS

1. DECLARANT is the owner of the real property located in Baldwin County, Alabama, which is known as Lots 1-174, and the areas designated as COMMON AREA 1 through COMMON AREA 13 on the plat of ROCK CREEK, A PLANNED UNIT DEVELOPMENT, Phase One recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Slide #1395B, #1396A and #1396B, together with all improvements and appurtenances, sometimes hereinafter referred to as the "PROPERTY".
2. DECLARANT intends by this DECLARATION to impose upon the PROPERTY mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of the PROPERTY and to provide a method whereby other property may become part of the PLANNED UNIT DEVELOPMENT subject to this DECLARATION by the recordation of a supplement to this DECLARATION.
3. DECLARANT has caused the ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC. ("ASSOCIATION") to be formed as a master ASSOCIATION for the purpose of providing an Alabama non-profit corporation to serve as representative of the DECLARANT and owners of the PROPERTY.
4. The ASSOCIATION and the PROPERTY shall be subject to the terms and conditions of this DECLARATION.

[Following Section Amended on 11/15/1993 to include Lots 175 - 231 and Common Area 14; on 05/13/1994 to include Lots 232 - 256, Lots 284 - 333 and Common Areas 15-17; on 04/04/1995 to include Lots 257 - 283; and on 12/15/1995 to include Lots 334 - 442 and Common Areas 18-26]

NOW, THEREFORE, DECLARANT hereby declares that the PROPERTY and any additional property as may by SUBSEQUENT AMENDMENT be added to and subjected to this DECLARATION shall be held, sold, and conveyed or encumbered, rented, used, occupied, and improved, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the PROPERTY subject to this DECLARATION and which shall be binding on all parties having any right, title, or interest in the PROPERTY or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. Only Lots 1 through 174 and the areas designated as COMMON AREA 1 through COMMON AREA 13 on the plat of ROCK CREEK, A PLANNED UNIT DEVELOPMENT, Phase One is hereby made subject to this declaration and no other property shown on said plat is made subject to this DECLARATION; provided, however, by one (1) or more SUBSEQUENT AMENDMENTS, DECLARANT has the right, but is not obligated, to subject other real property or additional property to this DECLARATION, as hereinafter provided.

ARTICLE I
DEFINITIONS

The following words and terms when used in this DECLARATION or any SUBSEQUENT AMENDMENT (unless the context clearly shall indicate otherwise) shall have the following meanings:

Section 1.1 "ADDITIONAL PROPERTY" shall mean and refer to additional real property subject to DECLARANT'S unilateral right of annexation as provided elsewhere in this DECLARATION.

Section 1.2 "ARTICLES OF INCORPORATION" or "ARTICLES" shall mean and refer to the ARTICLES OF INCORPORATION of the ASSOCIATION.

Section 1.3 "ASSESSMENTS" shall mean and refer to the ASSESSMENTS provided for in this DECLARATION which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the OWNERS and the occupants of the PROPERTY against which an assessment is levied and for the purpose of maintaining the PROPERTY, all as may be specifically authorized from time to time by the BOARD OF DIRECTORS and as more particularly authorized in this DECLARATION.

Section 1.4 "ASSOCIATION" shall mean and refer to ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC., an Alabama non-profit corporation, its successors and assigns.

Section 1.5 "BOARD OF DIRECTORS" or "BOARD" shall mean and refer to the BOARD OF DIRECTORS of the ASSOCIATION.

Section 1.6 "BYLAWS" shall mean and refer to the BYLAWS of the ASSOCIATION.

Section 1.7 "COMMON AREA" or "COMMON PROPERTY" shall mean and refer to the area designated on the plat of ROCK CREEK, PLANNED UNIT DEVELOPMENT, Phase One as COMMON AREA 1 through COMMON AREA 13 or any property, buildings, fixtures, facilities, or other personal property now owned or otherwise acquired by the ASSOCIATION by purchase, gift, lease, or otherwise to be devoted to the common use and enjoyment of the OWNERS of the PLANNED UNIT DEVELOPMENT.

Section 1.8 "COMMON EXPENSES" shall mean and include the actual and estimated expenses of operating the ASSOCIATION, including any reasonable reserve, as may be found to be necessary and appropriate by the BOARD pursuant to this DECLARATION, the ARTICLES OF INCORPORATION of the ASSOCIATION, and the BYLAWS of the ASSOCIATION.

Section 1.9 "DECLARANT" shall mean and refer to H/M PARTNERS, an Alabama general partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the DECLARANT for the purpose of development.

Section 1.10 "DECLARATION" shall mean and refer to this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, which shall be recorded in the Probate Records of Baldwin County, Alabama, as the same may from time to time be supplemented or amended in the manner described herein.

Section 1.11 "DEED" shall mean and refer to any DEED, assignment, lease, or other instrument conveying fee simple title or a leasehold interest in any part of the PROPERTY.

Section 1.12 "ELIGIBLE MORTGAGE HOLDER" shall mean and refer to a holder, insurer, or guarantor of a first mortgage on a LOT who has requested notice of certain matters from the ASSOCIATION as hereinafter and in the BYLAWS provided.

Section 1.13 "EXISTING PROPERTY" shall mean and refer to the PROPERTY.

Section 1.14 "LOT" shall mean and refer to any improved or unimproved plot, parcel, or portion of land shown upon any recorded final subdivision map of the PROPERTY, with the exception of COMMON PROPERTY as herein defined, and shall include, where the context may indicate, any improvement or fixture located thereon.

Section 1.15 "MAJORITY" shall mean and refer to those eligible votes, OWNERS, or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

Section 1.16 "MEMBER" shall mean and refer to a person or entity who holds membership in the ASSOCIATION, as provided herein.

Section 1.17 "MORTGAGE" shall mean and refer to any MORTGAGE, DEED with vendor's lien reserved, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.18 "MORTGAGEE" shall mean and refer to the holder of any MORTGAGE, the holder of any vendor's lien reserved, and the holder of any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of any obligation.

Section 1.19 "OWNER" shall mean and refer to the record OWNER, whether one or more persons or entities, of a fee simple title to any LOT which is a part of the PROPERTY, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 "PERSON" shall mean and refer to a natural person, corporation, partnership, trustee, or other legal entity.

Section 1.21 "PROPERTY", "PROPERTIES", or "PLANNED UNIT DEVELOPMENT" shall mean and refer to that certain real property described in paragraph 1 under RECITALS on page 1 of this DECLARATION and where the context requires such additions thereto as may be brought within the jurisdiction of the ASSOCIATION.

Section 1.22 "SUBSEQUENT AMENDMENT" shall mean and refer to an amendment to this DECLARATION which adds ADDITIONAL PROPERTY to that covered by this DECLARATION. Such SUBSEQUENT AMENDMENT may but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by the Amendment to the provisions of this DECLARATION.

ARTICLE II MUTUALITY OF BENEFIT AND OBLIGATION

This DECLARATION is made for the mutual and reciprocal benefit of each and every part of the PROPERTY and is intended to create mutual, equitable servitudes upon the PROPERTY, to create reciprocal rights between the respective owners and future owners of the PROPERTY; and to create a privity of contract and estate between the grantees of the PROPERTY, their heirs, successors and assigns.

ARTICLE III
PROPERTY RIGHTS AND EASEMENTS

Section 3.1 Owner's Easement of Enjoyment.

Every OWNER shall have and is hereby granted a nonexclusive right and easement of ingress, egress, use, and enjoyment in and to the COMMON AREA necessary for access to his or her LOT and such rights shall be appurtenant to and shall pass with the title to every LOT, subject to the following provisions:

- A. The right of the ASSOCIATION to charge reasonable admission and other fees for the use and maintenance of the COMMON PROPERTY and to impose reasonable limits on the number of guests who may use the COMMON PROPERTY.
- B. The right of the ASSOCIATION, in addition to its other rights as hereinafter set forth, to suspend the voting rights of an OWNER and the right to use any of the COMMON PROPERTY for any period during which any ASSESSMENT against that OWNER'S LOT remains unpaid, and for any infraction by an OWNER of the ASSOCIATION'S published rules and regulations after hearing by the BOARD OF DIRECTORS of the ASSOCIATION for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days.
- C. The right of the DECLARANT with regard to the property which may be owned by DECLARANT to grant easements in, on, and over the PROPERTY and the COMMON AREA to any public agency, authority, or utility.
- D. The right of the ASSOCIATION to borrow money for the purpose of improving the COMMON PROPERTY, or any portion thereof, for acquiring additional COMMON PROPERTY, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a MORTGAGE conveying all or any portion of the COMMON PROPERTY, provided, however, the lien and encumbrance of any such MORTGAGE given by the ASSOCIATION shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this DECLARATION for the benefit of DECLARANT or any OWNER, or the holder of any MORTGAGE, irrespective of when executed, given by DECLARANT or any OWNER encumbering any LOT or other PROPERTY located within the PLANNED UNIT DEVELOPMENT.
- E. The right of the ASSOCIATION to dedicate 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 agreeing to such dedication or transfer has been approved: (i) by at least two-thirds (2/3) of the VOTES of the MEMBERS of the ASSOCIATION which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class B MEMBER of the ASSOCIATION so long as such membership shall exist.
- F. The parking of automobiles in the designated area within the COMMON AREA is restricted to OWNERS and guests, invitees and tenants of OWNERS and shall not interfere with the rights of ingress and egress of the OWNER of any particular LOT. The parking of automobiles may be regulated by the ASSOCIATION.
- G. The right of the ASSOCIATION to adopt and promulgate reasonable rules and regulations pertaining to the use of the PROPERTY, which, In the discretion of the ASSOCIATION, shall serve to promote the best interests of the OWNERS and residents in the PLANNED UNIT DEVELOPMENT.

Section 3.2 Delegation of Use.

Any OWNER may delegate, in accordance with the BYLAWS and subject to reasonable rules, regulations, and limitations as may be adopted in accordance herewith, his or her right of enjoyment of the COMMON AREA and facilities to the members of his or her family, tenants and social guests or contract purchasers who reside on the PROPERTY.

Section 3.3 Common Property.

The COMMON AREA or COMMON PROPERTY is not donated, dedicated nor granted to the public, but shall be conveyed by the DECLARANT to the ASSOCIATION for use as COMMON PROPERTY for the benefit of the ASSOCIATION. The COMMON PROPERTY shall be owned and maintained by the ASSOCIATION and neither the recording of the PLANNED UNIT DEVELOPMENT plat nor any other act of DECLARANT shall be construed as a dedication of the COMMON PROPERTY to the public.

Section 3.4 Drainage Easements.

Except with prior written permission from DECLARANT, or (when so designated by DECLARANT) from the ARCHITECTURAL COMMITTEE, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to this DECLARATION or any part thereof. DECLARANT may cut drainways for surface water wherever and whenever such action may appear to DECLARANT to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that DECLARANT'S right to cut drainways on an owner's property shall terminate when the principal structure and approved landscaping on such property have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installment and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon DECLARANT to cut such drainways.

Section 3.5 Grading.

DECLARANT may at any time make such cuts and fills upon any LOT or other part of the PROPERTY and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the access areas or roads in or adjacent to the PROPERTY and to drain surface waters therefrom; and may assign such rights to the appropriate governmental authority; provided, however, that after plans for the principal structure upon a LOT shall have been approved by the ARCHITECTURAL COMMITTEE as provided herein, the rights of DECLARANT under this Section 3.5 shall terminate with respect to all parts of such LOT other than the easement area thereof, except that DECLARANT or any such municipal or public authority shall thereafter have the right to maintain existing roads and drainage structures.

Section 3.6 Easements for Utility.

There is hereby reserved to the ASSOCIATION blanket easements upon, across, above, and under all. PROPERTY within the PLANNED UNIT DEVELOPMENT for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the PLANNED UNIT DEVELOPMENT or any portion thereof, including but not limited to gas, water, sanitary sewer, telephone, cable television, and electricity, as well as storm drainage and any other service which the ASSOCIATION might decide to install to serve the PLANNED UNIT DEVELOPMENT. It shall be expressly permissible for the ASSOCIATION or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repair, replacement, and maintenance of such wires, conduits, cables, and other equipment relating to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the BOARD shall have the right to grant such easement.

Section 3.7 Easement for Governmental, Health, Sanitation and Emergency Services.

There is hereby granted to the appropriate governmental authorities and to the appropriate private organizations supplying health, sanitation, police services and any emergency services such as fire, ambulance and rescue services, a nonexclusive easement, for purposes of ingress and egress over the COMMON AREA. In

furtherance of the foregoing, the ASSOCIATION shall save harmless the appropriate governmental authority from damages to any persons arising out of the use of the COMMON AREA by said governing authority for the uses which are stated in this Section.

Section 3.8 Easements for Encroachment.

As to LOTS 10 through 22 and LOTS 109 through 163 there shall be reciprocal easements of encroachment as between each LOT and such portion or portions of the COMMON AREA adjacent thereto or as between adjacent LOTS due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereto (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each LOT and adjacent portion of the COMMON AREA or as between said adjacent LOTS, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an OWNER, tenant, or the ASSOCIATION.

Section 3.9 Declarant's Reserved Easement.

Notwithstanding any provisions contained in this DECLARATION to the contrary, DECLARANT hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and blanket easement with respect to the PLANNED UNIT DEVELOPMENT and the COMMON AREA for the benefit of the DECLARANT, its successors and assigns, over, under, in, and/or on the PLANNED UNIT DEVELOPMENT or COMMON PROPERTY, without further obligation and without charge to the DECLARANT, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the PLANNED UNIT DEVELOPMENT or COMMON PROPERTY. The reserved easement shall constitute a burden on the title to the PLANNED UNIT DEVELOPMENT and the COMMON PROPERTY and specifically includes but is not limited to:

A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the PLANNED UNIT DEVELOPMENT and the COMMON PROPERTY; and the right to tie into any portion of the PLANNED UNIT DEVELOPMENT or COMMON PROPERTY with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the PLANNED UNIT DEVELOPMENT or COMMON PROPERTY; and

B. The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices, and business offices as, in the sole opinion of DECLARANT, may be required, convenient, or incidental to the construction and sale by DECLARANT of the improvements in the PLANNED UNIT DEVELOPMENT, COMMON PROPERTY, or in any portion of the ADDITIONAL PROPERTY.

C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the PLANNED UNIT DEVELOPMENT or COMMON PROPERTY, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from DECLARANT releasing such right, privilege, or easement by express referenced thereto.

D. Notwithstanding any other provision in the DECLARATION, the DECLARANT is irrevocably empowered to sell, lease, or rent LOTS on any terms to any purchasers or lessees for as long as DECLARANT owns a LOT.

So long as DECLARANT continues to have rights under this Section, no person or entity shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the PROPERTY or COMMON PROPERTY without DECLARANT'S review and written consent thereof, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the DECLARANT.

This Section may not be amended without the express written consent of the DECLARANT; provided, however, the rights contained in this Section shall terminate upon the earlier of (a) twenty (20) years from the date this DECLARATION is recorded, or (b) upon recording by DECLARANT of a written statement releasing its rights under this Section.

Section 3.10 Rock Creek Golf and Tennis Club.

ROCK CREEK GOLF AND TENNIS CLUB, (herein "GOLF CLUB") is a for-profit business and is established as a private business whose members, guests or invitees may or may not be OWNERS within the PLANNED UNIT DEVELOPMENT. The GOLF CLUB may or may not be used by the general public and by members and nonmembers. No OWNER or occupant of a LOT in the PLANNED UNIT DEVELOPMENT gains any right of membership or right to enter or use the GOLF CLUB, golf course, club house, tennis courts or related property or facilities of the GOLF CLUB because of ownership or occupancy of a LOT within the PLANNED UNIT DEVELOPMENT.

No representations or warranties have been or are made by the DECLARANT or any other person or entity with regard to the continuing ownership or operation of the GOLF CLUB as same presently exists, and no such representation or warranty shall ever be effective without a written amendment to this DECLARATION executed or joined into by the DECLARANT. The ownership, operation, use, or management of the GOLF CLUB may change at any time, solely at the discretion of H/M PARTNERS, or its successor or assign.

H/M PARTNERS, its successors and assigns, shall have the right, at the sole discretion of the H/M PARTNERS and without the further consent of any OWNER of any LOT in the PLANNED UNIT DEVELOPMENT or of the ASSOCIATION, to make any present or future use or change of use of any real property, personal property, or facility in the private GOLF CLUB as it deems proper, including, but not limited to, the discontinued or suspended use of the property or any part thereof as a golf course or golf club. The GOLF CLUB is specifically exempted from any and all provisions of this DECLARATION or any supplements or amendments thereto. No LOT OWNER nor the ASSOCIATION will take any action that will interfere with the operation and management of the GOLF CLUB.

Portions of the REAL PROPERTY owned by H/M PARTNERS as the GOLF CLUB are adjacent to the public road running through the PLANNED UNIT DEVELOPMENT. Members, guests, invitees, stockholders, officers, directors, agents, or employees of the GOLF CLUB shall have the unlimited and unrestricted right of ingress and egress over and across the public road for ingress or egress to the property of the GOLF CLUB. H/M PARTNERS shall have the unrestricted right to regulate the use of and access to its GOLF CLUB property.

Section 3.11 Easement for Golf Ball Retrieval.

Anyone playing golf upon the GOLF CLUB property or private golf course shall have a nonexclusive easement and license to go upon COMMON AREA or on an OWNER'S LOT to retrieve errant golf balls so long as such person does so in a reasonable manner not to damage the adjacent PROPERTY while accomplishing such retrieval. Any golfer causing damage by his errant golf ball during play or while retrieving it shall be solely responsible for such damage, and the DECLARANT, GOLF CLUB or owner or manager of the golf course shall not be responsible therefor.

ARTICLE IV
ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL

Section 4.1 Architectural Committee.

The Architectural Committee (herein the "ARCHITECTURAL COMMITTEE") shall be composed of at least three (3) individuals designated and redesignated from time to time (i) by DECLARANT so long as there is a Class B membership or until DECLARANT releases the right if DECLARANT elects to do so prior to the termination of Class B membership, and (ii) by the ASSOCIATION thereafter. Delegation of control of the ARCHITECTURAL COMMITTEE from the DECLARANT to the ASSOCIATION shall be evidenced by an instrument signed by the DECLARANT and filed for record in the Probate Records of Baldwin County, Alabama.

Except as hereinafter provided, the affirmative vote of a majority of the membership of the ARCHITECTURAL COMMITTEE shall be required in order to approve any plans and specifications submitted under this ARTICLE IV.

Section 4.2 Approval Required.

No structure shall be commenced, erected, placed, moved on to or permitted to remain on any LOT, nor shall any existing structure upon any LOT be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any LOT, unless plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the ARCHITECTURAL COMMITTEE. Such plans and specifications shall be in such form and shall contain such information as may be required by the ARCHITECTURAL COMMITTEE, including: (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all structures proposed for the LOT; (ii) a site plan of the LOT showing the location with respect to the particular LOT (including proposed front, rear and side setbacks and free spaces, if any are proposed) of all structures, the location thereof with reference to structures on adjoining portions of the PROPERTY, and the number and location of all parking spaces and driveways on the LOT; (iii) a grading plan for the particular LOT; (iv) a drainage plan; (v) a plan for landscaping; and (vi) any necessary or appropriate governmental permit. All of said plans shall address the matters set forth in ARTICLE V, as applicable.

Section 4.3 Basis for Disapproval of Plans.

The ARCHITECTURAL COMMITTEE shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- A. failure of such plans or specifications to comply with this DECLARATION;
- B. failure to include information in such plans and specifications as may have been reasonably requested;
- C. objection to the exterior design, appearance or materials of any proposed structure;
- D. incompatibility of any proposed structure or use with existing structures or uses upon other LOTS in the vicinity;
- E. objections to the location of any proposed structure upon any LOT or with reference to other LOTS in the vicinity;
- F. objection to the site plan, grading plan, drainage plan or landscaping plan for any LOT;

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

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

I. failure of plans to take into consideration the particular topography, vegetative characteristics, natural environment and storm water runoff of the LOT; or

J. any other matter which, in the judgment of the ARCHITECTURAL COMMITTEE, would render the proposed structure, structures or uses inharmonious with the general plan of improvement of the PROPERTY or with structures or uses located upon other LOTS in the vicinity.

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

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

THE SCOPE OF REVIEW BY THE ARCHITECTURAL COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

Section 4.4 Retention of Copy of Plans.

Upon approval by the ARCHITECTURAL COMMITTEE of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARCHITECTURAL COMMITTEE, and shall be retained for a period of no more than six (6) months after completion of the improvement, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 4.5 Rules of Architectural Committee; Effect of Approval and Disapproval; Time for Approval.

The ARCHITECTURAL COMMITTEE may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on LOTS, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the ARCHITECTURAL COMMITTEE at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the ARCHITECTURAL COMMITTEE to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the ARCHITECTURAL COMMITTEE'S discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any LOT of any plans or specifications shall not be deemed a waiver of the ARCHITECTURAL COMMITTEE'S right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans,

specifications, features or elements are subsequently submitted for use on any other LOT or LOTS. Approval of any such plans and specifications relating to any LOT, however, shall be final as to that LOT and such approval may not be revoked or rescinded thereafter, provided, (i) that the structure or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this DECLARATION, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all structures on and uses of the LOT in question.

Section 4.6 Certificate of Compliance.

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

Section 4.7 Inspection and Testing Rights.

Any agent of DECLARANT, ASSOCIATION or the ARCHITECTURAL COMMITTEE may at any reasonable time or times enter upon and inspect any LOT and any improvements thereon for the purpose of ascertaining whether the maintenance of such LOT and the maintenance, construction, or alteration of the structures thereon are in compliance with the provisions hereof; and neither DECLARANT, ASSOCIATION nor the ARCHITECTURAL COMMITTEE nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Without limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines, each owner agrees to notify the ARCHITECTURAL COMMITTEE prior to its installation of the sanitary sewer service lines and to permit such inspection and testing thereof by the ARCHITECTURAL COMMITTEE both before and after backfill as is required by the ARCHITECTURAL COMMITTEE. Any such inspection shall be for the sole purpose of determining compliance with this DECLARATION, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the owner of a LOT or any third persons or entities for any purpose whatsoever; nor shall any such inspection obligate the DECLARANT, the ASSOCIATION or the ARCHITECTURAL COMMITTEE to take any particular action based on the inspection.

Section 4.8 Waiver of Liability.

Neither the ARCHITECTURAL COMMITTEE nor any architect nor agent thereof, nor the ASSOCIATION, nor the DECLARANT, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of structures to comply with requirements of this DECLARATION, although a certificate of compliance has been issued, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to in this Section and further agree to and do hereby release said entities and persons for any and every such cause.

ARTICLE V
ZONING AND SPECIFIC RESTRICTIONS

This DECLARATION shall not be taken as permitting any action or thing prohibited by the applicable laws, or the laws, rules or regulations of any governmental authority, or by specific covenants or restrictions imposed by any DEED or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, DEEDS, leases, covenants, restrictions or this DECLARATION shall be taken to govern and control.

ARTICLE VI
SITE DEVELOPMENT

Section 6.1 Site to be Staked Prior to Tree Cutting.

After the plan for the structure is approved, the site of the structure must be staked out and such site approved by the ARCHITECTURAL COMMITTEE before tree cutting is done. Existing vegetation shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the ARCHITECTURAL COMMITTEE. Removal of "underbrush" from the corded areas is expressly prohibited except on ARCHITECTURAL COMMITTEE approval. No tree may be cut or removed without consent of the ARCHITECTURAL COMMITTEE until the building plans, site plans, and site staking are approved by the ARCHITECTURAL COMMITTEE.

Section 6.2 Erosion Control.

Erosion control measures shall be taken by the owner of a LOT, or his contractors, to protect adjacent properties during construction on such LOT and thereafter until the soil is stabilized on the LOT. This may be accomplished by the use of temporary retention ponds, silt fencing, hay bales or other protective measures intended to intercept and filter the excess storm water runoff from the LOT. All erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the ARCHITECTURAL COMMITTEE prior to commencement of grading activities.

Any storm water retention ponds created during construction on a LOT shall not remain as permanent ponds after completion of construction unless so provided in the grading, site and landscaping plans submitted to and approved by the ARCHITECTURAL COMMITTEE.

If any portion of the PROPERTY has been identified as "wetlands" pursuant to Federal law and regulation, such wetlands area shall not be utilized or otherwise developed and improved upon unless and in accordance with all Federal, state, and local laws and regulations.

If any portion of the PROPERTY is located within an area designated as "flood prone" pursuant to Federal law and regulations, all improvements constructed in said flood prone area must be constructed in accordance with all Federal, state, and local laws and regulations pertaining to flood prone areas.

Section 6.3 Utility Lines and Appurtenances.

All gas, water, sewer, telephone, television cable and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the ARCHITECTURAL COMMITTEE. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the ARCHITECTURAL COMMITTEE; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the OWNER of a LOT, the OWNER of a LOT will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or

overhead facilities of any kind, including but not limited to electrical, television cable or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the ARCHITECTURAL COMMITTEE. Nothing herein shall be construed to prohibit overhead road lighting or ornamental yard lighting, where serviced by underground wires or cables. Where underground electric service is to be installed, in order to permit installation of underground electric service to each LOT for the mutual benefit of all OWNERS therein, no OWNER of any such LOT will commence construction of any improvement on any such LOT until such OWNER (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral on such LOT, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission.

If required by the electric utility, such electric utility, its successors and assigns, may retain title to the underground service lateral and outdoor metering trough, the house power box (exclusive of circuit breakers) serving each said house, and said service entrance facilities provided by such utility will not in any way be considered a fixture or fixtures and thereby a part of said real estate, but will remain personal property belonging to such utility, its successors and assigns, in accordance with applicable Rules and Regulations filed with and approved by the Alabama Public Service Commission.

Section 6.4 Connection Points for Utility Service Lines.

To the extent of the interests of the OWNER of each LOT, each OWNER agrees to connect utility service lines (including, but not limited to, gas, water, sewer, telephone, television cable and electricity) at points designated by ARCHITECTURAL COMMITTEE.

Section 6.5 Sanitary Sewer Service Lines.

The material for sanitary sewer service lines must be approved by the ARCHITECTURAL COMMITTEE.

Section 6.6 Landscaping.

The landscape plan must be approved by the ARCHITECTURAL COMMITTEE prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the LOT. The landscape plan shall include provision for an underground sprinkler system which is approved by the ARCHITECTURAL COMMITTEE. The OWNER must faithfully execute the landscape plan as submitted to and approved by the ARCHITECTURAL COMMITTEE. If the OWNER should fail to faithfully execute the landscape plan, the ASSOCIATION shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost thereof shall be a binding, personal obligation of the owner when billed by the ASSOCIATION as well as a lien upon the LOT in question. The lien provided in this Section shall have the same enforceability and priority as the lien provided for in ARTICLE XI below.

Section 6.7 Colors; Architectural Styles.

All exterior building materials and colors must be approved by the ARCHITECTURAL COMMITTEE. Excessively bright colors or objectionable noticeable colors are prohibited. All architecture must be compatible with the atmosphere of this PLANNED UNIT DEVELOPMENT and must be compatible with surrounding buildings within the subdivision.

Section 6.8 Exterior Lighting.

Exterior lighting plans must be set forth on the architectural or landscape plans for a LOT, and must be approved by the ARCHITECTURAL COMMITTEE. No exterior lighting fixture (other than fixtures approved by the ARCHITECTURAL COMMITTEE) shall be installed within or upon any LOT without adequate and proper

shielding of the fixture. No lighting fixture shall be installed that may become an annoyance or a nuisance to OWNERS or occupants of adjacent PROPERTIES. All modifications to exterior lighting must be approved in writing by the ARCHITECTURAL COMMITTEE in advance as provided for in this DECLARATION.

ARTICLE VII GENERAL COVENANTS AND RESTRICTIONS

The ASSOCIATION is empowered to enforce the following covenants and restrictions which shall pertain to the PROPERTY and to set forth policy as to enforcement thereof in accordance with this DECLARATION and the BYLAWS.

Section 7.1 Permitted Uses and Structures.

All LOTS which are part of the PROPERTY and each and every one thereof are hereby declared to be residential LOTS, and no LOT shall be used except for single-family residential purposes. Except as may be provided elsewhere in this DECLARATION, no building or structure shall be constructed, erected, altered, placed, remodeled, reconstructed, added to, or permitted to remain on any LOT other than a single-family dwelling, not to exceed two and one-half stories (except as provided in Section 7.4 below) and forty-five (45) feet in height above the elevation of the first floor(living area) and (except that an attic or a basement floor under the ground surface shall not be considered a story for this purpose), and except as provided in Section 7.4 A. a private enclosed garage for not more than four (4) automobiles. No previously approved structure shall be used for any purpose other than that for which it was originally designed.

Section 7.2 Business Use.

Except as herein provided, no trade or business may be conducted in or from any LOT. Notwithstanding the above, the leasing of a LOT for residential purposes shall not be considered a trade or business within the meaning of this section. This section shall not apply to operation of the GOLF CLUB nor to any activity conducted by the DECLARANT with respect to DECLARANT'S development and sale of the PROPERTY or DECLARANT'S use of any LOTS which DECLARANT owns within the PROPERTY nor to the PROPERTY designated by the DECLARANT as DECLARANT'S sales office or model home. Also, this section shall not apply to any land shown on the plat of ROCK CREEK, A Planned Unit Development, Phase One, which is not specifically described as part of the PROPERTY, unless specifically annexed as provided elsewhere herein. (See other provisions in this DECLARATION granting special rights to DECLARANT.)

Section 7.3 Leasing.

LOTS may be leased for residential purposes; provided, however, that all leases shall be for a minimum term of six (6) months, and such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the ASSOCIATION to prescribe reasonable rules and regulations relating to the lease and rental of LOTS and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the BOARD deems appropriate, including eviction. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the DECLARATION, BYLAWS, use restrictions, rules and regulations of the ASSOCIATION. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the BOARD, in addition to any other remedies available to it, may evict the tenant on behalf of the OWNER and specifically assess all costs associated therewith against the OWNER and the OWNER'S PROPERTY.

Section 7.4 Minimum Dwelling Area.

A. The following shall apply to Lots 10-22 and 109-163: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand seven hundred (1,700) square feet in the case of a one-story building or structure; or in the case of a one and one-half-story building or structure, the ground floor livable area (heated and cooled area) of

the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand two hundred (1,200) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than one thousand eight hundred fifty (1,850) square feet; or in the case of a two-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand two hundred (1,200) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand (2,000) square feet. No building or structure shall be constructed, erected, altered, placed, remodeled, reconstructed, added to, or permitted to remain on Lots 10-22 and 109-163 other than a single-family dwelling not to exceed two (2) stories and forty-five feet (45') in height above the elevation of the first floor (living area) and (except that an attic or a basement floor under the ground surface shall not be considered a story for this purpose) a privately enclosed garage for not more than two (2) automobiles.

B. The following shall apply to Lots 23-57 and 83-87: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than two thousand two hundred (2,200) square feet in the case of a one-story building or structure; or in the case of a one and one-half-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand three hundred twenty (1,320) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand two hundred (2,200) square feet; or in the case of a two-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand four hundred forty (1,440) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand four hundred (2,400) square feet; or in the case of a two and one-half-story building or structure, the ground floor livable area (heated and cooled area), exclusive of open porches and garages, shall contain not less than one thousand five hundred (1,500) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand (3,000) square feet.

[Following Subsection Amended on 12/02/1993 to include Lots 214 – 231 and on 05/13/1994 to include Lots 232-256]

C. The following shall apply to Lots 1-9. 76-82, 88-108. And 164-174: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than two thousand four hundred (2,400) square feet in the case of a one-story building or structure; or in the case of a one and one-half-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand four hundred forty (1,440) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand four hundred (2,400) square feet; or in the case of a two-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand six hundred eighty (1,680) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand eight hundred (2,800) square feet; or in the case of a two and one-half-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand six hundred (1,600) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand two hundred (3,200) square feet.

[Following Subsection Amended on 12/02/1993 to include Lots 175 – 213; on 05/13/1994 to include Lots 284 – 333; and on 12/15/95 to include Lots 354 – 442]

D. The following shall apply to Lots 58-75: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than two thousand six hundred (2,600) square feet in the case of a one-story building or structure; or in the case of a one and one-half-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand six hundred eighty (1,680) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand eight hundred (2,800) square feet; or in the case of a two-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred (1,800) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand (3,000) square feet; or in the case of a two and one-half story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred (1,800) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand six hundred (3,600) square feet.

Following Subsection Added by Amendment on 04/04/1995 and Amended on 12/15/95 to Include Lots 334-353]

E. The following shall apply to Lots 257-283: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred (1,800) square feet in the case of a one-story building or structure; or in the case of a one and one-half-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand two hundred (1,200) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than one thousand eight hundred fifty (1,850) square feet; or in the case of a two-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand two hundred (1,200) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand (2,000) square feet; or in the case of a two and one-half story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand five hundred (1,500) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand eight hundred (2,800) square feet.

Section 7.5 Minimum Building Setback Lines.

No building or structure located on any LOT shall be constructed, erected, altered, placed, remodeled, reconstructed, added to, or allowed to remain on any LOT so as to be located any nearer to any property boundary line than the setback lines shown on the recorded plat of the subdivision, but the ARCHITECTURAL COMMITTEE, in its sole discretion, shall have the power to grant exceptions. All setbacks shall comply with all applicable subdivision and zoning regulations.

Section 7.6 Subdivision of Lot and Time Sharing.

No LOT shall be split, divided, or subdivided or its boundary lines changed except with the prior written approval of the BOARD OF DIRECTORS of the ASSOCIATION. The BOARD may permit a division in ownership of any LOT intended for a single family detached residence as shown on a plat, but solely for the purpose of increasing the size of the adjacent LOTS. In the event of a division of any LOT, the OWNERS among whom the

ownership is divided shall be treated as co-owners of the divided LOT for purposes of voting and shall be jointly and severally liable for all ASSESSMENTS hereunder against the LOT. DECLARANT hereby expressly reserves the right to replat any LOT or LOTS owned by DECLARANT. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No LOT shall be made subject to any time of time-share program, interval ownership, or similar program whereby the right to exclusive use of the LOT rotates among multiple owners or MEMBERS of the program on a fixed or floating time schedule over a period of years.

Section 7.7 Adjoining Lot Ownership.

For the purposes of this instrument, any OWNER having two or more adjoining LOTS may treat, use, and build on them as though they were one (1) after making written application and receiving written approval by the BOARD. Said approval shall be recorded and operate as an amendment to this instrument. The rights granted by this Section are subject to the easements, if any, granted to others and any applicable subdivision and zoning regulations.

Section 7.8 Use of Common Property.

The ASSOCIATION shall have full control over the COMMON PROPERTY and may establish such rules and regulations and conditions for the use of the COMMON PROPERTY as it may deem adequate or necessary, and the ASSOCIATION shall have full power and authority to suspend or revoke the privilege and license of any such owner, and any member of his or her household or any of his or her guests, tenants, or invitees, from using the COMMON PROPERTY, should any such party, while in said Area, conduct himself or herself in such a manner as to warrant such action in the sole discretion of the majority of the ASSOCIATION. Provided, however, nothing herein shall be construed to allow the ASSOCIATION to prohibit any LOT OWNER from ingress and egress to and from his or her LOT.

Under no circumstances may any motorized vehicle, all-terrain vehicle, three-wheeler, four-wheeler, motor cycle or any other motorized vehicle of any nature be permitted within the COMMON AREA. The provisions of this paragraph may be waived, altered or amended by the ASSOCIATION.

Section 7.9 Parking and Vehicular Restrictions.

Parking in or on the PROPERTY or COMMON PROPERTY shall be restricted as provided in this DECLARATION, the BYLAWS, or rules and regulations of the ASSOCIATION. No vehicle, camper, mobile home, motor home, house trailer or trailer of any type, recreational vehicle, motorcycle, golf cart, scooter, go-cart, moped, boat or other water craft, boat trailer, van, bus, automobile, or any other transportation device of any kind shall be permitted to be parked or to be stored at any place within the PROPERTY or COMMON PROPERTY, except in spaces for some or all of the above specifically designated by the ASSOCIATION. No OWNER shall keep any vehicle on the PROPERTY or COMMON PROPERTY which is deemed a nuisance by the BOARD. No commercial vehicle shall be permitted to be parked or to be stored at any place within the PROPERTY or COMMON PROPERTY except in spaces designated by the ASSOCIATION. For the purposes of this Section, "commercial vehicle" shall mean those that are not designed and used for customary, personal/family purposes. The absence of commercial type lettering or graphics on a vehicle shall not be dispositive of whether it is a commercial vehicle. No OWNER shall conduct repairs (except in an emergency) or restorations of any vehicle on or upon any portion of the PROPERTY or COMMON PROPERTY, except in an enclosed area with the doors to that area closed at all times. The prohibitions on parking contained in this Section shall not apply to temporary parking of vehicles such as for construction use or providing pick-up and delivery and other commercial services nor to any vehicles of the DEVELOPER or the GOLF CLUB. No overnight on-street parking or parking on lawns shall be permitted.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained in this DECLARATION or in the rules and regulations may be towed by the ASSOCIATION at the sole expense of the owner of the vehicle if the vehicle remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle. The ASSOCIATION shall not be liable to the owner of that vehicle for trespass, conversation, or otherwise, nor guilty of any criminal act, by reason of the towing, and once the notice is posted, neither its removal, nor failure of the owner to receive it for any reason, shall be grounds for relief of any kind. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

For the purposes of this Section, "vehicle" shall mean and refer to any device on wheels or runners for conveying persons, property, or objects.

Section 7.10 Driveways.

Each PURCHASER of a LOT from DECLARANT shall be responsible for building, at said PURCHASER'S sole expense, a concrete or brick driveway. Each driveway must be completed on or prior to the completion of the dwelling. All driveways must connect with the adjoining road and the parking area on the LOT. The location, design, and construction of all driveways must be approved in writing by the ARCHITECTURAL COMMITTEE prior to construction.

Unless otherwise approved by the ARCHITECTURAL COMMITTEE all driveways located on the following LOTS must access to and from the following named streets and all houses on the following LOTS must front the following named streets:

- A. LOTS 10 and 22. Driveways must access and houses must front North Creek Circle.
- B. LOTS 23 through 27, and LOT 35. Driveways must access and houses must front Mockingbird Lane.
- C. LOTS 36 and 49. Driveways must access and houses must front Sweetwater Lane.
- D. LOTS 50 and 87. Driveways must access and houses must front Beaver Dam Road.
- E. LOT 58. The driveway must access and the house must front Clubhouse Circle.
- F. LOTS 164 and 165. Driveways must access and houses must front Old Mill Road.

Section 7.11 Preservation of Trees, Topography and Vegetation.

No tree having a diameter of six (6) inches or more (measured from a point two feet above ground level) shall be removed from any LOT without the express written authorization of the ARCHITECTURAL COMMITTEE. The recorded plat of the subdivision designates certain areas as a "GREEN BELT AREA". In order to protect the natural beauty of the vegetation and topography of the GREEN BELT AREA, and to provide privacy to LOT OWNERS, written approval of the ARCHITECTURAL COMMITTEE is hereby required for the removal, reduction, cutting down, excavation, filling or alteration of any topographic and vegetation characteristics. The ARCHITECTURAL COMMITTEE, in its discretion, may adopt and promulgate rules and regulations regarding the GREEN BELT AREA and in general the preservation of trees and other natural resources and wildlife upon all of the PROPERTY. If it shall deem it appropriate, the ARCHITECTURAL COMMITTEE may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section, the DECLARANT, the ASSOCIATION and the ARCHITECTURAL COMMITTEE and the respective agents of each may come upon any LOT during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the ASSOCIATION, nor the

ARCHITECTURAL COMMITTEE, nor DECLARANT, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 7.12 Accumulation of Refuse or Noxious Activity.

No lumber, metals or bulk materials (except lumber, metals and bulk materials as is usual in the maintenance of a private residence and which must be stored in such a manner so that it cannot be seen from adjacent and surrounding property), refuse or trash shall be kept, stored, or allowed to accumulate on any LOT, except building materials during the course of construction of any approved structure. No harmful or noxious materials shall be stored, either inside any structure, or outside any structure, if said materials pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such structures. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, approved containers may be placed in the open on any day a pick-up is to be made. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the ARCHITECTURAL COMMITTEE. All trash and garbage containers shall be kept in a clean and sanitary condition. The ARCHITECTURAL COMMITTEE, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage and screening of the same on the PROPERTY.

No portion of the PROPERTY shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept on any portion of the PROPERTY that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the PROPERTY nor shall anything be done on the PROPERTY tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the PROPERTY. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the PROPERTY. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted within the PROPERTY.

[Following Section Amended on 03/31/2003]

Section 7.13 Fences, Walls, Hedges and Ornamental Structures.

No fence, wall, hedge, ornamental structure, or gazebo shall be located or constructed on any LOT without the prior written approval of the ARCHITECTURAL COMMITTEE. No fence, wall, hedge, ornamental structure, or gazebo shall be over six (6) feet in height nor be located nearer the front property line of any LOT than the front of the dwelling on such LOT without the written approval of the ARCHITECTURAL COMMITTEE. No chain link fence may be constructed on any LOT. As to fences on any LOT line or COMMON AREA property line abutting the Golf Course or GOLF CLUB or the Lake shown as COMMON AREA No. 25 on the Phase Four Plat, there shall be permitted only natural growing hedges or wrought iron-style fencing approved by the ARCHITECTURAL COMMITTEE and not exceeding four (4) feet in height from the ground. No dog runs, animal pens, or fences of any kind shall be permitted on any lot without the prior written approval of the ARCHITECTURAL COMMITTEE. The ASSOCIATION shall have the right to enter upon any LOT and trim or prune, at the expense of the owner, any hedge or other planting which, by reason of its location upon the LOT or the height to which it is permitted to grow, in the opinion of the ASSOCIATION unreasonably detrimental to the adjoining property or obscures the view of road traffic or is unattractive in appearance; provided, however, that the owner shall be given fifteen (15) days prior written notice of such action. All PROPERTY located at street intersections shall be landscaped to permit safe sight across the street corners.

Section 7.14 Mail or Newspaper Boxes.

The design of all mailboxes and newspaper boxes must be approved by the ARCHITECTURAL COMMITTEE and free-standing mail boxes and newspaper boxes equipped with lighting may be required in some or all sections of the PROPERTY.

Section 7.15 Artificial Vegetation, Exterior Sculpture, and Similar Items.

No artificial vegetation shall be permitted on any PROPERTY or on the exterior of any portion of any improvement on the PROPERTY. Exterior sculpture, fountains, flags, and similar items must be approved by the ARCHITECTURAL COMMITTEE; provided, however, that nothing herein shall prohibit the appropriate display of the American flag.

Section 7.16 Animals and Pets.

No animals, wildlife, livestock, insects, reptiles, or poultry of any kind shall be raised, bred, harbored or kept on any LOT except that the owner may keep three domesticated household pets. No such pets shall be kept for any commercial purpose, and any such pets may be kept only so long as they or any of them do not become an annoyance or nuisance to the neighborhood. All pets, at all times when they are outside a residence, must be confined on a leash held by a responsible person and kept under the close supervision of their owners. Pets shall only be permitted in the COMMON AREA if portions thereof are so designated by the ASSOCIATION. All persons bringing a pet onto a COMMON AREA shall be responsible for immediately removing any solid waste of said pet. Those pets which, in the sole discretion of the ASSOCIATION, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the OWNERS of other LOTS or the OWNER of any portion of the PROPERTY shall be removed upon request of the BOARD.

Section 7.17 Signs.

No sign, billboard, advertisement, or other advertising device of any nature shall be placed upon any LOT except as provided herein. The ARCHITECTURAL COMMITTEE may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the PROPERTY, if approved by the ARCHITECTURAL COMMITTEE, as to color, location, nature, size and other characteristics of such signs or devices. Provided, however, the DECLARANT specifically reserves the right for itself, its successors, nominees, assigns, and the ASSOCIATION to place and maintain signs in connection with constructing, marketing, selling, and renting LOTS, and the improvements thereon, and identification and informational signs anywhere on the PROPERTY.

Section 7.18 Temporary Structures.

No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a residence or temporary housing or the like on any LOT. If approved by the ARCHITECTURAL COMMITTEE, such a structure may be used as a security station during construction or other special purpose.

Section 7.19 Pipes.

To the extent of the interest of the owners of a LOT, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any LOT above the surface of the ground.

Section 7.20 Wall and Window Air Conditioning Units.

Wall and window air conditioning units shall not be permitted.

Section 7.21 Clothes Lines.

No clothing or any other household fabric shall be hung in the open on any LOT and no clothes lines or clothes hanging devices shall be kept or maintained on any LOT.

Section 7.22 Chimney Flues.

Exposed chimney flues shall be enclosed.

Section 7.23 Carports and Garages.

No carports or garages shall open toward a road unless approved by the ARCHITECTURAL COMMITTEE. All carports shall be screened or enclosed.

Section 7.24 Play Equipment, Strollers, Etc.

All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from roads or PROPERTY adjacent to the LOT. No such items shall be allowed to remain on the COMMON AREA or on LOTS so as to be visible from adjacent PROPERTY or the road when not in use. Notwithstanding the above, the BOARD may, but shall not be obligated to, permit swing sets and similar permanent playground equipment to be erected on LOTS provided it is approved by the ARCHITECTURAL COMMITTEE. No baseball cages or similar recreational facilities shall be permitted without approval of the ARCHITECTURAL COMMITTEE.

Section 7.25 Energy Conservation Equipment.

No solar energy collector panels or attendant hardware or energy conservation equipment shall be constructed or installed on any LOT unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARCHITECTURAL COMMITTEE. Under no circumstances shall solar panels be installed that will be visible from any road or COMMON AREA in the PROPERTY.

Section 7.26 Oil or Gas Tanks, Pools, Swimming Pool Equipment.

All swimming pool equipment and housing must be placed in walled-in or screened areas or landscaped area so that they are not visible from any COMMON AREA, road or adjoining property. No oil tanks or bottled gas tanks shall be allowed on any LOT or on the COMMON AREA, provided, however, two bottled natural gas tanks no larger than five (5) gallons in size may be kept on a LOT for the purpose of cooking with a gas grill and so long as said natural gas tank is placed in a screened area and so that they are not visible from any COMMON AREA, road or adjoining property.

No above-ground pools shall be erected, constructed or installed on any LOT except that above-ground spas or Jacuzzis may be permitted with approval of the ARCHITECTURAL COMMITTEE. Any in-ground pool to be constructed on any LOT shall be subjected to the requirements of the ARCHITECTURAL COMMITTEE, which include, but are not limited to, the following:

- A. Composition to be of material thoroughly tested and accepted by the industry for such construction;
- B. Pool screening may not be visible from the street in front of the LOT; and
- C. All screening material shall be of a color in harmony with the LOT. No raw aluminum color screen will be allowed.

Section 7.27 Outside Installations.

[Following Three Sentences Replace Former First Sentence Per Amendment 02/15/2005]

No exterior antennas, aerials, towers or other apparatus, or support thereof, for the reception or transmission of television, radio or other signals of any kind shall be erected, installed, placed, allowed or maintained upon any portion of the PROPERTY, except that signal receiving and transmitting equipment for residential use by an OWNER may be located in such place upon such OWNER'S LOT that it is hidden from view from abutting streets, common area and the golf course, and except that one satellite dish of no more than 1 meter in diameter may be installed in a place not visible from the street in front of the LOT. The OWNER of a LOT

attempting to install thereon any reception or transmission equipment not in compliance with this Section must demonstrate that compliance will result in the inability of such equipment to receive and transmit signals and that it is impossible to screen such equipment as required herein. Nothing contained in this Section 7.27 shall be interpreted to violate the rules and regulations of the Federal Communications Commission as in effect from time to time. The DECLARANT and/or the ASSOCIATION shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna or cable system for the benefit of all or a portion of the PROPERTY, should master system or systems to be used by the ASSOCIATION require any such exterior apparatus. No radio transmissions of any kind shall be made from any building, UNIT or COMMON AREA, except for communication equipment used by the ASSOCIATION. No machinery shall be placed or operated upon any LOT except such machinery as is usual in maintenance of a private residence. No roof penetrations, such as vents and pipes, shall be placed on any roof so as to be visible from any road or COMMON AREA.

Section 7.28 Irrigation.

No sprinkler or irrigation system of any type that draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals, or other ground or surface waters within the PROPERTY shall be installed, constructed, or operated within the PROPERTY by any person, other than the ASSOCIATION or the DEVELOPER, or to be utilized by any group of LOTS, unless prior written approval has been received from the ARCHITECTURAL COMMITTEE. All sprinkler and irrigation systems must be installed underground and shall be subject to approval of the ARCHITECTURAL COMMITTEE. This Section shall not apply to the DECLARANT.

Section 7.29 Wells and Drainage.

No private water system shall be constructed on any LOT except private irrigation wells not to exceed three inches (3") in diameter approved by the ARCHITECTURAL COMMITTEE. Any such private irrigation well must be screened from public view and is subject to the approval of the ARCHITECTURAL COMMITTEE. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No community wells or community water systems shall be allowed except the water system provided by any governmental entity.

Section 7.30 Storm Precautions.

No hurricane or storm shutters shall be permanently installed on any structure on a LOT unless first approved by the ARCHITECTURAL COMMITTEE. Hurricane or storm shutters may be installed temporarily, and other storm precautions may be taken to protect structures on a LOT, while the threat of a hurricane or similar storm is imminent; provided, all such shutters and other exterior alterations or additions made as a storm precaution shall be promptly removed once the storm or imminent threat of the storm has passed.

Section 7.31 Window Coverings, etc.

Reflective window coverings are prohibited. No awnings, canopies, shutters, patio cover, building or storage unit of any kind shall be erected, placed, or permanently installed on any LOT unless first approved by the ARCHITECTURAL COMMITTEE.

Section 7.32 Mineral Operations Prohibited.

No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind whatsoever shall be permitted upon any LOT, nor shall oil wells, derricks, tanks, tunnels, mineral excavations or shafts be erected or permitted to remain on any LOT; however, it is understood that this prohibition does not affect the rights of mineral owners or owners of any interest in minerals that may have been previously reserved or conveyed to others.

Section 7.33 Firearms.

The discharge of firearms within the PLANNED UNIT DEVELOPMENT is prohibited except with the prior approval of the BOARD OF DIRECTORS. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, notwithstanding anything to the contrary contained herein or in the BYLAWS. The ASSOCIATION shall not be obligated to take action to enforce this Section.

Section 7.34 Golf Carts.

No gasoline-powered golf carts shall be operated within the PROPERTY except as may be owned and operated by the DECLARANT, the ASSOCIATION, or the GOLF CLUB. All other golf carts shall be powered by electricity or by similar noncombustion means. Golf carts shall be stored only in garages serving the OWNER'S LOT or other areas specifically designated by the BOARD as golf cart parking areas. No golf cart shall be placed, parked, or stored on the lawn of any LOT. No golf cart shall be operated on other than designated golf cart paths, if any. All golf carts shall be kept in good order and repair. No child under the age of sixteen (16) shall be permitted to operate a golf cart on the PROPERTY.

Section 7.35 Insurance Rates.

Nothing shall be done or kept on any LOT or in any improvement or the COMMON AREA which will increase the rate of insurance on any property insured by the ASSOCIATION without the approval of the BOARD, nor shall anything be done or kept on any LOT which would result in the cancellation of insurance on any PROPERTY insured by the ASSOCIATION or which would be in violation of any law.

Section 7.36 Completion of Construction.

All homes and other structures, landscaping and other improvements must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the OWNER or builder due to strikes, fires, national emergencies, or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. During the continuation of construction, the OWNER shall require the contractor to maintain the LOT in a reasonably clean and uncluttered condition. Upon completion of construction, the OWNER shall cause the contractor to immediately remove all equipment, tools, construction material and debris from the LOT. Any damage to roads, paths, COMMON PROPERTY, or any other property owned by any person or entity caused by the OWNER or OWNER'S agent, contractor, or other party providing labor or services to the OWNER shall be repaired by the OWNER.

Section 7.37 Occupants Bound.

All provisions of the DECLARATION, BYLAWS, and of any rules and regulations or use restrictions promulgated pursuant hereto that govern the conduct of OWNERS and that provide for sanctions against OWNERS shall also apply to all occupants, guests, and invitees of any LOT. Every OWNER shall cause all occupants of the OWNER'S LOT to comply with the DECLARATION, BYLAWS, and the rules and regulations adopted pursuant hereto, and shall be responsible for all violations and losses to the PROPERTY caused by those occupants, notwithstanding the fact that those occupants of a LOT are fully liable and may be sanctioned for any violation of the DECLARATION, BYLAWS, and rules and regulations adopted pursuant hereto.

Section 7.38 No Discrimination.

No action shall at any time be taken by the DECLARANT, the ASSOCIATION or its BOARD OF DIRECTORS which in any manner would discriminate against any OWNER or OWNERS in favor of the other OWNERS.

[Following Section Amended on 03/31/2003 to include Lots 175 – 231 and common area 14; on 05/13/1994 to include Lots 232 – 256, Lots 284-333 and common areas 15 - 17 ; on 04/04/1995 to include Lots 257-283; and on 12/15/1995 to include Lots 334-442 and common areas 18 - 26]

Section 7.39 Disclosure.

This DECLARATION and the restrictions, covenants and conditions contained herein shall apply only to Lots 1-174 and the areas designated as COMMON AREA 1 through COMMON AREA 13 on the recorded plat of ROCK CREEK, A PLANNED UNIT DEVELOPMENT, Phase One and such other real property or ADDITIONAL PROPERTY as DECLARANT may submit to this DECLARATION by SUBSEQUENT AMENDMENT. See Article XVI concerning the right of DECLARANT to annex ADDITIONAL PROPERTY. Land shown on the plat of ROCK CREEK, A Planned Unit Development, Phase One, other than Lots 1-174 and said common areas may be used for purposes other than residential.

ARTICLE VIII
WATERFRONT AREAS AND WATERWAYS

Any LOT which shall abut upon any lake, stream, pond or other waterway shall be subject to the following additional restrictions:

A. No wharf, pier, dock, bulkhead, or other structure or obstruction shall be built or maintained upon any waterfront LOT or into or upon any waterway on the PROPERTY or adjacent thereto except with the specific written approval of the ARCHITECTURAL COMMITTEE. Also, no wharf, pier, dock, bulkhead, or other structure shall be constructed into any waterway unless the appropriate governmental permit for such construction has been obtained.

B. Except with prior written approval of the ASSOCIATION or ARCHITECTURAL COMMITTEE, no device may be constructed or installed upon any LOT which shall in any way alter the course of natural boundaries of any waterway or which shall involve or result in the removal of water from any waterway.

C. The OWNER of each LOT that is contiguous to a waterway shall have, if granted by law, the right of ingress and egress to and from the water but shall be responsible for the maintenance of the LOT between the side lines of his or her PROPERTY to the water's edge.

D. The OWNER of each LOT abutting the water's edge shall release and discharge the DECLARANT and the ASSOCIATION from any and all claims for debt or damage sustained by OWNER or existing in OWNER'S favor, to OWNER, OWNER'S property and property rights heretofore or hereafter to be sustained or to accrue by reason or account of the operation and maintenance of any waterway.

E. The use of any waterway on the PROPERTY shall be subject to the rules and regulations promulgated from time to time by the ASSOCIATION. All waterways on or in the PROPERTY are subject to the rights, if any, of the public, the United States of America, State of Alabama, and others to the use of the waterways. No authority to use any waterway is granted or implied by this DECLARATION, and such use may be prohibited or unauthorized. The DEVELOPER does not covenant and warrant that any waterway is navigable or otherwise capable of being navigated or otherwise usable.

F. Each LOT OWNER covenants and agrees to allow the ASSOCIATION, its delegates, agents, or employees, at all reasonable times to enter into any waterway for the purpose of maintaining or inspecting the same or to determine compliance with the provisions of this DECLARATION. The ASSOCIATION shall not, except by approval of the BOARD, be obligated to maintain or repair any waterway that does not fall within the COMMON AREA.

ARTICLE IX
MEMBERSHIP AND VOTING RIGHTS

Section 9.1 The Association.

The operation and administration of the PROPERTY shall be by the ASSOCIATION of LOT OWNERS. The ASSOCIATION shall be a not-for-profit Alabama corporation incorporated by ARTICLES OF INCORPORATION recorded in the office of the Judge of Probate of Baldwin County, Alabama. The ASSOCIATION shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or nonexercise of its powers. The ASSOCIATION shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of LOT OWNERS of the PROPERTY with reference to the COMMON AREA and COMMON PROPERTY and with reference to any and all other matters in which all of the LOT OWNERS have a common interest. The ASSOCIATION shall have all the powers and duties granted to or imposed on it under its ARTICLES OF INCORPORATION and BYLAWS and under this DECLARATION as they may be amended from time to time. The ASSOCIATION is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. The ASSOCIATION shall have the right to grant permits, licenses and easements over the COMMON AREAS for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the PROPERTY. The BOARD shall have the authority and duty to levy and enforce the collection of general and specific ASSESSMENTS for COMMON EXPENSES and is further authorized to provide adequate remedies for failure to pay such ASSESSMENTS.

Section 9.2 Membership.

Every person or entity who is the record owner of a fee simple or undivided fee interest in any LOT that is subject to this DECLARATION shall be deemed to have a membership in the ASSOCIATION. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the OWNER'S membership.

Section 9.3 Voting Rights.

The ASSOCIATION shall have two (2) classes of voting membership. Class A and Class B, as follows:

A. Class A. Class A MEMBERS shall be all OWNERS with the exception of the Class B MEMBERS, if any, and shall be entitled to one (1) vote in the ASSOCIATION for each LOT owned. Provided, however, Class A OWNERS shall not be entitled to vote until the first to occur of: (1) that date when DECLARANT no longer owns any LOTS (including any subsequently annexed LOTS); or (2) the date five (5) years after this DECLARATION is recorded. At that time (or such earlier date as DECLARANT, in the sole discretion of DECLARANT, shall irrevocably determine as evidenced by an instrument recorded in the public records of the county where the property is located) each LOT shall be entitled to one vote. When more than one person holds an interest in any LOT, all such persons shall be MEMBERS. The vote for such LOT shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any LOT.

B. Class B. Class B MEMBER(S) shall be the DECLARANT and any successor of DECLARANT 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(S) shall be a Voting MEMBER and shall be entitled to cast three (3) votes for each LOT owned.

The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, provided, however, that if, after the conversion of the Class B membership, there are additional LOTS annexed with the result that the total votes outstanding in the Class A membership would not equal or exceed the total votes outstanding in the Class B membership if there were then a Class B membership, the Class B membership shall thereupon be reinstituted until the then total votes outstanding in the Class A membership again equals or exceeds the then total votes outstanding in the Class B membership; or

2. When, in its discretion, the DECLARANT so determines.

From and after the happening of these events, whichever occurs earlier, the Class B MEMBER shall be deemed to be a Class A MEMBER. At such time, the DECLARANT shall call a meeting, as provided in the BYLAWS of the ASSOCIATION for special meetings, to advise the membership of the termination of Class B status and to elect the remaining MEMBERS of the BOARD OF DIRECTORS.

Only Voting MEMBERS shall be entitled to cast votes at ASSOCIATION meetings on matters pertaining to the ASSOCIATION, including the election of MEMBERS of the BOARD OF DIRECTORS, amending the DECLARATION, the ARTICLES OF INCORPORATION, and the BYLAWS of the ASSOCIATION, and all other matters which may be brought before the ASSOCIATION membership except as otherwise provided in this DECLARATION. The right of an OWNER to vote may be suspended by the ASSOCIATION as provided in Section 9.4 below.

Section 9.4 Rules and Regulations.

The ASSOCIATION, through its BOARD OF DIRECTORS, may make and enforce reasonable rules and regulations governing the use of the PROPERTY, which rules and regulations shall be consistent with the rights and duties established by this DECLARATION. Copies of such rules and regulations and amendments thereto shall be furnished by the ASSOCIATION to all OWNERS. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the COMMON PROPERTY. The BOARD shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of fines and/or sanctions shall be as provided in the BYLAWS of the ASSOCIATION. In addition, the ASSOCIATION, through the BOARD, may, by contract or other agreement, enforce local ordinances on the PROPERTY for the benefit of the ASSOCIATION and its MEMBERS.

Section 9.5 Implied Rights.

The ASSOCIATION may exercise any other right or privilege given to it expressly by this DECLARATION or the BYLAWS, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 9.6 Self-Help

In addition to any other remedies provided for herein, the ASSOCIATION or its duly authorized agent shall have power to enter upon a LOT or any portion of the COMMON PROPERTY to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates this DECLARATION, the BYLAWS, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the BOARD shall give the violating LOT OWNER ten (10) days' written notice of its intent to exercise self-help. All costs of self-help including reasonable attorney's fees actually incurred shall be assessed against the violating LOT OWNER and shall be collected as provided for herein for the collection of assessments.

Section 9.7 Right of Entry.

The ASSOCIATION shall have the right, in addition to and not in limitation of the rights it may have, to enter into LOTS for emergency, security, or safety purposes, which right may be exercised by the BOARD, its

officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be during reasonable hours and after reasonable notice to the OWNER or occupant of the LOT.

Section 9.8 Contracts.

The ASSOCIATION shall not be bound, either directly or indirectly, to any professional management contracts or leases entered into prior to passage of control by DECLARANT unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, with not more than ninety (90) days notice to the other party.

Section 9.9 Assignment.

The share of a member and the funds and assets of the ASSOCIATION cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his or her LOT.

Section 9.10 Board of Directors.

The affairs of the ASSOCIATION shall be conducted by a BOARD OF DIRECTORS which shall consist of such number as shall, from time to time, be determined and fixed by a majority of the voting rights present at any annual or special meeting of the MEMBERS. The ASSOCIATION shall have the right to amend the BYLAWS for the purposes of changing the number of DIRECTORS.

Section 9.11 ByLaws.

The ASSOCIATION and its MEMBERS shall be governed by the BYLAWS which shall be adopted by the MEMBERS.

Section 9.12 Availability of Records.

The ASSOCIATION shall make available to LOT OWNERS, prospective purchasers, ELIGIBLE MORTGAGE HOLDERS of MORTGAGES on any LOT, current copies of this DECLARATION, BYLAWS, rules and regulations and other books, records, financial statements and the most recent annual audited or unaudited financial statement of the ASSOCIATION, if such audited or unaudited financial statement is prepared. "Available" shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

Section 9.13 Indemnification.

The ASSOCIATION shall indemnify every officer and director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceedings, if approved by the then BOARD OF DIRECTORS) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors 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 or directors may also be MEMBERS 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, and any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director or former officer or director may be entitled. The ASSOCIATION shall maintain adequate general liability and officers and directors liability insurance to fund this obligation, if such coverage is reasonably obtainable.

Section 9.14 Reserve Fund.

The ASSOCIATION shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the COMMON AREAS. The fund shall be maintained out of regular ASSESSMENTS for COMMON EXPENSES.

ARTICLE X
COVENANTS FOR MAINTENANCE

Section 10.1 Association's Responsibility.

The ASSOCIATION shall maintain and keep in good repair the COMMON PROPERTY, such maintenance to be funded as hereinafter provided.

Section 10.2 Owner's Responsibility.

Each OWNER shall keep all LOTS owned by him or her, and all improvements therein or thereon, in a safe, clean, and attractive condition and in good order and repair. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive, keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damage to improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the ASSOCIATION, any OWNER fails to perform the duties imposed by this Section after fifteen (15) days' written notice from the ASSOCIATION to the OWNER to remedy the condition in question, the ASSOCIATION shall have the right, through its agents and employees, to enter upon the LOT in question and to repair, maintain, repaint and restore the LOT or such improvements and the cost thereof shall be a binding, personal obligation of such OWNER when billed by the ASSOCIATION as well as a lien upon the LOT in question. The lien provided in this Section shall have the same enforceability and priority as the lien provided for in ARTICLE XI below.

ARTICLE XI
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 11.1 Purpose of Assessments.

The ASSESSMENTS levied by the ASSOCIATION shall be used exclusively for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment by the OWNERS and occupants of the PROPERTY and for the improvement and maintenance of the COMMON PROPERTY, including the maintenance of real and personal property, all as may be specifically authorized from time to time by the BOARD.

Section 11.2 Creation of the Lien and Personal Obligation of ASSESSMENTS.

Except as provided herein, the DECLARANT, for each LOT owned within the PROPERTY, hereby covenants, and each OWNER of any LOT by acceptance of a DEED therefor, whether or not it shall be so expressed in such DEED, is deemed to covenant and agree to pay to the ASSOCIATION: (i) annual ASSESSMENTS or charges; (ii) special ASSESSMENTS, such ASSESSMENTS to be established and collected as hereinafter provided; and (iii) specific ASSESSMENTS against any LOT which are established pursuant to the terms of this DECLARATION, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this DECLARATION and the BYLAWS. All such ASSESSMENTS, together with late charges, interest, not to exceed the maximum legal rates, costs, and reasonable attorney's fees actually incurred, shall be a charge on the LOT and shall be a continuing lien upon the LOT against which each ASSESSMENT is made. *[Following Sentence Amended on 02/15/2005]* Each such ASSESSMENT, together with late charges, interest, costs and reasonable attorney's fees, shall also be the personal obligation of the PERSON who is the OWNER of such property at the time when the ASSESSMENT fell due, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Provided however, notwithstanding any other provision elsewhere contained in this DECLARATION, DECLARANT shall not be obligated to pay any assessment, annual or otherwise, on LOTS owned by DECLARANT unless DECLARANT voluntarily elects to pay said assessment.

[Following Section Amended on 03/31/2003]

Section 11.3 Computation of Assessments.

It shall be the duty of the BOARD to prepare a budget covering the estimated cost of operating the ASSOCIATION during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The BOARD shall cause the budget and the assessments to be levied against each LOT for the following year to be delivered to each MEMBER at least thirty (30) days prior to the end of the current fiscal year. The budget shall take effect if approved by the MEMBERS at the annual meeting or a special meeting duly called at which a quorum is present.

Section 11.4 Maximum Annual Assessment.

Until the first day of January of the year immediately following the conveyance of the first LOT to an OWNER, the maximum annual ASSESSMENT shall be TWO HUNDRED AND 00/100 DOLLARS (\$200.00) per LOT.

A. From and after the first day of January of the year immediately following the conveyance of the first LOT to an OWNER, the maximum annual ASSESSMENT may be increased each year not more than twenty-five (25%) above the maximum ASSESSMENT for the previous year without a vote of the membership.

[Deleted by Amendment on 03/31/2003]

~~B. From and after the first day of January of the year immediately following the conveyance of the first LOT to an OWNER, the maximum annual ASSESSMENT may be increased above twenty-five (25%) by a two-thirds (2/3) vote of the total votes entitled to be cast by MEMBERS and who are voting in person or by proxy, at a meeting duly called for that purpose.~~

C. The BOARD OF DIRECTORS may fix the annual ASSESSMENT at an amount not in excess of the maximum.

[Following Section Amended on 03/31/2003]

Section 11.5 Special Assessments for Capital Improvements Upon Common Area.

In addition to the annual and special ASSESSMENTS authorized by this DECLARATION, the ASSOCIATION may levy, in any ASSESSMENT year, a special ASSESSMENT applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the COMMON AREA, including fixtures and personal property related thereto, provided that any such ASSESSMENT shall have the approval of the MEMBERS at a meeting duly called for the purpose at which a quorum is present.

[Following Section Amended on 03/31/2003]

Section 11.6 Notice and Quorum For Any Action Authorized Under Sections 11.3, 11.4 and 11.5 above.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 11.3, 11.4, and 11.5 above shall be sent to all MEMBERS not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

Section 11.7 Uniform Rate of Assessment.

The ASSESSMENTS herein described shall be fixed at a uniform rate for all LOTS.

Section 11.8 Date of Commencement of Annual Assessments: Due Dates.

The annual ASSESSMENTS provided for herein shall commence as to all LOTS then existing and subject to assessment under this DECLARATION on the first day of the month following the conveyance of the first LOT by DECLARANT and shall be due and payable in the manner and on a schedule as the BOARD may provide. The first annual ASSESSMENT shall be adjusted according to the number of months remaining in that fiscal year.

The ASSOCIATION shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the ASSOCIATION, setting forth whether the ASSESSMENTS on a specified LOT have been paid. A properly executed certificate of the ASSOCIATION as to the status of ASSESSMENTS on a LOT is binding upon the ASSOCIATION as of the date of its issuance.

Section 11.9 Lien for Assessments.

All sums assessed against any LOT pursuant to this DECLARATION, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such LOT in favor of the ASSOCIATION. *[Following Sentence Added per Amendment on 02/15/2005]* Such lien shall be superior to all other liens and encumbrances on such LOT except for liens of ad valorem taxes.

All other PERSONS acquiring liens or encumbrances on any PROPERTY subject to this DECLARATION after this DECLARATION shall have been recorded in the records of the office of the Judge of Probate of Baldwin County, Alabama, shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for ASSESSMENTS, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 11.10 Effect of Nonpayment of Assessments: Remedies of the ASSOCIATION.

Any ASSESSMENT which is not paid when due shall be delinquent. Any ASSESSMENT delinquent for a period of more than ten (10) days shall incur a late charge and bear interest thereon in an amount and at a rate to be set by the BOARD, but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama. In the event the ASSOCIATION remains unpaid after thirty (30) days, the ASSOCIATION may, as the BOARD may determine, bring an action at law or in equity against the owner personally obligated to pay the same, foreclose the lien against the PROPERTY or seek injunctive relief, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such ASSESSMENT. Each OWNER, by his or her acceptance of a DEED to a LOT, or as a party to any other type of conveyance, hereby expressly vests in the ASSOCIATION or its agents the right and power to bring all actions against such OWNER personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the ASSOCIATION in a like manner as a mortgage lien on real property, and such OWNER hereby expressly grants to the ASSOCIATION a power of sale in connection with said lien. The lien provided for in this DECLARATION shall be in favor of the ASSOCIATION and shall be for the benefit of all LOT OWNERS. The ASSOCIATION, acting on behalf of the LOT OWNERS, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. With the exception of the DECLARANT, no OWNER may waive or otherwise escape liability for the ASSESSMENTS provided for herein by non-use of the COMMON AREA or abandonment of his or her LOT.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent ASSESSMENTS, then to any unpaid installments of the annual ASSESSMENT or special ASSESSMENT, which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual ASSESSMENT or special ASSESSMENTS which are the subject matter of suit in the order of their coming due.

Section 11.11 Capital Budget and Contribution.

The BOARD shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair and replacement. The BOARD shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the ASSOCIATION, as shown on the capital budget, with respect to both amount and timing by annual ASSESSMENTS over the period of the budget. The capital contribution required shall be fixed

by the BOARD and included within the budget and the ASSESSMENT as provided for in this DECLARATION. A copy of the capital budget shall be distributed to each MEMBER in the same manner as the operating budget.

[Following Section Amended on 02/15/2005]

Section 11.12 Lien Not Affected By Transfer.

The sale or transfer of any LOT shall not affect the ASSESSMENT lien. No sale or transfer shall relieve such LOT from liability for any ASSESSMENTS or relieve the prior owner from any personal liability for any unpaid ASSESSMENTS occurring prior to said sale or transfer. Such unpaid share of COMMON EXPENSES or ASSESSMENTS shall be deemed to be COMMON EXPENSES collectible from all of the LOTS, including such acquirer, his or her heirs, successors and assigns.

Section 11.13 Capitalization of Association.

Upon acquisition of record title to a LOT from DECLARANT, each OWNER shall contribute to the working capital fund of the ASSOCIATION an amount equal to one-sixth (1/6) of the estimated amount of the general ASSESSMENT for that LOT as determined by the BOARD. Any amounts paid into this fund should not be considered as advanced payments or regular ASSESSMENTS. The DECLARANT shall not be obligated to contribute to the working capital fund of the ASSOCIATION as required of LOT PURCHASERS by this Section.

Section 11.14 Assessment by Declarant.

DECLARANT shall not be obligated to pay any assessment, annual or otherwise, on any LOT owned by DECLARANT.

ARTICLE XII
PARTY WALL

Section 12.1 General Rules of Law to Apply.

Each wall which is built as a part of the original construction of the improvements upon the PROPERTY and placed on the dividing line between the LOTS shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 12.2 Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the LOT OWNERS of the property upon which the Party Wall is situated; provided that, should a Party Wall be damaged by the negligent or intentional act of any OWNER or any member of his family or his tenant or guest, then all such repair costs shall be borne by such OWNER.

Section 12.3 Damage and Destruction.

If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any OWNER who has used the wall may restore it, and if the OWNER or OWNERS thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice; however, to the right of any such OWNERS to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 12.4 Weatherproofing.

Notwithstanding any other provision of this Article, an OWNER, who by his negligent or willful act causes the Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

Section 12.5 Right to Contribution Runs With Land.

The right of any OWNER to contribution from any other OWNER under this Article shall be appurtenant to the land and shall pass to such OWNER'S successors in title.

Section 12.6 Arbitration.

In the event of any dispute concerning a Party Wall or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE XIII
INSURANCE AND CASUALTY LOSS

Section 13.1 Association Insurance.

The BOARD, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk hazard insurance, if reasonably available, for all insurable improvements on the COMMON AREA. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage for all insurable improvements on the COMMON AREA shall be obtained. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

The BOARD shall also obtain a public liability policy covering the COMMON AREA, the ASSOCIATION, and its MEMBERS for premises liability, blanket contractual liability, and products/completed operations liability. The public liability policy shall have at least One Million Dollar (\$1,000,000.00) combined single limit for bodily injury and property damage liability claims. The public liability policy may contain a reasonable deductible. All such insurance coverage, obtained by the BOARD shall be written in the name of the ASSOCIATION as Trustee for the benefit of the OWNERS, as further identified in B below. Such insurance shall be governed by the provisions hereinafter set forth:

A. All policies shall be written with a company licensed to do business in Alabama and holding a rating of "A" or better in the Financial Category as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

B. All policies on the COMMON AREA shall be for the benefit of the LOT OWNERS and their mortgagees as their interests may appear.

C. Exclusive authority to adjust losses under policies in force on the property obtained by the ASSOCIATION shall be vested in the BOARD; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

D. In no event shall the Insurance coverage obtained and maintained by the BOARD hereunder be brought into contribution with insurance purchased by individual OWNERS, occupants, or their mortgagees.

E. All property insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Baldwin County area.

F. The BOARD shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

1. A waiver of subrogation by the insurer as to any claims against the BOARD, its manager, the OWNERS, and their respective tenants, servants, agents, and guests; and
2. that no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the ASSOCIATION.

In addition to the other insurance required by this Section, the BOARD shall obtain, as a COMMON EXPENSE, worker's compensation insurance, if and to the extent necessary, and, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the ASSOCIATION'S funds. The amount of fidelity coverage shall be determined in the best business judgment of the BOARD, but may not be less than three (3) months' ASSESSMENTS, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days prior written notice to the ASSOCIATION.

This DECLARATION does not obligate the ASSOCIATION to purchase casualty insurance to cover LOTS nor does it obligate the ASSOCIATION to provide liability insurance to cover OWNERS in their individual capacities.

Each OWNER may obtain additional insurance at his or her own expense; provided, however, that no OWNER shall be entitled to exercise his or her right to maintain Insurance coverage in such a way as to decrease the amount which the ASSOCIATION, on behalf of all the OWNERS and their mortgagees, may realize under any insurance policy which the BOARD may have in force on the PROPERTY at any particular time.

Premiums for all insurance obtained by the ASSOCIATION shall be a COMMON EXPENSE of the ASSOCIATION. The cost of insurance coverage obtained by the ASSOCIATION shall be included in the annual or special ASSESSMENT as provided in this DECLARATION. The policies may contain a reasonable deductible.

Section 13.2 Individual Insurance.

By virtue of taking title to a LOT subject to the terms of this DECLARATION, each OWNER covenants and agrees with all other OWNERS and with the ASSOCIATION that each OWNER shall carry property and liability insurance on his or her LOT and improvements constructed thereon with similar coverages as provided for in Section 13.1 above. Each OWNER further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures located on his or her LOT, the OWNER shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the OWNER determines not to rebuild or to reconstruct, the OWNER shall clear the LOT of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The ARCHITECTURAL COMMITTEE may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the LOT and the standards for returning the LOT to its natural state in the event the OWNER decides not to rebuild or reconstruct.

Section 13.3 Disbursement of Proceeds.

Proceeds of insurance policies maintained by the ASSOCIATION shall be disbursed as follows:

- A. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed

in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the COMMON PROPERTY or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected OWNER or OWNERS and the MORTGAGEE(S), as their interests may appear, shall be retained by and for the benefit of the ASSOCIATION and placed in a capital improvements account. This is a covenant for the benefit of any MORTGAGEE of a LOT and may be enforced by such MORTGAGEE.

B. If it is determined, as provided for in this Article, that the damage or destruction to the COMMON PROPERTY for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section 13.3-A above.

Section 13.4 Damage or Destruction.

A. Immediately after the damage or destruction by fire or other casualty to all or any part of the COMMON PROPERTY covered by insurance written in the name of the ASSOCIATION, the BOARD, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portion of the COMMON PROPERTY. Repair or reconstruction, as used in this Article, means repairing or restoring the COMMON PROPERTY to substantially the same condition in which it existed prior to the fire or other casualty.

B. Any damage or destruction to the COMMON PROPERTY shall be repaired or reconstructed unless the Voting MEMBERS representing at least seventy-five percent (75%) of the total votes of the ASSOCIATION shall decide within sixty (60) days after the casualty not to repair or reconstruct. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the ASSOCIATION within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No MORTGAGEE shall have the right to participate in the determination of whether the COMMON PROPERTY damage or destruction shall be repaired or reconstructed.

C. In the event that it should be determined by the ASSOCIATION in the manner described above that the damage or destruction of the COMMON PROPERTY shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the COMMON PROPERTY shall be restored to its natural state and maintained as an undeveloped portion of the COMMON PROPERTY by the ASSOCIATION in a neat and attractive condition.

Section 13.5 Repair and Reconstruction.

If the damage or destruction to the COMMON PROPERTY for which the insurance proceeds are paid by the ASSOCIATION is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the BOARD shall use general funds or seek a Special ASSESSMENT as permitted by this DECLARATION. Additional ASSESSMENTS may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XIV NO PARTITION

Except as is permitted in the DECLARATION or amendments thereto, there shall be no physical partition of the COMMON AREA or any part thereof, nor shall any person acquiring any interest in the PROPERTY or any part thereof seek any such judicial partition unless the PROPERTY has been removed from the provisions of this DECLARATION. This Article shall not be construed to prohibit the BOARD from acquiring

and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this DECLARATION.

ARTICLE XV CONDEMNATION

Whenever all or any part of the COMMON AREA shall be taken (or conveyed by the BOARD acting on the written direction of all Voting MEMBERS in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, the ASSOCIATION shall represent the OWNERS, provided, however, each OWNER shall be entitled to notice thereof. The award made for such taking shall be payable to the ASSOCIATION as Trustee for all OWNERS. The provisions of this DECLARATION at Section 13.3 and 13.4 above regarding disbursement of proceeds and damage or destruction shall govern replacement or restoration and the actions to be taken in the event that improvements are not restored and replaced.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION

Section 16.1 Annexation Without Approval of Class A Membership.

As the OWNER thereof, or if not the OWNER, with the consent of the OWNER thereof, DECLARANT shall have the unilateral right, privilege, and option, from time to time and at any time until seven (7) years from the date of this DECLARATION, to subject to the provisions of this DECLARATION and the jurisdiction of the ASSOCIATION such additional REAL PROPERTY and/or COMMON AREAS (regardless of whether contiguous or not and either single residential detached or multi-family) as DECLARANT may determine (herein "ADDITIONAL PROPERTY"), whether in fee simple or leasehold, by filing in the office of the Judge of Probate of Baldwin County, Alabama, an amendment annexing such PROPERTY. Such SUBSEQUENT AMENDMENT or SUBSEQUENT AMENDMENTS to this DECLARATION shall not require the vote of MEMBERS. Any such annexation shall be effective upon the filing for record of such SUBSEQUENT AMENDMENT unless otherwise provided therein.

[Following sentence deleted by Amendment 11/15/1993]

~~All improvements intended for additional phases will be substantially completed prior to annexation and will be substantially consistent with, but may not be the same as, the initial improvements on the PROPERTY in terms of quality of construction.~~

DECLARANT shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex ADDITIONAL PROPERTY which is herein reserved to DECLARANT, provided that such transferee or assignee shall be the developer of at least a portion of the ADDITIONAL PROPERTY and that such transfer is memorialized in a written, recorded instrument.

The rights reserved unto DECLARANT to subject ADDITIONAL PROPERTY to the DECLARATION shall not be implied or construed so as to impose any obligation upon DECLARANT to subject any part of all of such ADDITIONAL PROPERTY to this DECLARATION or to the jurisdiction of the ASSOCIATION nor any obligation, if subjected, to build housing of the same type, design, or materials. If all or any part of such ADDITIONAL PROPERTY is not subjected to this DECLARATION, DECLARANT'S reserved right shall not impose any obligation on DECLARANT to impose any covenants and restrictions similar to those contained herein upon such ADDITIONAL PROPERTY, nor shall rights in any manner limit or restrict the use to which such ADDITIONAL PROPERTY shall be put by DECLARANT or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not. DECLARANT may use or authorize the use of land shown on the plat of ROCK CREEK, A Planned Unit Development, Phase One, other than Lots 1-174, for any use it deems appropriate including but not limited to commercial uses.

Section 16.2 Amendment.

This Article shall not be amended without the written consent of DECLARANT, so long as the DECLARANT owns any PROPERTY or ADDITIONAL PROPERTY.

Section 16.3 Modification.

The SUBSEQUENT AMENDMENT may contain such complementary additions and modifications of the Covenants and Restrictions contained in this DECLARATION as may be necessary or convenient, in the judgment of the DECLARANT, to reflect and adapt to any difference in character of the added property and as are not inconsistent with the scheme of this DECLARATION. In no event, however, shall such SUBSEQUENT AMENDMENT revoke, modify, or add to the covenants established by this DECLARATION so as to affect the EXISTING PROPERTY.

Section 16.4 Mergers, Combinations or Consolidations.

Upon merger, combination or consolidation of the ASSOCIATION with another association, the property, rights, and obligations of the ASSOCIATION may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the property, rights, and obligations another association may, by operation of law, be added to the property of the ASSOCIATION as a surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the EXISTING PROPERTY, together with the covenants and restrictions established upon any other property as one scheme. No such merger, combination, or consolidation, however, shall affect any revocation or change of or addition to the covenants and restrictions established by this DECLARATION within the EXISTING PROPERTY, except as herein provided.

ARTICLE XVII
AMENDMENT

This DECLARATION may be amended unilaterally at any time and from time to time by DECLARANT (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the LOTS subject to this DECLARATION; (c) if such amendment is required by an institutional or governmental lender or purchaser of MORTGAGE loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase MORTGAGE loans on the LOTS subject to this DECLARATION; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure MORTGAGE loans on the LOTS subject to this DECLARATION; provided, however, any such amendment shall not adversely affect the title to any OWNER'S LOT unless any such LOT OWNER shall consent thereto in writing. Further, so long as the Class B membership exists, DECLARANT may unilaterally amend this DECLARATION for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any LOT OWNER hereunder, nor shall it adversely affect title to any LOT without the consent of the affected LOT OWNER.

[Following Paragraph Amended on 03/31/2003]

In addition to the above, this DECLARATION may be amended by a vote of the MEMBERS at a meeting duly noticed and called for the purpose at which a quorum is present in person or by proxy. Amendments to this DECLARATION shall become effective upon recordation in the Baldwin County, Alabama, Probate Records, unless a later effective date is specified

ARTICLE XVIII
MORTGAGEE RIGHTS

The following provisions are for the benefit of ELIGIBLE MORTGAGE HOLDERS in the PLANNED UNIT DEVELOPMENT. The provisions of this Article apply to both this DECLARATION and to the BYLAWS, notwithstanding any other provisions contained herein.

Section 18.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first MORTGAGE, who provides written request to the ASSOCIATION (such request to state the name and address of such holder, insurer, guarantor and the LOT number, therefore becoming an ELIGIBLE MORTGAGE HOLDER), will be entitled to timely written notice of:

- A. any condemnation loss or any casualty loss which affects a material portion of the PLANNED UNIT DEVELOPMENT or which affects any LOT on which there is a first MORTGAGE held, insured, or guaranteed by such ELIGIBLE MORTGAGE HOLDER;
- B. any delinquency in the payment of ASSESSMENTS or charges owed by an OWNER of a LOT subject to the MORTGAGE of such ELIGIBLE MORTGAGE HOLDER, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first MORTGAGE upon request is entitled to written notice from the ASSOCIATION of any default in the performance by an OWNER of a LOT of any obligation under the DECLARATION or BYLAWS of the ASSOCIATION which is not cured within sixty (60) days;
- C. any lapse, cancellation, or material modification of any insurance policy by the ASSOCIATION;
or
- D. any proposed action which would require the consent of a specified percentage of ELIGIBLE MORTGAGE HOLDERS.

Section 18.2 No Priority.

No provision of this DECLARATION or the BYLAWS gives or shall be construed as giving any OWNER or other party priority over any rights of the first MORTGAGEE of any LOT in the case of distribution to such OWNER of insurance proceeds or condemnation awards for losses to or a taking of the COMMON PROPERTY.

Section 18.3 Notice to Association.

Upon request, each OWNER shall be obligated to furnish to the ASSOCIATION the name and address of the holder of any MORTGAGE encumbering such OWNER'S LOT.

Section 18.4 Applicability of this Article.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the DECLARATION, BYLAWS-, or Alabama law for any of the acts set out in this Article.

Section 18.5 Failure of Mortgagee to Respond.

Any Mortgagee (or insurer or guarantor of a MORTGAGE) who receives a written request from the BOARD to respond to or consent to any action shall be deemed to have approved such action if the ASSOCIATION does not receive a written response from the MORTGAGEE within thirty (30) days of the date of the ASSOCIATION'S request.

ARTICLE XIX
DECLARANT'S RIGHTS

Section 19.1 Transfer of Rights.

Any or all of the special rights and obligations of the DECLARANT may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further that no such transfer shall be effective unless it is in a written instrument signed by the DECLARANT and duly recorded in the office of the Judge of Probate of Baldwin County, Alabama.

Section 19.2. Legal Description Modifications.

DECLARANT has the right to change or modify the legal description of any real property designated as the COMMON AREA or as a Parcel or Parcels or as a LOT or LOTS located within the boundaries of the PLANNED UNIT DEVELOPMENT without obtaining any approval from the ASSOCIATION or any OWNER or other party, solely by filing an affidavit executed by the project surveyor describing the change made in the legal description of a COMMON AREA, Parcel or LOT.

Section 19.3 Right of Approval.

So long as DECLARANT owns any PROPERTY within the PLANNED UNIT DEVELOPMENT, this Section may not be amended without the express, written consent of the DECLARANT.

In addition to any other rights granted or reserved to DECLARANT by this DECLARATION or by Section 3.9 above, from the termination of the Class B membership, the DECLARANT shall have the right to approve all actions of the BOARD and the ARCHITECTURAL COMMITTEE as those actions may affect the DECLARANT'S rights to improve, construct, market, and sell the PROPERTY or ADDITIONAL PROPERTY. This right shall be exercisable only by DECLARANT and DECLARANT'S successors and assigns who specifically take this right in a recorded instrument. The right shall be exercised as follows:

No action authorized by the BOARD or ARCHITECTURAL COMMITTEE shall become effective nor shall any action, policy, or program be Implemented until and unless:

A. DECLARANT shall have been given written notice of all meetings and proposed actions approved at meetings of the BOARD or the ARCHITECTURAL COMMITTEE by certified mail, return receipt requested, or by personal delivery at the address DECLARANT has registered with the Secretary of the Association, as it may change from time to time; and

B. DECLARANT shall be given the opportunity at any such meeting to join in or to have a representative or agent join in discussion from the floor of any prospective action, policy, or program to be implemented by the BOARD or the ARCHITECTURAL COMMITTEE. DECLARANT and DECLARANT'S representatives or agents shall make the concerns, thoughts, and suggestions of DECLARANT known to the MEMBERS of the ARCHITECTURAL COMMITTEE or the ASSOCIATION. Said right must be exercised by DECLARANT, DECLARANT'S representatives, or agents within ten (10) days after the meeting held pursuant to the terms and provisions hereof.

ARTICLE XX
MISCELLANEOUS

Section 20.1 Unrestrictive Right of Transfer.

The right of a LOT OWNER to sell, transfer or otherwise convey his or her LOT shall not be subject to any right of first refusal or a similar restriction.

Section 20.2 No Restrictions on Mortgaging.

Anything construed in any of the PROPERTY documents to the contrary, there shall be no restrictions on a LOT OWNER'S right to mortgage his or her LOT.

Section 20.3 Grantee's Acceptance.

The grantee of any LOT subject to the coverage of this DECLARATION, by acceptance of the DEED or other Instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from DECLARANT or a subsequent owner of such LOT, shall accept such DEED or other contract upon and subject to each and all of the terms and conditions set out in this DECLARATION.

Section 20.4 Indemnity for Damages.

Each and every LOT OWNER and future LOT OWNER, in accepting a DEED or contract for any LOT subject to this DECLARATION, agrees to indemnify DECLARANT for any damage caused by such owner, or the contractor, agent or employees of such owner, to private access areas, streets, roads, gutters, walkways or other aspects of private or public ways, including all surfacing thereon or to water, drainage or storm sewer lines or sanitary sewer line owned by DECLARANT, or for which DECLARANT has responsibility, at the time of such damage.

Section 20.5 Severability.

If any Article, part, clause, provision, or condition of this DECLARATION is held to be void, invalid, or inoperative, such voidness, invalidity, or inoperativeness shall not affect any other Article, clause, provision or condition hereof; but the remainder of this DECLARATION shall be effective as though such Article, clause, provision or condition had not been contained therein.

Section 20.6 Captions, Gender, and Grammar.

The captions preceding the various sections, paragraphs and subparagraphs of this DECLARATION are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision in this DECLARATION. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 20.7 Effect of Violation on Mortgage Lien.

No violation of any of the terms and conditions of this DECLARATION shall defeat or render invalid the lien of any MORTGAGE made or reserved in good faith and for value upon any portion of the PROPERTY; provided, however, that any MORTGAGEE in actual possession, or any purchaser at any MORTGAGEE'S judicial or nonjudicial foreclosure sale shall be bound by and subject to this DECLARATION as fully as any other owner of any portion of the PROPERTY.

Section 20.8 No Reverter.

No provision of this DECLARATION is intended to be, or shall be construed as, a condition., subsequent or as creating a possibility of reverter.

Section 20.9 Duration.

The provisions of this DECLARATION shall run with and bind the PROPERTY and shall be and remain in effect perpetually to the extent permitted by Alabama law; provided, however, should any provision of Alabama law now or hereafter in effect limit the period during which covenants restricting land to certain usage may run, any provisions of this DECLARATION affected thereby shall run with and bind the PROPERTY so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten (10) years or such shorter period as may be allowed by law, unless such extension is disapproved at a meeting duly called for such purpose by a vote of at least a majority of all votes entitled to be cast by

MEMBERS of the ASSOCIATION and, so long as the DECLARANT has an option unilaterally to subject ADDITIONAL PROPERTY to this DECLARATION as provided herein, the consent of DECLARANT. Such meeting must be recorded within the year immediately preceding the beginning of a renewal period. A purchaser or grantee of any interest in any PROPERTY subject to this DECLARATION, by acceptance of a deed or other conveyance thereof, hereby agrees that such provisions of this DECLARATION may be extended or renewed as provided in this Section.

Section 20.10 Enforcement.

In the event of a violation or breach of any of this DECLARATION, the BYLAWS, or the rules and regulations of the ASSOCIATION or any amendments thereto by any OWNER, or employee, agent, or lessee of such OWNER, the OWNER(S) of LOT(S), the ASSOCIATION, DECLARANT (so long as it is a member of the ASSOCIATION), their successors and assigns, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of this DECLARATION, the BYLAWS, or the rules and regulations of the ASSOCIATION to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing this DECLARATION, the BYLAWS, or the rules and regulations of the ASSOCIATION or enjoining the violation of this DECLARATION against a LOT OWNER may be awarded a reasonable attorney's fee against such LOT OWNER.

Section 20.11 Certificate of Violation.

In addition to any other rights or remedies available to the ASSOCIATION hereunder or at law or equity, the ASSOCIATION shall have the right to file in the records of Baldwin County, Alabama, a Certificate or Notice of Violation of this DECLARATION (which violation shall include, without limitation, nonpayment of the annual charges and/or failure to comply with architectural guidelines) upon failure of a LOT OWNER to correct a violation of this DECLARATION within thirty (30) days after written notice of the violation has been given by the ASSOCIATION to the LOT OWNER.

Section 20.12 Interpretation by ASSOCIATION.

The ASSOCIATION shall have the right to construe and interpret the provisions of this DECLARATION, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Section 20.13 Estoppel Certificate.

Upon the request of any MEMBER, the BOARD or its designee shall furnish a written certificate signed by an officer or agent of the ASSOCIATION regarding unpaid ASSESSMENTS levied against that MEMBER'S property in violation of the DECLARATION, BYLAWS, use restrictions, rules and regulations by any OWNER or occupant of the PROPERTY. Such certificate shall bind the ASSOCIATION with respect to the foregoing matters. The ASSOCIATION may require the advance payment of a reasonable processing fee.

Section 20.14 Assignment by Association.

The ASSOCIATION shall be empowered to assign its rights hereunder to any successor nonprofit membership corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the ASSOCIATION hereunder.

Section 20.15 No Waiver.

The failure of any party entitled to enforce this DECLARATION shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

Section 20.16 Deviation.

The BOARD or its designee may, in the exercise of its reasonable discretion, permit deviations from the restrictions contained in this DECLARATION, the BYLAWS, the rules and regulations, the use restrictions, and the architectural guidelines.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein, has caused this instrument to be duly executed on this the 5th day of May, 1993.

DECLARANT:

H/M PARTNERS, An Alabama General Partnership

By: _____

DAVID H. HEAD

Its: Partner