

STATE OF ALABAMA
COUNTY OF BALDWIN

Beaver Creek

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

THIS Declaration made this ^{15th} ~~31st~~ day of ~~October~~ ^{January}, 2002, by Jim Brown Inc.,
an Alabama Limited Liability Company, hereinafter called "Developer";

WITNESSETH

WHEREAS, Developer is the owner of the real estate described herein
(the "Property"); and

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

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

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

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

ARTICLE I

DEFINITIONS

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

(A) "Association" means Beaver Creek Property Owners
Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

Unless the context otherwise requires, all references herein to the

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

2003 January -22 12:17PM

Instrument Number 705624 Pages 17
Recording 51.00 Mortgage
Deed Min Tax
Index IP 1.00
Archive 3.00
Adrian T. Johns, Judge of Probate

40617

705624

Board of Directors or the Board, or to the Articles of Incorporation or Bylaws or to the President or Secretary or any other officer, shall mean, respectively, those of the Association.

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

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

(D) "Common Expenses" means expenditures made by or financial liabilities of the Association, including, but not limited to, expenditures made by or financial liabilities of the Association for the maintenance and repair of the public street(s) and right(s)-of-way in the Subdivision until the County or Municipality assumes the responsibility for the maintenance thereof, and for the management, maintenance, and care of the Common Elements, and the administration and enforcement of the rights, covenants, restrictions, affirmative obligations and conditions set forth in this Declaration, together with any allocations to reserves therefor.

(E) "County" means Baldwin County, Alabama, or, if the context so requires, an agency thereof.

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

(G) "Developer" means Jim Brown, Inc., an Alabama Corporation, its successors and assigns of its development rights in respect to the Subdivision.

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

(I) "Lot" means a Lot in the Subdivision as shown on the Plat.

(J) "Member" means any Person having membership rights in the Association as provided herein.

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

(L) "Owner" means the record owner, whether one or more Persons, of a vested interest in the fee simple title to a Lot. If title to a Lot is split between estates for life or for years, and remainder, then the owner or owners of the estate having present rights to possession shall be considered the Owner for the purposes hereof. Notwithstanding any applicable theory of the mortgage, "Owner" shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title, whether subject to redemption or not, pursuant to foreclosure or any proceeding in lieu thereof. After any mortgagee, lien holder or purchaser at foreclosure sale acquires title by foreclosure or proceedings in lieu of foreclosure, he shall be an become the "Owner" within the meaning of this Declaration, and

the mortgagor or mortgagors shall no longer be an Owner regardless of whether there is outstanding a right of redemption.

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

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

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

(P) "Property" means the land described in Exhibit "A" hereto and all improvements thereon, and all easements, rights and appurtenances thereunto belonging. If additional land is added to the Subdivision, "Property" shall include such land and the improvements thereon when added to the Subdivision by conveyance recorded in the Office of the Judge of Probate of Baldwin County, Alabama, designating the land described therein as an addition to the Subdivision.

(Q) "Subdivision" means the Property when subdivided, laid out and platted in accordance with the Plat.

(R) "Subdivision Regulations" means the subdivision regulations of the County or Municipality applicable to the Subdivision.

All other terms used in this instrument and in the Subdivision Regulations shall have the same meanings herein as in such regulations unless the context of this instrument otherwise requires.

ARTICLE II

CREATION OF SUBDIVISION

The name of the Subdivision shall be " Beaver Creek". The Property shall be subdivided, laid out and platted in accordance with the Plat when approved by the Planning Commission and recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The Developer expressly reserves the right but shall have no obligation to add additional real estate to the Subdivision.

ARTICLE III

PERMITTED USE

3.1 All Lots shall be restricted to single-family residential use; provided, however, that nothing herein contained shall prohibit an Owner from renting his house, whether on a long-term or short-term basis, as long as it is used exclusively for single-family residential purposes by the tenant; nor shall anything herein contained prohibit an Owner (or his tenant) from maintaining an office or work place in his home or an accessory building if and to the extent permitted by the Subdivision Regulations and applicable zoning ordinances; and provided, further, that until such time as Developer no longer owns any Lot in, or planned for, the Subdivision (including all planned additional phases), Developer shall have the right to maintain a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the

Subdivision therein and therefrom. The term "single-family residential use" or any similar term used in this Declaration refers to the character of the dwellings in the Subdivision and not to the number of persons that may own any Lot; provided, however, that no Lot shall contain more than one dwelling.

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

ARTICLE IV

RESTRICTIONS

4.1 Buildings.

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

(b) No house or other building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one dwelling and no more than one (1) accessory building not to exceed 10 feet by 12 feet. No barns will be permitted. For the purposes of this subparagraph, a garage or carport attached to any building on a Lot shall not be considered a building or structure separate from that to which it is attached.

In the event an accessory building is placed on a lot, a privacy fence must be constructed. All fence construction should be completed within two weeks.

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

(d) **All shingles must be dimensional and black in color.**

4.2 Living Area. The living area of each house shall contain not less than **one thousand three hundred (1,300) square feet with a double garage**. In determining the living area of any house, carports, garages and open porches shall not be counted.

No house, building or other structure on any Lot shall be occupied or used by the Owner for any purpose until the same has been substantially completed and, if required by law, a Certificate of Occupancy therefor has been issued by the appropriate governmental authority.

4.3 Building Set Backs. No part of any building or other structure on a Lot (other than walls and fences or accessory buildings permitted under Section 4.6) shall be located closer to any side property line of the Lot than the minimum

building set back lines shown on the Plat. The front line of all Lots shall be the property line adjoining a Subdivision street, or, if a corner lot, as designated on the Plat.

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

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

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

4.6 Walls and Fences. No cyclone, chain link or wire fencing will be allowed. **All fences must be made of wood and be made with new materials.** Walls or fences will be permitted in the rear yards of homes, provided that they do not exceed six feet (6') in height. The rear yard shall be that portion of the Lot extending from the rear Lot line to the front most plane of the house

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

Any additional garage must be located to the rear of the rear most plane of the house, and must be designed in such fashion as to blend with the design of the house and must be approved by the architectural review committee.

As used herein, "garage" includes, but is not limited to, portecocheres and carports.

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

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

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

4.10 Satellite Dishes. All satellite dishes must be located to the rear of the front most plane of the house and no closer to any property line of the Lot than the minimum building set back lines applicable to the Lot. **Maximum dish size shall be 18 inches.**

4.11 Exterior Lighting. Exterior lighting shall be recessed or directed downward and away from neighbors' yards.

No lighting shall be located so as to interfere with vehicular traffic or become a nuisance to neighbors by adversely affecting the nighttime environment of adjacent properties.

4.12 Clothes Lines. No outside clotheslines shall be permitted at any time.

4.13 Signs. No signs of any kind shall be placed or maintained upon any Lot at any time by anyone, including, without limitation, the Owner, a realtor, contractor, or subcontractor, except for the following approved signs of not more than six (6) square feet: (a) one (1) "For Sale" or "For Rent" sign; (b) one (1) sign by the builder during the construction period not to exceed one hundred eighty (180) days; (c) any sign or signs required to be posted by statute, ordinance, or governmental rule or regulation, or court order; or (d) any sign which has been specifically approved in writing by the Association. The Association shall have the right to restrict the size, color, content, location, number and method of display of each approved sign. All "For Sale" or "For Rent" signs shall contain only the Lot or street number, real estate company (and individual agent if desired) and telephone number. All contractor signs shall contain only the Lot or street number, name of the Owner and/or the general contractor, and telephone number. Signs must be placed parallel to the street and may not be displayed from the interior of any house, out building or other structure so as to be visible from the exterior. Nothing herein contained, however, shall prevent the placing or maintenance of any sign or signs of any kind anywhere in the Subdivision by the Developer advertising the Subdivision or its sales activities pertaining to the Subdivision as long as Developer owns a Lot in the Subdivision which has not been previously conveyed to a Person other than the Developer.

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

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

No trailer, mobile home, camper, recreational vehicle or other vehicle, or boat shall at any time be used as a dwelling, temporarily or otherwise.

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

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

4.18 Each Owner's Obligation to Repair. All buildings, structures and improvements on each Lot shall at all times be maintained and kept in a proper and good state of repair by the Owner of the Lot, at his expense. All exposed painted areas of all buildings, structures and improvements on each Lot shall also be kept well painted by the Owner of the Lot, at his expense. **The Owner of a Lot shall, at his expense, keep his grass properly mowed and trimmed and maintain his yard and landscaping in good order and condition free of trash, dead trees and plants, and unsightly debris at all times.** Developer reserves the right after 10 days notice to the lot owner, to enter any residential lot for the purpose of mowing, clearing, or cutting underbrush, weeds, etc. Such entrance shall not constitute a trespass. Lot owner will be charged a reasonable fee plus interest at 12%, which charge will constitute a lien on the property. The provisions of this paragraph do not constitute an obligation on the part of the developer.

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

4.20 Mailboxes. All owners are required to purchase standardized mailboxes. Builder will provide property owner with purchasing information prior to closing.

ARTICLE V

EASEMENTS

The easements shown on the Plat are hereby adopted as part of these restrictions. Developer reserves unto itself and its successors and assigns the right and easement, but does not assume any obligation, to construct, install, maintain, repair or replace power, water, gas, sewer, telephone or other utility lines, equipment or facilities or drainage ditches within the easements shown on the Plat, and to construct, install, operate, maintain, repair, or replace walls, fences, shrubbery, bushes, trees or other decorative or screening improvements in, on, over and under any easement shown on the Plat, with full right of ingress and egress to and from the street and said easements and the right to contract generally

with others for the doing of any or all of such things as the Developer, in its discretion, may deem appropriate or convenient in connection therewith.

All lots within the subdivision will have an understood "repair easement", along lot lines in between residences. This will allow homeowners ingress and egress along lot lines for any maintenance or repairs that might be needed. Maintenance and repairs must be completed in a timely fashion.

ARTICLE VI

OWNERS ASSOCIATION

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

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

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

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

(2) Incidental damage caused to any Lot or the improvements thereon by any work done by the Association.

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

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

The Association shall have only one class of member. Each Owner shall cease being a member of the Association at the time he no longer owns a Lot. Change of membership in the Association shall be established by recording in the Office of the Judge of Probate of Baldwin County, Alabama, the deed or other instrument establishing record title to a Lot, and the delivery to the Association of

a true and correct photocopy of such instrument as recorded, showing all recording data, the Owner designated by such instrument thereby becoming a record Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners shall be subject to and shall comply with all of the provisions of the Governing Documents.

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

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

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

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

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

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

An Owner may not revoke a proxy given pursuant to this Section except by written notice of revocation filed with the Secretary prior to a meeting or actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall be void if it is not dated or purports to be revocable without notice. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.15 Abatement of Violations. The Board of Directors shall, upon written request by any Owner, or upon its own initiative, if it so elects, investigate suspected violations of the provisions of this Declaration, and determine whether a violation exists. If the Board determines that no such violation exists, it shall give written notice of its determination to the complainant Owner, if any, in person or by registered or certified mail, addressed to such Owner at his last known address. Should the Board determine that a violation does exist, it shall give written notice of this determination in person or by registered or certified mail to the complainant Owner, if any, and to the Owner of the Lot on which, or as to which, such violation exists, addressed to each at his last known address. The Owner of the Lot on which, or as to which, such violation exists shall be allowed thirty (30) days [twenty four (24) hours in the case of a violation of Sections 4.11 through 4.18, inclusive] after the giving of such notice, or such longer period as the Board may deem appropriate, in which to correct such violation. Should the violation not be corrected within such period, the Board and/or any Owner or Owners, shall each have the right, but not the obligation, to prosecute any proceedings at law or in equity against the Person or Persons found by the Board to be violating any of these rights, covenants, restrictions, affirmative obligations and conditions and prevent him or them from so doing, recover damages for such violation, and obtain any other legal or equitable relief to which it, he, or they may be entitled under the circumstances.

The remedies provided for above shall not be exclusive. The breach of the provisions of this Declaration shall give the Association, or any Owner the right,

in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Lot(s) and improvements thereon of such defaulting Owner.

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

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

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

ARTICLE VII

RESERVATIONS BY DEVELOPER

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

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

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

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

(d) The right to add one or more additional phases to the Subdivision, and to amend these covenants and restrictions as provided in Article IX.

All of the above rights and interests reserved by the Developer may be exercised by the Developer without the consent or concurrence of the Association or any Member.

ARTICLE VIII

TERM OF RESTRICTIONS

The rights, covenants, restrictions, affirmative obligations and conditions herein contained shall run with the land and be binding upon all Owners and future Owners, and parties claiming under them, and shall inure to the benefit of and shall be binding upon them, and each of their heirs, executors, administrators, successors and assigns, for a period of twenty (20) years after the date this Declaration is first recorded, after which time the rights, covenants, restrictions, affirmative obligations and conditions herein contained shall automatically be extended for successive periods of five (5) years each, unless at the end of the first twenty-year period or at any time thereafter, by the vote of Owners of two-thirds of the Lots then in the Subdivision it is agreed to terminate or change the provisions of this Declaration, in whole or in part, said termination or change to be signed by the President and attested by the Secretary of the Association, or by a majority of the then Owners, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama. Should any provision, clause, restriction, limitation or condition of this instrument be declared unenforceable, illegal, against public policy, or inconsistent with or contrary to the laws or Constitution of the State of Alabama or the United States of America by any court of competent jurisdiction, or by legislative enactment of the State of Alabama, or the United States of America, every remaining provision, clause, restriction, limitation, or condition contained herein not affected by such judicial or legislative declaration, decision, or act shall be and remain in full force and effect.

The rights, covenants, restrictions, affirmative obligations and conditions set forth in this Declaration shall not operate as a cloud upon the title of any Lot, nor shall the breach thereof forfeit the title to any Lot of the Owner violating the provisions of the Declaration, but any Owner shall have the right to enforce the

provisions hereof against any Person violating the same by appropriate proceedings in a court of competent jurisdiction.

ARTICLE IX

ADDITIONS AND AMENDMENTS

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

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

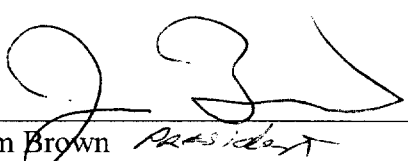
ARTICLE X

SEVERABILITY

All provisions of this Declaration shall be severable.

IN WITNESS WHEREOF, Jim Brown, Inc., has caused these presents to be executed by Jim Brown, its Manager, it being thereunto duly authorized, and he being thereunto duly authorized, on this the 31st day of October, 2002.

By:

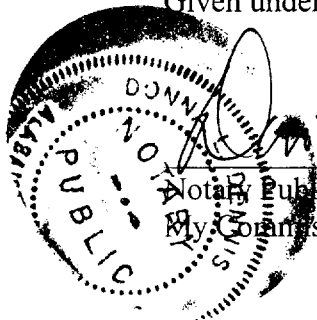

Jim Brown *President*
Jim Brown Inc.
-Manager

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned Notary Public in and for said *State* and County, do hereby certify that Jim Brown, whose name as *President* ~~Manager~~ of Jim Brown, Inc., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation and limited liability company, on the day the same bears date.

Given under my hand and seal, this the 31st day of October, 2002.



Notary Public
My Commission Expires: 9-29-04

EXHIBIT "A"

Lots 1 through 23, 67 through 96, and 113 through 125, Beaver Creek Subdivision, as recorded on Slide 2094E, probate records, Baldwin County, Alabama.