

STATE OF ALABAMA

COUNTY OF BALDWIN



**DECLARATION OF COVENANTS, RESTRICTIONS
AND CONDITIONS OF BRIAR ROSE SUBDIVISION**

This Declaration of Covenants, Restrictions and Conditions (this "Declaration") is made this 4th day of June, 2009, by Bay Minette Land Company, an Alabama corporation (hereinafter referred to as the "Declarant") for the Briar Rose Subdivision.

WHEREAS, the Declarant has subdivided the Property into lots (singularly, the "Lot" or collectively the "Lots") as designated on the plat of that certain subdivision to be known as Briar Rose Subdivision, (the "Subdivision"), as recorded in the Office of the Judge of Probate of Baldwin County, Alabama, as Instrument Number 2420-E, (the "Subdivision Plat");

WHEREAS, the Declarant intends to sell the Lots within the Property in accordance with and subject to all the covenants, conditions and restrictions of this Declaration so as to preserve the value and residential qualities of the Subdivision; and

WHEREAS, the Declarant desires for the Property and all Lots contained within said Property to be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to the covenants, restrictions and conditions set forth in this Declaration which said covenants, restrictions and conditions shall run with the land; and

WHEREAS, the Declarant states that Briar Rose Subdivision is one of a number of phases of an overall subdivision plan, which Declarant, or its successors and assigns, anticipates to develop, and that Declarant in accordance with said plan may add additional phases in the future in Declarant's sole discretion; and

WHEREAS, the Declarant intends to create a uniform vegetative buffer no less than four (4) feet in width extending along the rear line of Lots 14 through 19 consisting of the present natural trees, bushes and shrubs together with any additional planted shrubs, trees, and bushes to be added from time to time to maintain the uniform vegetative buffer.

NOW, THEREFORE, the Declarant hereby declares that the Property and all Lots and Common Areas shown on Exhibit "B" shall be subject to the following covenants, restrictions and conditions:

ARTICLE ONE

Definitions

1.1 **“Additional Property”** shall refer to any additional property that the Declarant includes within the overall subdivision plan for future phases.

1.2 **“Architectural Control Committee”** shall refer to first the Declarant and its designated representatives and then to members of the Association voted to serve thereon by majority vote

1.3 **“Association”** shall mean and refer to the Briar Rose Subdivision Homeowners’ Association, Inc., its successors and assigns, an Association formed and organized under the laws of the State of Alabama.

1.4 **“By-Laws”** shall mean and refer to the By-Laws of the Association.

1.5 **“Common Area(s)”** shall mean all real property (including improvements) owned by the Association for the common use and enjoyment of the Owners of Lots in the Subdivision. The Property Owners Association shall be allowed to make such improvements, through planting, which doesn’t adversely affect the retention pond which constitutes a portion of the common area(s).

1.6 **“Declarant”** shall mean and refer to Bay Minette Land Company, an Alabama corporation, its successors and assigns.

1.7 **“Lot”** shall mean and refer to any plot of land or parcel shown upon the recorded Subdivision Plat of the Property with the exception of the Common Area(s).

1.8 **“Class A Member”** shall mean and refer to all Owners with the exception of the Declarant.

1.9 **“Class B Member”** shall mean and refer to the Declarant.

1.10 **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot that is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. “Owner” shall include his/her respective successors, heirs and assigns.

1.11 **“Property”** shall mean and refer to that certain real property described on Exhibit “A”, and any such additions thereto as may hereafter be brought within the jurisdiction of the Association, and shall include any and all Lots and Common Areas within the Subdivision as shown on the Subdivision Plat

1 12 **“Subdivision”** shall refer to the Briar Rose Subdivision.

1.13 **“Subdivision Plat”** shall refer to the plat or map of the Briar Rose Subdivision recorded May 28, 2009, on Slide No. 2420-E in the Office of the Judge of Probate of Baldwin County, Alabama.

ARTICLE TWO

Covenants, Restrictions and Conditions Running with the Land

2.1 **Property Conveyed Subject to this Declaration.** The Property shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied, subject to the covenants, restrictions and conditions set forth in this Declaration, expressly and exclusively for the use and benefit of the Property and of each and every Owner of a Lot in the Subdivision

2.2 **Covenants Running with the Land.** The covenants, restrictions and conditions set forth in this Declaration shall constitute covenants running with the land, to apply in their entirety to the Property, and to be binding upon and inure to the benefit of the undersigned and to the Owners of Lots in the Subdivision.

2.3 **Construction Time Limits.** Construction of a dwelling as allowed by this Declaration, including any landscaping, shall be completed no later than seven (7) months from commencement of said construction, unless prior written approval is obtained from the Architectural Control Committee (the “ACC”), except when such completion is impossible or will result in great hardship to the Owner or builder due to fires, national emergency or natural disaster.

2.4 **Lot Clearing.** No lot clearing, grading or preparation, and no building, fence, storage building, outbuilding, structure or other improvement shall be constructed, erected or placed on any lot or other part of the Subdivision, without first having obtained the prior written approval of the ACC. No grading of a lot shall exceed 16 inches and no grading shall change the flow of water onto adjoining landowners.

2.5 **Permits.** No construction of any kind shall commence until the party proposing to undertake such construction obtains all construction and work permits necessary from all municipal agencies having jurisdiction over any aspect of construction.

2.6 **Land Use and Building Type.** No Lot other than those designated as Common Areas shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot, other than one single-family dwelling not to exceed two and one-half (2 ½) stories in height and other detached buildings specifically permitted by these covenants. An enclosed garage whether a part of the main dwelling or detached shall have doors and the interior parking area shall not exceed 10’ in height. Open-sided carports whether a part

of the main dwelling or detached shall be allowed so long as the interior parking area does not exceed ten (10) feet in height.

Except for a garage or carport detached from the main dwelling and one storage building that otherwise meets the requirements of this Declaration, no other detached building shall be constructed or permitted on any Lot unless previously approved by the ACC. The location, construction, style, exterior finish and color of any detached building must be constructed with the same material as used in whole or in part for the dwelling and be compatible with the dwelling. All storage buildings shall have peak or hip roofs and shall be located to the rear of the structure. Pre-fabricated storage buildings are not allowed.

2.7 Minimum Dwelling Size. No dwelling shall be erected with less than 1450 square feet of above-ground living space, exclusive of porches, carports, and garages. Dwellings of more than one story must have not less than 1100 square feet on the first level above the ground

2.8 Roofs. All dwellings or other buildings shall either be textured, architectural type shingles compatible to GAF Woodline or pine or cedar shakes or metal roofs. The placement of solar panels attached to any roof shall be restricted to the rear of the house and shall be approved by the ACC. The roof pitch of any building shall be no less than 5/12, unless otherwise approved by the ACC.

2.9 Lawn and Recreational Items. No lawn sculptures, bird baths, statutes, games, play structures, swing sets, basketball goals or any other lawn or recreational item, of any type, kind or description, shall be constructed or maintained on the front lawn or front paved areas of any lot.

2.10 Building Location.

(a) Building setbacks shall be as required by the City of Bay Minette.

(b) No Lot shall be further subdivided, and no residential structures may be erected or placed on less than one full lot as shown on the Subdivision Plat.

(c) Should the Owner of two adjacent lots desire to build and maintain one dwelling on both lots, such an Owner must obtain approval of the ACC in writing, including approval of any relocation or extension of any easement. The side lot restrictions as referred herein shall apply to the side lines of the combined lot.

2.11 Materials

(a) No metal building shall be allowed in the Subdivision.

(b) All foundations and exposed chimneys must be covered with brick, natural wood material or finished masonry which will match the construction of the dwelling or building involved.

(c) No manufactured homes, trailers, tents, relocated structures or out-buildings shall be used on any part of the Property as a residence.

(d) No exposed concrete or concrete block will be allowed, except that concrete will be allowed on the surfaces of driveways or walkways.

(e) All gas, sewer, water, telephone, electronic, electrical, and all other utility service or lines or cables shall be underground.

2.12 Fences and Walls. No fences, screens or walls shall be located closer to the front of the lot than the rear corner of the main structure on the Lot. All fences shall be wooden, open-work metal, masonry, or composite wood, masonry or open-work metal. No fence shall be over six (6) feet in height, and no visible wire or chain link fence will be permitted. Walls shall comply with the construction requirements set out in these covenants and restrictions.

2.13 Swimming Pools. All pool enclosures must comply with the requirements of Section 2.12 above. Pools must be in-ground and no above-ground pools will be allowed. All pool equipment, pumps, etc., shall be stored out of view and pump houses must meet the requirements of outbuildings as set out in Section 2.10 and 2.11 above and must be architecturally related. Above ground spas and hot tubs will be permitted only with prior written approval from the ACC.

2.14 Trees and Topography. In order to protect and preserve the natural beauty and the topography of suitable mature trees and vegetation of the woodlands and other areas within the Subdivision, approval of the ACC is required for the removal, reduction, cutting or alteration of any trees exceeding six (6) inches in diameter or other significant topographical characteristics. In addition, the requirements of any landscape ordinance of the City of Bay Minette must be complied with.

2.14 Sight Distances at Intersection. In addition to any legal rule, regulation or requirement, no fence, wall, hedge or shrub that obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet from the intersection of the street lines. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the specified distance of the intersections unless the foliage line is maintained a sufficient height to prevent obstruction of the sight lines.

2.15 **Construction Site Requirements.** All job sites shall be kept in a clean and orderly condition. No materials will be stored or placed in rights of way. Debris shall be kept in a dumpster or other receptacle for storing debris and shall be removed in a timely manner. Each Owner shall control silt, erosion or other runoff in accordance with the requirements of all applicable governmental authorities and the requirements of the ACC and this Declaration. Construction hours and specific routes for access to and from job sites may be established by the ACC. All builders are required to supply their name and a 24 hour emergency telephone number to Declarant so long as Declarant is a Class B member and the Association thereafter. Contractors or subcontractors, and their agents and employees, who violate construction site requirements may be prohibited from entering the Subdivision by the ACC. A contractor may be permitted to place a temporary tool trailer during the construction of a residential structure on a lot, subject to the approval of the ACC.

2.16 **Satellite Dishes, Poles and Wires.** No facilities, including but not limited to poles or wires for the transmission of electricity, television, telephone messages and the like, shall be placed or maintained on any lot in the Subdivision, and no external or outside antennas, including satellite dishes greater than 18" in diameter, shall be permitted. Satellite dishes 18" or less are permitted, but must not be visible from the right-of-way that faces the front of the house.

2.17 **Mailboxes.** Any mailbox serving a Lot shall be aesthetically pleasing, professionally constructed and maintained at all times.

2.18 **Storage and Parking of Recreational Vehicles.** No boat, jet ski, motorcycle, golf cart, 4-wheeler, utility trailer, RV, or trailer of any kind, character or nature, shall be stored on or placed on or at any lot, unless same be housed in an enclosed garage and not visible from the road or by any lot owner. No one other than licensed individuals will be permitted to drive or operate these vehicles in the Subdivision.

2.19 **Signs.** No signs of any kind may be displayed to the public view on any lot except one professional sign of not more than five (5) square feet advertising the property for sale or signs used by builders to advertise a lot during the construction and sales period. The Declarant however shall be allowed to erect signs for marketing and advertising.

2.20 **Temporary or Mobile Structures.** No structure of a temporary or mobile character shall be used on any Lot at any time as a residence, either temporarily or permanently.

2.21 **Garbage and Refuse Disposal.** No lot shall be used as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, sanitary condition and shall be of uniform size and appearance.

2.22 **Nuisances.** No noxious or offensive activity shall be allowed to occur on any Lot; nor shall anything be done on any Lot that may constitute an annoyance or nuisance to the

residence in the Subdivision. Without limiting the generality of this provision, (a) the discharge of firearms in the Subdivision is prohibited, (b) no animals, livestock or poultry of any kind shall be raised, bred or kept on any lots. Dogs, cats or other household pets may be kept, provided, that they are not kept, bred or maintained for any commercial purpose and further provided that the number of dogs shall not exceed three (3) and the number of cats shall not exceed three (3); (c) no oil drilling or refining, quarrying or mining operations of any kind shall be permitted on or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot; (d) no weeds, underbrush, trees or natural growth shall be permitted to grow or remain upon any lawn area of any lot, and no refuse pile, unused motor vehicles or unsightly objects shall be allowed to be placed or to remain anywhere on the Property.

ARTICLE THREE

Architectural Control

3.1 **Architectural Control.** No improvements or structure of any kind shall be commenced, constructed, erected, placed or maintained on any Lot; nor shall any landscaping, grading, excavation or filling of any nature whatsoever shall be implemented, installed or altered; nor shall any addition, change, or alteration to improvements or structures on any Lot be made; nor shall any new use be commenced or made on any Lot unless and until an application and complete plans and specifications for the proposed construction, installation or change, including the description of any proposed new use thereof, shall have been submitted to and approved in writing by the ACC. After approval of any plans and specifications hereunder, representatives of the ACC shall have the right at reasonable hours to enter upon the building site and inspect the improvements with respect to which construction is underway to determine whether or not the previously approved plans and specifications are being complied with.

3.2 **Architectural Control Committee.** The purpose of the ACC shall be to manage, maintain and enforce the continued harmonious design of all houses, structures and other improvements located in the Subdivision. The scope of review by the ACC shall be limited exclusively to appearance only. The ACC does not and shall not assume or accept any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards or any other factors. Initially, the ACC shall be governed by the Declarant which shall select its members in its sole and absolute discretion until such time as Declarant is no longer a Class B member, by either sale of all subdivision lots or resignation as a Class B member. The initial ACC shall consist of the Declarant and up to four other members appointed by the Declarant. Thereafter, the ACC shall be governed by the Association, and a majority of the Class A members shall select no less than three individuals to serve on the ACC for an annual term. The ACC is authorized to retain the services of consulting architects, landscape architects, engineers, inspectors and attorneys in order to advise and assist the ACC in performing its functions. It will be at the Declarant's sole and absolute discretion when the

Subdivision is turned over to the homeowner's association and at such time, the ACC shall be controlled by the Homeowners Association or a majority of the lot owners.

3.3 Approval Process. An Owner seeking approval from the ACC must submit plans and specifications that include site plan, topography and landscape plan, floor plans, building sections, exterior elevations for all sides, roof plan, details on exterior materials, colors and finishes, patios/deck materials and finish, exterior lighting, screen enclosures, mechanical equipment location and screening detail and driveway materials and finish, and other matters required by this Declaration. All plans and specifications shall be evaluated as to conformity with the restrictions, covenants and conditions in this Declaration; consistency with existing improvements in the Subdivision; general aesthetic qualities; and location in relation to the surrounding structures, topography and finished grade and elevation. Refusal of plans and specifications by the ACC may be based on any ground, including purely aesthetic grounds, which, in its sole and uncontrolled discretion the ACC shall deem sufficient. The ACC shall have no duty or responsibility with the structural design or structural integrity of any building.

The ACC has the authority to set further rules and guidelines for the approval process, such as requirements for information and design criteria to be contained within plans and specifications.

The ACC shall have the right to charge fees sufficient to cover the expense for processing applications, reviewing plans and specifications, and compensating any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in accordance with the terms hereof.

In the event the ACC has not formally approved or rejected the lot owner's plans within thirty (30) days of receipt thereof, such plans shall be deemed approved as submitted and the related covenants shall be deemed to have been fully complied with.

Notwithstanding anything contained herein to the contrary, in no way shall the failure of the ACC or another lot owner to file an action to enjoin the commencement of construction of any structure deemed not to be in compliance prior to the expiration of said thirty-day period be deemed as a waiver of or other implied approval of such violation or non-compliance. The intent of the Declarant and this paragraph is to allow the ACC at least thirty (30) days to review the lot owner's plans and specifications for compliance, and all lot owners, by acceptance of their deed, acknowledge and agree the commencement of any construction on a lot prior to the receipt of the response from the ACC or the expiration of said thirty-day period shall toll the said thirty-day period.

Any new or existing structure or improvement erected, altered, placed, commenced or maintained upon any lot which is not in accordance with the plans and specifications approved by the ACC pursuant hereto shall be deemed to have been undertaken in violation of this covenant and without the approval of the ACC as required herein, and upon written notice of

such violation by the ACC, such construction shall be ceased and such violation removed, or in the alternative, such violation altered or otherwise changed to comply with the ACC's requirements and these covenants.

If the owner of the lot upon which such violation exists shall not have taken reasonable steps toward removal or termination of the same within twenty-one (21) days of receipt of the notice of such violation from the ACC, the Declarant, the ACC, the Association, or any authorized agent shall have the right to enter upon such lot and to take such legal steps necessary, including but not limited to, filing of a lien upon such lot in question, to enforce compliance with these covenants and all amendments hereto and to make any judgment rendered pursuant thereto a binding, personal obligation of such lot owner.

3.4 Variances. The ACC may authorize variances from compliance with the provisions of this Declaration related to the construction, erection or installation of improvements or landscaping when circumstances such as topography, natural obstructions, undue hardship, aesthetic or environmental considerations indicate to the ACC that such a variance is warranted. To be effective, a variance under this section must be in writing. The ACC has the authority to grant or deny a variance in its sole and absolute discretion.

3.5 Architectural Control to Apply to Each Lot. Each Owner by acceptance of title or taking possession of a Lot in the Subdivision, covenants and agrees that no improvement, structure or landscaping shall be erected, constructed or installed upon any Lot unless the plans and specifications therefore have been approved as set forth herein.

ARTICLE FOUR

Easements and Property Rights

4.1 Owner's Easements of Enjoyments. Every Owner shall have a right and easement of enjoyment in and to the unimproved Common Area(s), which shall be appurtenant to and shall pass with the title to every Lot, provided that each Owner must comply with the rules and regulations of the Association and shall be subject to the provisions of the By-Laws.

4.2 Utility Easements. The Declarant reserves the right to grant additional easements for the installation and maintenance of utilities and drainage facilities. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconveniences caused thereby against Declarant, or any utility company or county, or any of its agents, employees or representatives, are waived by the Owners and the Association.

4.3 Easements to Run with the Land. Easements created hereunder may be permanent and may run with the land. Each Owner shall not interfere with or violate any easement reserved and/or granted hereunder.

4.4 **Reservation of Easements for Declarant.** Declarant reserves the right to grant easements for pedestrian and vehicular ingress and egress upon, across, over and through all roads, drives, walkways, and parking areas in favor of Declarant, the Association, all Owners, and their guests, licensees and invitees. Declarant reserves the right to change, lay out new, or discontinue any street, avenue or way not necessary for ingress and egress to and from an Owner's Lot, subject to the approval of any governmental authority if required.

ARTICLE FIVE

Homeowner's Association

5.1 **Formation.** When the Declarant ceases to be a Class B member, either upon sale of all the lots or upon resignation, a majority of the lot owners shall form the Homeowners Association ("Association") and shall adopt By-Laws for the regulation of the affairs of the Association. Formation shall be completed within three (3) weeks of notification by Declarant to a majority of the lot owners that Declarant is no longer a Class B member.

5.2 **Membership.** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. Class B member shall be the Declarant. An Owner of a Lot shall be a member of the Association and shall be bound by all terms, conditions and covenants in the By-Laws of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

5.3 **Voting Classes.** The Association shall have one class of voting membership made up of the lot owners with each lot entitled to one vote. Each lot owner is required to be a member of the Association.

5.4 **Declarant Control of Common Areas/Creation of Lien and Personal Obligation of Assessments.** The Declarant shall maintain the common area(s) until its Class B membership shall cease, or earlier at the Declarant's election in its sole discretion. When Declarant's obligation to maintain the Common Area(s) shall cease hereunder, Declarant shall notify a majority of the then lot owners who shall form the Association and the Common Area(s) shall be taken over by the Association for maintenance, upkeep and repair.

The Association shall be authorized to levy annual and special assessments in accordance with the By-Laws of the Association. Upon Declarant ceasing to be a Class B member, the maintenance duties for the Common Areas shall be assumed by the Association. Each Owner of any Lot by acceptance of a deed, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay to the Association any and all annual assessments and special assessments. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the

Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

5.5 **Annual and Special Assessments.** Each lot shall be equally assessed and no one lot shall be responsible to pay more than any other lot. The initial annual assessment for 2009 shall be set by the Declarant. Annual assessments thereafter shall be set by the Declarant until the Association is established by the owners.

5.6 **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of five percent (5%) per annum. The Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in accordance with the laws of the State of Alabama. No Owner may waive or otherwise escape liability for the assessments by nonuse of the Common Areas or abandonment of the Lot.

5.7 **Improved Common Areas.** Notwithstanding anything to the contrary contained hereinabove, the Association reserves the right to make improvements in, on or around the Common Area(s), provided that a majority of the members voting so desire. In that event the Association may set rules and regulations pertaining to membership, financing, building and use of such areas which shall be known as the Improved Common Area(s) and shall be entitled to regulate the use thereof by conferring membership upon those desiring to use such facility. The membership requirement shall, at a minimum, be that a member must be a Lot owner and must agree to pay such fees, assessments, and dues, if any, in addition to those levied for the Common Area(s) maintenance as may be levied under the By-Laws and to abide by such rules and regulations as may be passed by the governing body of the Association.

Before any improvement is undertaken, at least two-thirds (2/3) of the members shall be required to approve the planned undertaking.

ARTICLE SIX

Limitation of Liability of Declarant / "As Is" Sale

6.1 **Declarant's Actions as Member of Architectural Control Committee.** The Declarant shall not be liable to any Owner with respect to the performance of its duties as a member of the ACC, including without limitation the denial of any application submitted to the ACC for the erection, construction or installation of improvements or landscaping on any Lot or the denial of any variance requested by an Owner. Each Owner, by accepting a deed to his or her Lot, expressly waives any claim for damages against the Declarant for its acts or omissions, including decisions about the approval of plans and specifications or the interpretation and enforcement of any term, condition or covenant in this Declaration. Each Owner further

acknowledges that any liability of Declarant for alleged negligent acts or omissions, or other wrongdoing, shall be limited to this Subdivision.

6.2 **“As Is” Sale.** Declarant makes no representation or warranties, whether express or implied, regarding the condition of the Property and any Lot. Each Owner has the obligation to determine any and all conditions of a Lot prior to his or her decision to purchase the Lot. Each Owner acknowledges that Lots in the Subdivision are being sold **“AS IS, WHERE IS”, and that Declarant DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE PROPERTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF HABITABILITY OR WORKMANSHIP, EACH OF WHICH IS WAIVED BY OWNER.**

6.4 **Mediation and Arbitration.** All claims or disputes arising out of this Declaration in any way, or arising out of the relationship of the parties to this Declaration shall be resolved by the Declarant in its sole and absolute discretion so long as Declarant is a Class B member, and thereafter shall be subject to arbitration by a single arbitrator in Bay Minette, Alabama, selected by the Association and conducted in accordance with the Rules of the American Arbitration Association then in effect. All disputes concerning the arbitrability of any claim or the enforceability of this provision shall be subject to the same binding arbitration. The parties shall bear equally the cost of arbitration and each party shall otherwise bear their own costs. The arbitrator shall follow the law applicable to any claim or dispute submitted to binding arbitration hereunder and shall be empowered to award any damages or other relief which would be available under the law applicable to such claim or dispute. The arbitrator’s ruling shall be final and binding and non-appealable and may be entered in any court of competent jurisdiction for enforcement. The parties acknowledge and agree that the transactions contemplated by this Declaration involve the use of interstate mails, roadways and commerce and/or involve interstate commerce, within the meaning of the Federal Arbitration Act, 9 U.S.C. Section 1, et seq.

ARTICLE SEVEN

Remedies

7.1 **Enforcement.** The Association, the ACC, and the Declarant (as long as the Declarant remains a Class B member), shall have the right to enforce any covenant, condition, obligation, restriction, lien, or charge now or hereafter imposed hereunder, available at law or in equity or otherwise.

7.2 **Costs and Expenses.** All costs and expenses incurred by the Association, the ACC, and/or the Declarant for the collection of any sums due hereunder or the enforcement of any such covenant, condition, obligation, restriction, lien or other provision hereof shall be chargeable to the owner of the lot violating these covenants and shall constitute a lien on such owner’s lot.

7.3 **Violation.** In the event of a violation or breach of any covenant, condition, obligation, restriction or provision contained herein or the Articles or the By-Laws, or any amendments hereto, by any lot owner or any family member, guest, agent, employee, or lessee of such owner, in addition to any other right or remedy available at law or in equity or otherwise, the Association, the ACC, and the Declarant (as long as the Declarant remains a Class B member), their successors and assigns, and any other party to whom these covenants shall inure, shall have the right to pursue any one or more of the following remedies, to-wit:

(a) File a suit or other legal action or other proceeding at law or in equity for an injunction or to recover damages or other amounts due or to compel compliance with the terms and conditions hereof, and to file for and seek the recovery of all costs and expenses of such action including, but not limited to, a reasonable attorney's fee.

(b) Prevent the violation or breach hereof by self help or abatement of the violation, and the expenses and charges incurred therefore shall be taxable against the violating lot owner and the owner(s) lot by the Association until such owner has reimbursed all such expenses, interest, attorney's fees and costs.

(c) To impose a fine, together with interest, costs and attorney's fees, against such violating lot owner in an amount or amounts levied by the Association, the Declarant, or the ACC, and such fine, costs, attorney's fees and other expenses shall constitute a lien upon the lot owned by the violating owner and evidenced by the filing of a claim in the Office of the Judge of Probate of Baldwin County, Alabama.

7.4 **Lien.** Any lien hereunder shall be collectable in the same manner as an assessment, and if such lien is not paid, said lien may be foreclosed and the lot sold as in the case of past due mortgages.

7.5 **Damages.** In no event shall the award of damages in an action to enforce compliance herewith be deemed the only remedy or adequate compensation for breach or violation hereof and shall be in addition to any other specific relief such as an injunction or any other available relief

7.6 **Cumulative.** Each and every remedy set forth herein shall be cumulative and in addition to all other remedies, whether available at law or in equity or otherwise.

ARTICLE EIGHT

Miscellaneous

8.1 **Reservations by Declarant for Future Phases.**

(a) The Declarant reserves the right to set restrictions, covenants and conditions on any future phase in any adjoining property, which said restrictions, covenants and conditions may be different than those applicable to the Subdivision. Declarant makes no representation or warranty as to the size, type or use of future phases. Each Owner acknowledges and understands that not only does ownership of a Lot subject the Owner to the restrictions, covenants, and conditions for that particular phase of which that lot belongs, but also requires the Owner to become a member of a Homeowner's Association, which shall be incorporated to control the use, development, maintenance and improvement of the Common Areas without regard to the phase in which any particular lot lies.

Each Owner further acknowledges and agrees that not all of the common areas are being dedicated or deeded to the Homeowners' Association in this first phase and that as additional phases are developed in the Additional Property, common areas may be added as described in the restrictions, covenants and conditions related to that particular additional phase. The Declarant may in its sole option allow owners of lots in phases in the Additional Property to use the Common Areas of this Subdivision. Nothing herein requires Declarant to develop additional phases.

(b) Declarant reserves the right to grant easements and provide access so that phases in the adjoining property may tie into this Subdivision and the common areas.

(c) Declarant reserves the right to grant further easements for utilities and drainage facilities to serve the adjoining property in future phases, including using the common areas for drainage and use by owners of the adjoining property.

8.2 **Term.** The restrictions, covenants and conditions contained herein shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded. These covenants shall be automatically extended for successive periods of five (5) years, unless a majority of the then current owners execute and record an instrument revoking or altering these covenants in whole or in part.

8.3 **Modification.** The Declarant reserves the right to amend or modify these covenants, restrictions and conditions, in its sole and absolute discretion, until such time as Declarant is no longer a Class B member of the Association, by either sale of all subdivision lots, or resignation as a Class B member. Thereafter, a two-thirds majority vote of the current owners

of the Lots may amend this Declaration. An Owner shall be entitled to one vote for each lot he or she owns. In no event shall there be more than one vote cast with respect to any lot.

8.4 **Notices.** Any notice required to be given to any person under this Declaration shall be deemed to have been given when personally delivered or mailed postage prepaid to the Owner's dwelling on his or her respective Lot, or if mailed postage prepaid to the last known address of the Owner or principal place of business if a company. The effective date of such notice shall be the date the notice is personally delivered or postmarked, as the case may be. Any notice regarding liens, delinquent payments or fines for unpaid assessments shall be made in accordance with the By-Laws of the Association.

Notices to the Declarant shall be deemed given only when received and must be either hand delivered or mailed by certified mail or registered mail, postage prepaid, to the Declarant at 305 McMillan Avenue, Post Office Box 340, Bay Minette, Alabama 36507.

8.5 **Construction of the Provisions of this Declaration.** The Declarant and the ACC, where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration, and in the absence of an adjudication by arbitrators or a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property which benefit or which are bound by this Declaration. Any conflict between the Declarant and the ACC and that of any Owner or other person who may be entitled to enforce the provisions hereof, regarding the construction of this Declaration, shall be resolved in favor of the Declarant and the ACC where applicable.

8.6 **Sections and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning of interpretations of this Agreement.

8.7 **Governing Law.** This Declaration shall be governed by the laws of the State of Alabama.

8.8 **Severability.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on this the 4th day of June, 2009.

BAY MINETTE LAND COMPANY,
an Alabama corporation

BY: Mary Elisabeth Duryea
MARY ELISABETH DURYEA
As Its President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Deborah Morris, the undersigned Notary Public in and for the State of Alabama at Large, hereby certify that Mary Elisabeth Duryea whose name as President of Bay Minette Land Company, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, after being informed of the contents of said instrument, she, as such President and with full authority, executed the same voluntarily as and for the act of said corporation.

Given under my hand and seal this 4th day of June, 2009.

Deborah H Morris
Notary Public, State of Alabama at Large
My Commission Expires: 11/17/2012

This instrument prepared by:

FRED K GRANADE of

STONE, GRANADE & CROSBY, P.C.
Attorneys at Law
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Bay Minette, Alabama 36507
251-937-2417
00078328 WPD