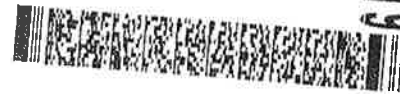


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THE COLONY AT THE GRAND

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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upon recording should be returned to:

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EXHIBITS:

EXHIBIT A LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B RULES AND REGULATIONS

THE COLONY AT THE GRAND
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS THE COLONY AT THE GRAND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 6th day of June, 2012 by and among POINT CLEAR PARTNERS, LLC, a Delaware limited liability company, BAYVIEW II DEVELOPER, LLC, an Alabama limited liability company, and THE COLONY AT THE GRAND OWNERS' ASSOCIATION, INC., an Alabama nonprofit corporation.

RECITALS:

Bayview II Developer, LLC, an Alabama limited liability company ("Bayview II"), is the owner of that certain real property (the "Bayview II Property") described as "Parcel 1" in Exhibit A attached hereto and incorporated herein by reference.

Certain owners of condominium units in the Bayview II Condominium (which is situated on the Bayview II Property) have heretofore consented to the adoption of this Declaration, as hereinafter defined, and whose written consents are attached hereto and incorporated herein by reference. Furthermore, pursuant to Second Amendment to Declaration of Condominium of Bayview II Condominium dated June 6, 2012 and recorded as Instrument No. 1343212, Pages 1 through 8 in the Probate Office, as hereinafter defined, the owners of the condominium units in the Bayview II Condominium have amended the Declaration of Condominium of Bayview Condominium dated May 15, 2008 and recorded as Instrument No. 1116935, Pages 1 through 142 in the Probate Office, in order to agree that all of the condominium units in the Bayview II Condominium are subject to the terms and provisions of this Declaration.

The Association, as hereinafter defined, is the owner of that certain real property (the "Association Property") described as "Parcel 2" in Exhibit A attached hereto.

Bayview II and the Association desire that the Property, as hereinafter defined, be owned, developed, improved, leased, sold, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration and maintenance of the Property.

Developer, as hereinafter defined, desires that any Additional Property, as hereinafter defined, submitted to the terms and provisions of this Declaration be owned, developed, improved, leased, sold, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Additional Property and to have a flexible and reasonable method for the development, administration and maintenance of the Additional Property.

NOW, THEREFORE, Developer, Bayview II and the Association do hereby declare that all of that certain real property situated in the City of Fairhope, Baldwin County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference shall be held,

developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described in Exhibit A attached hereto and any of the Additional Property, as hereinafter defined (but only to the extent that Developer submits any Additional Property to the terms and provisions of this Declaration, as hereinafter defined), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.01 ACCESS ROADS. The terms "Access Roads" shall mean and collectively refer to all private roadways and alleyways within the Property which are not located within the boundaries of any Lot or Dwelling and are not maintained by any Governmental Authority. The Association Property constitutes part of the Access Roads. All Access Roads, as long as the same are private roadways, constitute part of the Common Areas.

1.02 ADDITIONAL PROPERTY. The term "Additional Property" shall mean and refer to any real property lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include Common Areas and Improvements.

1.03 AFFILIATE. The term "Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term "control" (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

1.04 ARC. The term or letters "ARC" shall mean the architectural review committee for the Association to be appointed pursuant to Article V hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.05 ARTICLES OF INCORPORATION. The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.06 ARCHITECTURAL STANDARDS. The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of establishing architectural styles and standards for any Improvements to be constructed on any of the Lots and procedures for reviewing and approving all Dwellings, landscaping and any other Improvements which may be made to any Lot or Dwelling.

1.07 **ASSESSMENT.** The term "Assessment" shall mean, collectively, the Annual Assessments (as defined in Section 8.03(a) below), Special Assessments (as defined in Section 8.04 below), and Individual Assessments (as defined in Section 8.05 below).

1.08 **ASSOCIATION.** The term "Association" shall mean The Colony at The Grand Owners' Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

1.09 **ASSOCIATION PROPERTY.** The term "Association Property" shall have the meaning set forth in the Recitals.

1.10 **BAYVIEW II.** The term "Bayview II" shall have the meaning set forth in the Recitals. Bayview II is an Owner.

1.11 **BAYVIEW II PROPERTY.** The term "Bayview II Property" shall have the meaning set forth in the Recitals.

1.12 **BOARD.** The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

1.13 **BYLAWS.** The term "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

1.14 **COMMON AREAS.** The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. Subject to the remaining terms and provisions of this Section 1.14, the Common Areas shall also mean and include (regardless of whether legal title to the same has been conveyed to the Association) any of the following: (a) all Access Roads, (b) any and all guard buildings, access gates, access control devices and similar devices and equipment, if any, which are used to limit and restrict access to the Property (other than any such buildings, gates, devices or equipment located solely within the boundary lines of any Lot or Dwelling or which are maintained by any Person other than the Association), (c) all sidewalks, walkways, walking paths and trails, if any, situated within the Property (other than any such sidewalks, walkways, walking paths and trails which are located solely within the boundary lines of any Lot or Dwelling or which are maintained by any Person other than the Association), (d) all street lights, if any, walls, fences, entrances and entrance features, Improvements, landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians within any roadways, whether the same are located within the boundaries of the Property or on or within the rights-of-way of any public roadways which may provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling or which are maintained by any Governmental Authority), (e) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling or which are maintained by any Governmental Authority), (f) all utility (including storm drainage) and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not maintained by any public or private utility providers or Governmental Authorities), (g) any recreational facilities or amenities provided for the use and benefit of the Owners (other than such areas located solely within the boundary lines of any Lot or Dwelling), (h) any community gardens or gardening areas, stables, animal or poultry houses, maintenance buildings and other similar structures or Improvements (other than such areas located solely within the boundary lines of any Lot or Dwelling), and (i) and any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or

Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. Notwithstanding anything provided in this Declaration to the contrary, nothing contained in this Section 1.14 shall be deemed or construed to obligate or require Developer or the Association to provide or otherwise make available any of the foregoing areas, Improvements, facilities or amenities as Common Areas.

1.15 **COMMON EXPENSES.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.03(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.16 **DECLARATION.** The term "Declaration" shall mean and refer to this The Colony at The Grand Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.17 **DEVELOPER.** The term "Developer" shall mean Point Clear Partners, LLC, a Delaware limited liability company, and its successors and assigns.

1.18 **DWELLING.** The term "Dwelling", with an initial capital letter, shall mean and refer to any Lot which has been improved with one (1) or more residential housing units situated thereon which are sufficiently complete to reasonably permit habitation thereof. Each Single-Family Dwelling shall constitute one (1) Dwelling and each Multi-Family Dwelling shall constitute one (1) Dwelling. A Dwelling may be either a Single-Family Dwelling or a Multi-Family Dwelling; however, if a Single-Family Dwelling contains an attached or detached apartment, garage apartment or similar living structure, then such Single-Family Dwelling shall continue to be deemed to be a Single-Family Dwelling and not a Multi-Family Dwelling. Common Areas shall not constitute Dwellings.

1.19 **FINAL PLAT.** The term "Final Plat" shall mean and refer to any recorded Final Plat recorded in the Probate Office which reflects Lots thereon.

1.20 **GOVERNMENTAL AUTHORITY.** The term "Governmental Authority" shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any Improvements thereto.

1.21 **GOVERNMENTAL REQUIREMENTS.** The term "Governmental Requirements" shall mean and refer to any and all laws, statutes, ordinances, rules, regulations or requirements of any Governmental Authority.

1.22 **IMPROVEMENT.** The term "Improvement", with an initial capital letter, shall mean and refer to any Dwelling and any other building, structure or device constructed, erected, installed or placed upon any Lot or Dwelling which in any way affects, alters or causes a change in the exterior appearance of any Lot or Dwelling; provided, however, that for purposes of this Declaration, interior alterations of, or interior improvements to, a Dwelling or any other building or structure situated on a Lot shall not constitute an Improvement. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, parking areas, service areas, walkways, paving, curbing, parking areas, swimming pools, tennis courts, garages, accessory buildings, treehouses, playhouses, swingsets, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Dwelling or any other buildings situated on any Lot or Dwelling. "Improvements" shall also mean any exterior alterations or additions to any existing Dwelling

or other structure situated on a Lot and any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.23 **LIVING SPACE.** The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of any of the following areas of a Dwelling which are not heated and cooled by heating, ventilating and air conditioning equipment: "bonus" rooms in garages or attics, garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

1.24 **LOT.** The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any Final Plat for any portion of the Property, each lot indicated thereon (other than any lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon completion of construction of such Improvements, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. Common Areas shall not constitute Lots.

1.25 **MORTGAGE.** The term "Mortgage", with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security instrument encumbering a Lot or Dwelling or any interest therein and which has been duly and properly recorded in the Probate Office.

1.26 **MORTGAGEE.** The term "Mortgagee", with an initial capital letter, shall mean and refer to the holder of any Mortgage.

1.27 **MULTI-FAMILY BUILDING.** The term "Multi-Family Building" means any building or structure situated on one (1) Lot containing Multi-Family Dwellings.

1.28 **MULTI-FAMILY DWELLING.** The term "Multi-Family Dwelling" shall mean and refer to two (2) or more Dwellings situated on one (1) Lot which do not constitute Single-Family Dwellings. By way of example, Multi-Family Dwellings include apartments, condominiums and senior living, independent living, assisted living and other types of living facilities and accommodations found in senior communities to the extent the same are housed in one (1) or more buildings on one (1) Lot.

1.29 **OCCUPANT.** The term "Occupant" shall mean and include any family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Lot or Dwelling within the Property. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot or Dwelling.

1.30 **OWNER.** The term "Owner", with an initial capital letter, shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot or each Dwelling situated on a Lot, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement. To the extent any Lot or Dwelling is leased to a lessee pursuant to a lease, contract, installment contract or other agreement, then such lessee shall constitute and be deemed an Occupant and not the Owner of such Lot or Dwelling. Notwithstanding anything provided in this Declaration to the

contrary, in the event any Lot contains Multi-Family Dwellings and such Lot and Multi-Family Dwellings are subjected to a Sub-Declaration which also creates a Sub-Association for such Multi-Family Dwellings, then the voting rights of each Owner of a Multi-Family Dwelling subject to such Sub-Declaration shall be limited as provided in Sections 4.01 and 4.03 below.

1.31 **PERSON**. The term "Person" with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

1.32 **PROBATE OFFICE**. The term "Probate Office" shall mean and refer to the Office of the Judge of Probate of Baldwin County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Baldwin County, Alabama.

1.33 **PROPERTY**. The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Baldwin County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property includes the Bayview II Property and the Association Property. The Property shall also include any Additional Property which is specifically made subject to this Declaration pursuant to and in accordance with the terms and provisions of Section 2.02 hereof, including all Lots, Dwellings and Common Areas within such Additional Property to the extent the same are added to this Declaration as provided in Section 2.02 below.

1.34 **RULES AND REGULATIONS**. The term "Rules and Regulations" shall mean and refer to The Colony at The Grand Rules and Regulations, as the same may be amended from time to time by the Board of Directors pursuant to the terms and provisions of Section 6.13 below. The initial Rules and Regulations are attached hereto as Exhibit B and are incorporated herein by reference.

1.35 **SINGLE-FAMILY DWELLING**. The term "Single-Family Dwelling" shall mean and refer to one (1), but not more than one (1), attached or detached single-family housing unit situated only on one (1) Lot; provided, however, that if such Lot also contains not more than one (1) attached or detached apartment, garage apartment or similar housing unit, then the same shall still constitute a Single-Family Dwelling and such attached or detached apartment, garage apartment or similar housing unit shall not be deemed a separate Single-Family Dwelling (or Dwellings). By way of example, Single-Family Dwellings include any single-family detached home situated on one (1) Lot as well as any attached townhome or rowhouse which is situated on its own separate Lot.

1.36 **SUB-ASSOCIATION**. The term "Sub-Association" means and refers to any property owners' association or condominium owners' association created or established as part of any Sub-Declaration.

1.37 **SUB-DECLARATION**. The term "Sub-Declaration" shall mean and refer to any additional restrictive covenants or any declaration of condominium established for any Multi-Family Dwellings situated on one (1) Lot which may be imposed on or otherwise encumber the Multi-Family Dwellings on such Lot. The terms and provisions of this Declaration are superior to, and shall always control in the event of any conflict or ambiguity between the terms and provisions of this Declaration and any Sub-Declaration.

1.38 **TURNOVER DATE**. The term "Turnover Date" shall mean the first to occur of the following: (a) the later of (i) ten (10) years from the date hereof or (ii) the date on which Developer and any Affiliates of Developer cease to own any portion of the Property or (b) the date on which Developer elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the

Board pursuant to Section 4.02 below and (ii) all voting rights in the Association reserved to Developer pursuant to Section 4.03 below.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.01 **GENERAL DECLARATION.** Developer, Bayview II and the Association do hereby declare that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and all Owners and Occupants of the Property and any Lot, Dwelling and Common Areas thereof. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer).

2.02 **ADDITIONAL PROPERTY.** Subject to the remaining terms and conditions of this Section 2.02, Developer shall have the right, in its sole and absolute discretion, at any time and from time to time prior to the occurrence of the Turnover Date, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) set forth any such other or different covenants, conditions and restrictions which Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the voting rights and percentages of the Owners in the Association shall be changed so that each Lot or Dwelling is entitled to the voting percentage determined in accordance with the terms and provisions of Section 4.03 below. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, consents to the transfer and conveyance to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration before the occurrence of the Turnover Date, then this Declaration may be amended solely by Developer in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

2.03 **RIGHT TO MODIFY RESTRICTIONS WITH RESPECT TO LOTS OWNED BY DEVELOPER.**

With respect to any Lot or other portion of the Property owned by Developer, Developer may, by deed, contract or other instrument filed for record in the Probate Office, modify the provisions of this Declaration as the same apply to any such Lot or other portion of the Property owned by Developer.

2.04 **MUTUALITY OF BENEFIT AND OBLIGATION.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and Dwelling and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.05 **DEVELOPMENT OF PROPERTY.** Developer shall have the right, but not the obligation, for so long as Developer owns any portion of the Property, to make improvements and changes to all Common Areas and to all Lots and Dwellings owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots or Dwellings owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, (d) the installation and maintenance of any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas and (e) converting and changing any Lots or any portions thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses. The exercise by Developer of any of the rights set forth in this Section 2.05 may be exercised solely by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot or Dwelling, acknowledges and agrees that Developer or Affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration.

2.06 **SUBDIVISION.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more Final Plats setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such Final Plats and any amendments thereto shall be binding on the portions of the Property indicated thereon as if such Final Plats were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.06 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Dwellings, Common Areas and other portions of the Property owned by Developer, and (b) amend from time to time and at any time Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property.

2.07 **REMOVAL OF PROPERTY FROM DECLARATION.** Notwithstanding anything provided in this Declaration to the contrary, at any time on or prior to the occurrence of the Turnover Date, Developer reserves the right, in its sole and absolute discretion, without the consent or approval of any Owner (other than the Owner of that portion of the Property being removed from the Declaration), Occupant, Mortgagee or the Association, to amend this Declaration in order to remove and exclude any real property from the definition of the Property and the terms and provisions of this Declaration. The rights reserved by Developer pursuant to this Section 2.07 shall include, without limitation, the right to amend from time

to time and at any time Exhibit A to this Declaration to reflect the removal of any real property from the definition of Property, without being required to obtain the consent or approval of any Owner, Mortgagee or the Association.

ARTICLE III

EASEMENTS

3.01 GRANT OF NON-EXCLUSIVE EASEMENTS TO COMMON AREAS. Subject to the terms and provisions of Section 3.07 below, Developer and the Association do hereby grant to each other and to their respective successors and assigns and to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, the Association, their respective successors and assigns, and all other Owners, Occupants and other parties having any rights or interest therein. Subject to the terms and provisions of Section 3.07 below, the easement and rights granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

3.02 RESERVATION OF GENERAL ACCESS AND MAINTENANCE EASEMENT. Developer does hereby establish and reserve for itself and its successors and assigns and Developer and Bayview II do hereby grant to the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of (a) providing ingress to and egress from each Lot and Dwelling for (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then, except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Dwelling directly affected thereby and (b) mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

3.03 RESERVATION OF EASEMENTS WITH RESPECT TO COMMON AREAS.

(a) The Association does hereby grant to Developer, its successors and assigns, and Developer does hereby establish and reserve, for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots, Dwellings and Common Areas, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) The Association does hereby grant to Developer, its successors and assigns, and Developer does hereby establish and reserve for itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas. Developer hereby establishes and reserves for itself and its successors and assigns (i) a permanent and perpetual non-exclusive

easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate, (ii) the right to grant to third parties rights to use and easements to the Common Areas and (iii) the right to grant to third parties, other real property and the owners of such real property rights to use any of the Common Areas. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.04 RESERVATION OF EASEMENT FOR UTILITIES AND TELECOMMUNICATION SERVICES.

(a) Subject to the provisions of Section 3.04(b) below, Bayview II and the Association do hereby grant to Developer, its successors and assigns, and Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Common Areas and all Lots and Dwellings, which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property or other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.04 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.04 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.04 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein and (iii) the establishment and reservation of easements pursuant to this Section 3.04 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.04.

(b) In addition to the easements established and reserved by Developer for itself and the Association and their respective successors and assigns as provided in Section 3.04(a) above, Developer does further establish for the benefit of the Association and does hereby grant to the Association the sole and exclusive permanent and perpetual right to enter into any and all master agreements (collectively, a "Telecommunication Service Agreement") which would authorize one or more Persons (collectively, a "Telecommunications Provider") to exclusively provide telephone services (both local and long distance), cable or satellite television services (including pay-for-view, entertainment-on-demand and similar services), internet services and any other communications and multi-interactive, entertainment and related services (collectively, "Telecommunication Services") to all or any portions of the Property. Any and all Telecommunication Service Agreements entered into by the Association shall be binding on all Lots and Dwellings and the Owners and Occupants of all Lots and Dwellings within the Property. Furthermore, the Association shall have the right to cancel and terminate any Telecommunication Service Agreements which the Association may have entered into for the benefit

of any Lots and Dwellings. The provisions of this Section 3.04(b) shall apply to the Property and any Additional Property which may be added to this Declaration. If required by the Association or the Telecommunications Provider, the Owner of each Lot and Dwelling shall also enter into a separate agreement with such Telecommunications Provider pursuant to which such Owner will grant to such Telecommunications Provider easements for the installation of all lines, pipes, wiring, conduit, equipment and other apparatus necessary or required in order to provide Telecommunication Services to all Lots and Dwellings within the Property (which easements may include areas within the mechanic rooms of any Multi-Family Buildings). In the event any such separate agreements are entered into between the Owner of any Lot or Dwelling and such Telecommunications Provider, the terms and provisions of each Telecommunication Service Agreement entered into by the Association with such Telecommunications Provider shall at all times control. In no event shall any Owner or Occupant have the right to cancel, change, alter or otherwise amend the exclusive rights created by the Association in favor of any Telecommunications Provider under any Telecommunication Service Agreements entered into by the Association. To the extent the Telecommunications Provider agrees to pay to the Owner of any Multi-Family Building any compensation for providing Telecommunication Services to such Multi-Family Building (which compensation may partially reimburse such Owner for the costs incurred by such Owner in installing wiring, conduit and other apparatus which may be necessary to provide Telecommunication Services to any Multi-Family Dwellings within such Multi-Family Building), then such compensation shall be retained by the Owner of such Multi-Family Building and shall not be payable to the Association or any Owner or Occupant of any Multi-Family Dwelling situated in such Multi-Family Building. All actions authorized or permitted to be taken by the Association pursuant to the terms and provisions of this Section 3.04(b) shall be undertaken by the act of the Board of Directors of the Association and shall not require the consent or approval of any Owners, Occupants or Mortgagees.

3.05 RESERVATION OF EASEMENTS FOR WALKS AND TRAILS. Bayview II and the Association do hereby grant to Developer, its successors and assigns, and Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling and any public roadway which is directly adjacent to and abuts such Lot or Dwelling for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs and related improvements thereon; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

3.06 GRANT OF EASEMENTS TO GOVERNMENTAL AUTHORITIES AND UTILITY PROVIDERS. Subject to the provisions of Section 3.07 below, the Association and Developer do hereby grant to each branch, bureau, department and agency of the Governmental Authorities and all utility providers providing any utility services to the Property and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon the Access Roads for the purposes of performing their respective duties and activities relating to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any and all other official functions, duties or services to be performed by any of the Governmental Authorities and utility providers as shall be required or appropriate from time to time.

3.07 ESTABLISHMENT OF CONTROLLED ACCESS EASEMENTS.

(a) The Association and Bayview II, by execution of this Declaration, and each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot or Dwelling to such Owner, for such Owner and such Owner's Occupants, (i) waives all rights for uncontrolled and unlimited

access, ingress to and egress from such Owner's Lot and acknowledges and agrees that access and ingress to and egress from the Property may be controlled, restricted and limited to exclude the general public therefrom, (ii) acknowledges and agrees that access, ingress to and egress from such Owner's Lot or Dwelling shall be limited to the Access Roads, (iii) acknowledges and agrees that Developer shall have the right (but not the obligation) to operate controlled access gates or devices on or within any of the Access Roads pursuant to the terms and provisions of Section 3.07(b) below and (iv) acknowledges and agrees that Developer and its successors and assigns shall have the right to dedicate all or any portions of the Access Roads as public roadways pursuant to the terms and provisions of Section 3.07(c) below.

(b) Developer does hereby establish and reserve for itself and its successors and assigns the right and privilege to construct, operate and maintain controlled access gates or devices on or within any of the Access Roads controlling, limiting and restricting vehicular and pedestrian access to and from any portion of the Property.

(c) Notwithstanding anything provided in this Declaration to the contrary, the Association does hereby grant to Developer and Developer does hereby establish and reserve the right, in the sole and absolute discretion of Developer, at any time and from time to time, to dedicate any of the Access Roads as public roadways or public rights-of-way to any Governmental Authority designated by Developer without requirement that the approval or consent of any Owner, Occupant, Mortgagee or any other Person be obtained. Developer does hereby reserve the right, in its sole and exclusive discretion, to execute any and all agreements, documents, instruments and Final Plats pursuant to which any of the Access Roads or any portion thereof are submitted for dedication as public roadways. The Association and Bayview II, by execution of this Declaration, and each Owner, by acceptance of any deed to a Lot or Dwelling, and each Mortgagee, by the acceptance of any Mortgage on any Lot or Dwelling, shall be deemed to, and each hereby does, irrevocably appoint Developer and its successors and assigns as such Person's respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and Final Plats relating to the dedication any portions of the Access Roads to any Governmental Authority as public roadways or public rights-of-way for and in the name of any such Owner and Mortgagee, in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of Bayview II, the Association, any Owner or Mortgagee and shall be binding on Bayview II, the Association, all Owners, Mortgagees, and their respective heirs, executors, administrators, personal representatives, successors and assigns. To the extent Developer transfers and assigns its rights in and to the Access Roads to the Association, then the Association shall have the same rights reserved herein by Developer.

(d) Notwithstanding anything provided in this Declaration to the contrary, the placement or maintenance of a controlled access gate or device, fence, wall or any other improvements which may limit or restrict access to the Property is not intended to obligate Developer, the Association or any third party to provide any form of security within the Property and each Owner, for himself or herself and any Occupants of such Owner's Lot or Dwelling and their respective guests, heirs, executors, personal representatives, administrators, successors and assigns, do hereby irrevocably and unconditionally waive, release and forever discharge Developer, the Association and any other Person to whom Developer has transferred the Access Roads and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of any loss, damage or injury to person or property, including death, resulting from any entry, whether lawful or unlawful, onto the Property or any of the Lots or Dwellings by any third party (including any other Owners and Occupants) or arising out of the acts or omissions of any third party (including all other Owners and Occupants).

(e) All vehicular traffic on or within the Access Roads shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles. The Association is authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for the Access Roads and, subject to the provisions of Sections 11.01 and 11.02 below, the right to deny, limit or prohibit vehicular access via any of the Access Roads. The Association shall also be entitled to enforce any such rules and regulations by establishing such enforcement procedures as it deems necessary or appropriate, including hiring security or traffic patrols which have the right to levy fines for the violation of any such traffic rules and regulations. All vehicles of any kind and nature which are operated on any of the Access Roads shall be operated (i) in accordance with all reasonable rules and regulations adopted from time to time by the Association and (ii) in a careful, prudent, safe and quiet manner with due consideration for the rights of all other Owners and Occupants of the Property.

(f) Notwithstanding anything provided in this Declaration to the contrary, in no event shall any Owner or Occupant construct, install, place, operate or maintain any Improvements, including, without limitation, bird houses, bird baths or bird or other animal feeding or housing areas or Improvements, on or within any of the Common Areas.

ARTICLE IV

ASSOCIATION

4.01 **MEMBERSHIP.** Subject to the terms and provisions of this Section 4.01 and Sections 4.03(d) and 11.01 below, the Owner of each Lot and the Owner of each Dwelling on a Lot shall be a member of the Association. Subject to the terms and provisions of this Section 4.01 and Sections 4.03 and 11.01 below, membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) if a Lot has been improved with Multi-Family Dwellings, then, subject to the provisions of Section 4.01(b) below, the Owner of each Multi-Family Dwelling on such Lot shall have one (1) vote for each Multi-Family Dwelling owned, (b) if a Lot has been improved with Multi-Family Dwellings and such Multi-Family Dwellings are subject to a Sub-Declaration which also establishes a Sub-Association for such Multi-Family Dwellings, then (i) the voting rights and membership rights in the Association attributable to such Multi-Family Dwellings shall be exercised solely by the Sub-Association and not by the individual Owners of such Multi-Family Dwellings and (ii) the applicable Sub-Association (or its designated representative) shall have one (1) vote for each Multi-Family Dwelling subject to the applicable Sub-Declaration for which such Sub-Association was organized, (c) once a Lot is developed with a Dwelling, then the Lot, as a Lot only, no longer has any rights (voting or otherwise) in the Association but, subject to the provisions of Section 4.01(b) above, the Dwelling(s) on such Lot will have all such rights (voting and otherwise), (d) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling within the Property owned by Developer, (e) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot or Dwelling shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association, which representative shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner and (f) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Except for the voting rights to be exercised by a Sub-

Association for Multi-Family Dwellings as provided above, membership in, or the rights and benefits of, the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 **BOARD.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the Turnover Date, the number of members of the Board shall continue to be three (3) and the Owners shall have the exclusive right to elect and remove all three (3) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot or Dwelling, vests in Developer the sole and absolute authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

4.03 **VOTING RIGHTS.**

(a) **Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, Developer shall, subject to the remaining terms and provisions of this Section 4.03(a), have the sole and exclusive right to exercise all voting rights in the Association until the Turnover Date;** provided, however, that (i) any Special Assessments must be approved by the Owners in accordance with the terms and provisions of Section 8.04 below and (ii) certain amendments to this Declaration are subject to the terms and provisions of Section 10.02 below. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to have irrevocably and unconditionally agreed to the foregoing terms and provisions of this Declaration and shall further be deemed to waive any and all voting rights in the Association prior to the Turnover Date other than as specifically set forth in Sections 8.04 and 10.02 hereof.

(b) With respect to those two (2) matters described in Section 4.03(a) above which must be approved or voted on by the Owners prior to the occurrence of the Turnover Date and at all times following the Turnover Date, the Owner of each Lot and the Owner of each Dwelling who is "in good standing", as defined in the Bylaws, shall be entitled to one (1) vote in any matter submitted to the members of the Association for approval; provided, however, that if a Lot has been improved with Multi-Family Dwellings and such Multi-Family Dwellings are subject to a Sub-Declaration which has a Sub-Association, then the Sub-Association organized under the application Sub-Declaration shall exercise the voting rights of the Owners of all Multi-Family Dwellings subject to such Sub-Declaration and the individual Owners of each Multi-Family Dwelling on such Lot shall not have separate voting right separate and apart from such Sub-Association. In the event a Lot contains a Multi-Family Building with Multi-Family Dwellings but such Lot or the Multi-Family Dwellings situated thereon are not subject to a Sub-Declaration or, if such Lot and/or the Multi-Family Dwellings situated thereon are subject to a Sub-Declaration but such Sub-Declaration does not establish a Sub-Association under such Sub-Declaration, then, in either event, each Owner of each Multi-Family Dwelling on such Lot shall exercise the voting rights attributable to the Multi-Family Dwellings on such Lot. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Only those Owners who hold legal title to a Lot or Dwelling shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.03, at all times prior to and

after the Turnover Date, Developer shall be deemed the Owner of, and entitled to, all voting rights attributable to any Lots or Dwellings owned by Developer.

(c) Each Owner, by acceptance of a deed to a Lot or Dwelling, consents and agrees to the dilution or increase of his or her voting interest in the Association by virtue of the (i) resubdivision of any Lot by Developer pursuant to Section 2.05 above, (ii) the addition of any Additional Property to the terms of this Declaration pursuant to the provisions of Section 2.02 above (including additional Lots and Dwellings being added or developed as part of such Additional Property) and (iii) the removal of real property from the Declaration pursuant to the provisions of Section 2.07 above. Fractional voting shall not be permitted.

(d) Notwithstanding anything provided herein to the contrary, the Association shall have the right to suspend any Owner's voting rights or privileges in the Association pursuant to the terms and provisions of Section 11.01 below. To the extent any Owner is not "in good standing", as defined in the Bylaws, then the voting rights of such Owner shall be suspended and shall not be counted or included in determining whether a quorum is present or whether the applicable number of votes have been cast in any vote of the Owners, as more particularly described and provided in the Bylaws.

4.04 DUTIES AND POWERS OF ASSOCIATION.

(a) In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The powers and authority granted herein and in the Articles of Incorporation and Bylaws of the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners. Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property.

(b) In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be Affiliates of Developer, such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Common Areas, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association or any of the Common Areas shall be part of the Common Expenses. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically reserved to the Board or the officers of the Association by this Declaration, the Articles of Incorporation or the Bylaws. Such manager may be any Person and may be bonded in such manner as the Board may require, with the cost of such bond to be part of the Common Expenses. Developer or any of Developer's Affiliates may be employed as the manager of the Association and for the Property until the Turnover Date at such compensation and on such terms

as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the Baldwin County, Alabama area.

(c) In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal, accounting and other professional services as are necessary or desirable in connection with the administration and operation of the Property and the Association or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, the Architectural Standards or any rules and regulations of the Association.

4.05 MEETINGS OF MEMBERS OF ASSOCIATION. Notwithstanding anything provided in this Declaration, the Articles of Incorporation or the Bylaws to the contrary, no meetings of the Owners (*i.e.*, members of the Association) shall be held prior to the Turnover Date. Following the occurrence of the Turnover Date, annual meetings of the Owners (members of the Association) shall be held in accordance with the terms and provisions of the Bylaws.

4.06 INDEMNIFICATION. The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding, including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) harmless from and against any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) may be entitled, including anything provided to the contrary in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.06 and the costs of such insurance shall constitute a Common Expense.

4.07 TURNOVER. On or prior to the occurrence of the Turnover Date, all Common Areas, if any, owned by Developer shall be transferred and conveyed by Developer to the Association by quitclaim deed. Developer may, in its sole and absolute discretion, elect to transfer and convey to the Association by quitclaim deed any other real property owned by Developer at any time prior to or after the occurrence of the Turnover Date. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, cause any real property conveyed to the Association to be conveyed free and clear of all liens and encumbrances other than taxes for the then current year and all subsequent years thereafter, the terms and provisions of

this Declaration and all other easements, restrictions, rights-of-way, reservations and other matters of record and such other terms, covenants and agreements as may be required by Developer (which may include, by way of illustration, but not limitation, the reservation of easements and other rights as to such real property conveyed by Developer to the Association or the prior grant by Developer of use rights or easements to other Persons to use any such Common Areas). The Association, by execution of this Declaration, agrees to accept conveyances by quitclaim deeds of any and all real property which may be conveyed to it by Developer and, if requested by Developer, from any builders or developers of any portion of the Property and all such Property shall thereafter constitute and be deemed to be part of the Common Areas. In addition, on or before the Turnover Date, Developer shall transfer and assign to the Association and the Association shall assume all of Developer's rights and obligations under any and all agreements entered into by Developer on behalf of the Association or which benefit the Association. **Developer does not make, and has not made, any representations or warranties, either express or implied, as to the physical condition of any real or personal property which may be conveyed by Developer to the Association and the Association shall accept any such real or personal property in its then "AS IS" condition, "WITH ALL FAULTS".**

ARTICLE V

ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

5.01 **COMMITTEE COMPOSITION.** The ARC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below. The persons designated to serve on the ARC may, but shall not be required to be, Owners or Occupants. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.02 below.

5.02 APPOINTMENT AND REMOVAL OF ARC MEMBERS.

(a) **DEVELOPER RESERVES THE RIGHT AT ALL TIMES (EITHER PRIOR TO OR AFTER THE OCCURRENCE OF THE TURNOVER DATE) TO APPOINT AND REMOVE ALL MEMBERS OF THE ARC.** Any person appointed as a member of the ARC by Developer may be removed, with or without cause, at any time by Developer. In the event of the death or resignation of a member of the ARC who has been appointed by Developer, then the Developer shall appoint a substitute member of the ARC to fill such vacancy.

(b) Developer reserves the right, at any time either prior to or after the occurrence of the Turnover Date, to elect to assign to the Board its rights to appoint and remove ARC members. Should Developer elect to assign such rights to the Board, then the Board shall at all times thereafter have the right to appoint and remove all persons who will serve on the ARC. Any person appointed as a member of the ARC by the Board may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC who has been appointed by the Board, then the Board shall appoint a substitute member of the ARC to fill such vacancy.

(c) Any person appointed by Developer or the Board to serve on the ARC shall be deemed an agent of the Association.

5.03 **PROCEDURE AND MEETINGS.** The ARC shall elect a chairman and he or she, or in his or her absence, any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the total number of members of the ARC shall

constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

5.04 ARCHITECTURAL STANDARDS. The ARC is hereby authorized to promulgate and amend and modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and any other Improvements on any Lot or Dwelling, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot or Dwelling are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot or Dwelling. The Architectural Standards and any and all amendments thereto adopted from time to time by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

5.05 APPROVAL OF PLANS AND SPECIFICATIONS.

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING OTHER THAN BY DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, (i) THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, PLAY EQUIPMENT, AWNINGS, WEATHER VANES, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT'S QUARTERS, ACCESSORY BUILDINGS OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION TO AN EXISTING DWELLING, GARAGE OR OTHER STRUCTURE ON A LOT BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE), UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW AND (ii) THE INITIAL**

LANDSCAPING FOR ANY LOT SHALL NOT BE INSTALLED UNTIL PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. NO INTERIOR PORTIONS OR AREAS WITHIN A DWELLING OR OTHER STRUCTURES LOCATED ON A LOT WHICH DO NOT CONSTITUTE LIVING SPACE MAY BE CONVERTED INTO LIVING SPACE UNLESS THE ARC, IN ITS SOLE AND ABSOLUTE DISCRETION, APPROVES THE SAME.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which shall include the following:

(i) Two (2) copies of a professionally and accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling;

(ii) Two (2) copies of a foundation plan, floor plans, lighting plans (including specifically, any exterior lighting to be utilized with respect to such Lot or Dwelling) and exterior elevation drawings of the front, back and sides of the Dwelling or other Improvements to be constructed on the Lot;

(iii) Two (2) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwelling;

(iv) Two (2) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below, together with the irrigation (underground sprinkler) plan for such Lot or Dwelling; and

(v) Such other plans, specifications or other information or documentation as may be required by the ARC or the Architectural Standards.

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot or Dwelling, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style

of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within such Owner's Dwelling without the necessity or requirement that the approval or consent of the ARC be obtained so long as (i) such improvements and alterations do not affect the exterior appearance of such Dwelling and (ii) the Living Space within such Dwelling is not increased.

(d) The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot or Dwelling to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot or Dwelling and the compliance with all of the terms, conditions and provisions of this Declaration and interest, if any, earned on said deposit shall belong to and remain the property of the Association. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot or Dwelling and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her agents, employees or independent contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her agents, employees or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's builder, to execute a soil erosion indemnity in favor of the ARC, the Association and Developer.

(e) In the event the ARC fails to approve in writing any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, then the plans and specifications so submitted to the ARC will be deemed to have been disapproved.

(f) Any revisions, modifications or changes in any plans and specifications previously approved by the ARC must be approved by the ARC in the same manner specified above.

(g) If construction of the Dwelling or the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footings and otherwise commencing framing and other related construction work) within one (1) year of approval by the ARC of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced (or continued) on such Lot or Dwelling and the Owner of such Lot or Dwelling shall be required to resubmit all plans and specifications for any Dwelling or other Improvements to the ARC for approval in the same manner specified above.

(h) Each Owner, for such Owner and any builder, contractor, agent, employee or representative of such Owner, covenants and agrees not to apply for or obtain a building permit for any Improvements to such Owner's Lot until such time as the ARC has approved the plans and specifications for such contemplated Improvements.

5.06 **LANDSCAPING APPROVAL.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner (other than by Developer) on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the ARC. Notwithstanding the foregoing, an Owner may periodically remove, change, plant and replant annual flowers in any flower beds within such Owner's Lot designated for annual flowers (as shown on landscaping plans approved by the ARC).

5.07 **CONSTRUCTION WITHOUT APPROVAL.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.12 below.

5.08 **INSPECTION.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or Dwelling or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

5.09 **SUBSURFACE CONDITIONS.** The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the ARC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

5.10 **LIMITATION OF LIABILITY.** Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot or Dwelling, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss,

action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or Dwelling, or any Improvements situated thereon.

5.11 COMMENCEMENT AND COMPLETION OF CONSTRUCTION. As provided in Section 11.03 below, unless otherwise agreed to in writing by Developer, each Owner must commence construction of a Dwelling on such Owner's Lot within twelve (12) months from the date such Lot was first purchased from Developer. Upon commencement of construction of any Dwelling, unless otherwise agreed to in writing by Developer, construction work thereon shall be prosecuted diligently and continuously and shall be completed within twelve (12) months of the commencement date of said construction (unless an extension is granted in writing by the ARC), such completion to be evidenced by a final certificate of occupancy issued by the appropriate Governmental Authorities. In the event any Owner fails to commence or complete construction of a Dwelling on such Owner's Lot as provided herein, then Developer shall have the rights set forth in Section 11.03 below.

5.12 ENFORCEMENT AND REMEDIES. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Sections 8.01 and 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.12 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

5.13 **COMPLIANCE CERTIFICATION.** The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

6.01 **USE RESTRICTIONS.** Except as otherwise provided to the contrary in this Section 6.01, each Lot and Dwelling shall be used for residential purposes only as well as for ancillary structures and uses normally and customarily found in residential developments. Except as otherwise provided to the contrary in this Section 6.01, no trade or business may be carried on in or from any Lot or Dwelling. Notwithstanding anything provided to the contrary in this Section 6.01, (a) any portion of the Property may be used for Common Areas to the extent approved by either Developer or the ARC, (b) the use of any portion of a Dwelling as an office by an Owner or Occupant shall not be considered a violation of this Section 6.01 if such use does not create regular customer, client or employee traffic, (c) Developer and any Person to whom Developer has specifically authorized in writing to do so may utilize any portion of the Property and any Lot or Dwelling owned by Developer or such Person for information centers, sales centers, offices and model homes and (d) any portion of the Property may be used for any of the uses authorized or allowed by the zoning ordinance of the City of Fairhope, Alabama based on the zoning classification established for each portion of the Property under the terms of such City of Fairhope, Alabama zoning ordinance (e.g., with respect to any portion of the Property zoned as a "Low-Rise Residential Zone" all uses allowed by the City of Fairhope, Alabama zoning ordinance for "Low-Rise Residential Zone" property shall be allowed; with respect to any portion of the Property zoned as a "Mid-Rise Residential Zone" all uses allowed by the City of Fairhope, Alabama zoning ordinance for "Mid-Rise Residential Zone" property shall be allowed, etc.). To the extent any uses allowed by the City of Fairhope, Alabama zoning ordinance are authorized uses, the such uses shall be deemed acceptable and approved uses notwithstanding anything provided to the contrary in this Section 6.01. In no event shall any Lots be used for trailer and mobile homes; provided, however, that with ARC approval, construction trailers may be located on any Lot during construction of Improvements on that Lot.

6.02 **PLAN APPROVAL.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling or Improvements have been approved by the ARC in the manner set forth in Article V above.

6.03 UNDERGROUND UTILITIES.

(a) All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer (to the extent available), cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

(b) All electrical, gas, telephone and cable television meters, transformers and junction boxes, if any, for each Lot, shall be located, to the greatest extent possible, so as not to be visible from any roadway within or adjacent to the Property. All Owners shall install and maintain landscaping around all such meters and all electrical transformers and junction boxes situated on such Owner's Lot in a manner to visually screen, to the greatest extent practicable, all such meters, transformers and junction boxes from view from any roadway within or adjacent to the Property. All exterior heating, ventilating and air conditioning compressor units and equipment shall be located on the ground level of such Dwelling in a location and with appropriate screening by either walls or landscaping so that the same is not visible from any of the streets within or adjacent to the Property; provided, however, that with respect

to any Multi-Family Buildings, such equipment may be located within or on top of such Multi-Family Buildings so long as the same is screened from view.

6.04 **BUILDING SETBACKS.** Minimum building setback lines for all Dwellings shall be set forth on the Final Plat or in the deed to the Lot on which such Dwelling will be constructed (and may vary for each phase of development or subdivision within the Property). Canopies and awnings and second story porches, decks and balconies may overhang any building setback lines by up to twenty-four (24) inches but may not overhang Lot boundary lines.

6.05 **APPLICATION OF ARCHITECTURAL STANDARDS.** The Architectural Standards establish various requirements for the development, use and construction of a Dwelling and other Improvements on any Lot. The Architectural Standards are binding on all Lots and include, without limitation, requirements regarding Lot size, Dwelling size, approved building materials and landscaping requirements for each Lot and Dwelling. Each Owner of a Lot or Dwelling shall be bound by and shall observe all requirements established by the Architectural Standards in the development, use and construction of Dwellings and any other Improvements on such Owner's Lot.

6.06 **HEIGHT LIMITATIONS.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. The height of each Dwelling shall be approved by the ARC and shall be subject to all regulations and requirements of applicable Governmental Authorities. Towers, decks and outside porches shall be subject to the foregoing height limitations. Chimneys and roof finials are not subject to the foregoing height limitations.

6.07 **MINIMUM LIVING SPACE.** Minimum Living Space requirements for all Dwellings shall be established (a) on the recorded Final Plat (which may vary for each phase of development or subdivision for the Property), or (b) in the deed from Developer to the Owner of such Lot or Dwelling.

6.08 **SOIL EROSION AND DRAINAGE.** Each Owner shall provide and maintain on his or her Lot or Dwelling adequate soil erosion measures and drainage facilities to accommodate any storm water runoff resulting from any Improvements being or having been constructed on such Owner's Lot or Dwelling. Each Owner shall also insure that his or her Lot or Dwelling and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all storm water drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any Governmental Authority. Each Owner shall, in connection with the construction of any Dwelling or other Improvements on such Owner's Lot, be solely responsible for providing adequate storm water drainage improvements and facilities on such Owner's Lot which shall be sufficient to adequately channel any storm water which may either cross or come upon such Owner's Lot from adjoining Lots or Common Areas or which may originate and drain from such Owner's Lot and any Improvements thereto onto adjoining Lots and Common Areas. **Each Owner, by acceptance of a deed to his or her Lot or Dwelling, shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and expenses, and any and all other amounts suffered, paid or incurred by Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 6.08.**

6.09 ABOVE OR BELOW GROUND TANKS AND WELLS. No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or Dwelling or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwelling without the prior written consent of the ARC.

6.10 TEMPORARY STRUCTURES. No temporary house, trailer, shack, tent, barn, shed, storage shed, utility building, portable building, stable, poultry house or yard, rabbit hut, tree house or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) any detached garages or other structures which are approved in writing by the ARC, (b) to the extent approved by the ARC, dog houses for not more than two (2) dogs so long as such dog houses are visibly screened with landscaping from view from all roadways within or adjacent to the Property and all adjacent Lots and Dwellings, (c) to the extent approved by the ARC, temporary structures for social functions as may be permitted by the rules and regulations of the Board, (d) construction trailers and/or sales offices of Developer and (e) to the extent approved by the ARC, construction trailers and sales offices of Developer (or, with the prior written approval of the ARC, any other Person) for the construction and sale of Dwellings.

6.11 CONSTRUCTION OF IMPROVEMENTS.

(a) During the construction of any Improvements (including a Dwelling) on any Lot, (i) such Lot or Dwelling shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least every two (2) weeks. Used construction materials may be burned on-site only in accordance with the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any roadways within or adjacent to the Property.

(b) During the initial construction of any Dwelling, one (1) sign in size and color to be approved by the ARC, may be posted in the front yard of a Lot facing the public street at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or containing information identifying the builder of such Dwelling. No other signage, banners, flags or advertising posters shall be allowed on any portion of the Property unless approved by the ARC or the Board. No signage shall be attached, nailed or otherwise adhered to any tree or other plant life.

(c) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas, (ii) utilize off-street parking only, (iii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling, and (iv) not damage trees or other vegetation on such Lot which are to be preserved. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the

Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition. All builders, contractors, subcontractors, laborers, suppliers, materialmen and other professionals involved in the construction of any Dwelling or other Improvements on a Lot shall be required to abide by and comply with all construction standards, guidelines and requirements adopted from time to time by the ARC as part of the Architectural Standards.

(d) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

(e) The ARC shall have the right, in its sole and absolute discretion, to adopt an approved builder program pursuant to which only builders and general contractors approved by the ARC (and which satisfy any additional requirements of the ARC) will be allowed to construct Dwellings within the Property.

6.12 **SUBDIVISION.** No Lot may be further subdivided into more than one (1) Lot unless such Lot is owned by Developer. Lots may be resubdivided to combine two (2) Lots into one (1) Lot or resubdivided to reflect the same number of Lots which existed immediately prior to any such resubdivision so long as the same is approved by the ARC. Nothing contained in this Section 6.12 shall be applicable to the subdivision, resubdivision, or combination of any Lots or other real property owned by Developer. To the extent the ARC has approved the resubdivision or combination of any Lot as required by the terms and provisions of this Section 6.12, then such resubdivided or combined Lot shall continue to constitute the same number of Lots which existed immediately prior to the resubdivision or combination of such Lots and the Owner of such combined Lots shall continue to pay Assessments on the basis of the number of Lots which existed immediately prior to the resubdivision or combination of such Lots.

6.13 **RULES AND REGULATIONS.**

(a) The initial Rules and Regulations are attached hereto as **Exhibit B** and are incorporated herein by reference. The Rules and Regulations are subject to modification and amendment from time to time and at any time solely by the action of the Board and without any prior notification of, action, consent of or approval by, any of the Owners. The Board shall also have the right to adopt additional rules and regulations which shall be incorporated into and form a part of the Rules and Regulations, including, without limitation, the right to approve rental and sales agents, contractors and subcontractors who do business within the Property.

(b) In addition to the terms and provisions set forth in this Declaration, the Board may establish and enforce additional rules and regulations governing the use, improvement, maintenance and repair of all Common Areas. Such rules and regulations shall be binding upon all Owners and Occupants.

6.14 **COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of all Governmental Authorities.

6.15 **VARIANCES.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article V above, this Article VI and the Rules and Regulations. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC.

6.16 **ENFORCEMENT AND REMEDIES.** In the event any of the provisions of this Article VI or any of the Rules and Regulations, are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI or any of the Rules and Regulations, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI or any of the Rules and Regulations, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Sections 8.01 and 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 6.16 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

7.01 RESPONSIBILITIES OF OWNERS.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or her Lot and Dwelling in a neat, clean and sanitary condition, both inside and outside of any Dwelling or other Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot or Dwelling shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.06 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner thereof in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of the roadway abutting such Lot or Dwelling and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot or Dwelling shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive

condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, trash, refuse, rubbish, debris, garbage and waste material shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Property. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot or Dwelling nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas or any other portion of the Property.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any Lot or Dwelling or the landscaping, grounds or other Improvements within a Lot or Dwelling unless such decoration, change or alteration is first approved, in writing, by the ARC.

7.02 RESPONSIBILITIES OF ASSOCIATION.

(a) Except as otherwise provided in this Declaration to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas. The Association shall not be liable for injuries or damages to any person or property (i) caused by the elements, acts of God or any Owner, Occupant or other person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Areas onto a Lot or Dwelling or (iii) resulting from thief, burglary or other illegal entry onto the Property or any Lot or Dwelling. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by either the negligence or willful act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have seven (7) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such seven (7) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Sections 8.01 and 8.07 below. If, and to the extent that, the Association undertakes any action pursuant to this Section 7.02(b) on behalf of any Owner, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be

deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

ARTICLE VIII

ASSESSMENTS

8.01 ASSESSMENTS AND CREATION OF LIEN. Each Owner of a Lot and each Owner of a Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.07(a) below, and all court costs and attorneys' fees and expenses incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.07(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he or she is the Owner of a Lot or Dwelling and his or her grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.07(a) below, court costs and attorneys' fees and expenses incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. Each Multi-Family Dwelling on a Lot shall be considered a separate Dwelling and each such Multi-Family Dwelling shall be subject to Assessments. All Assessments shall commence as to each Lot or Dwelling as provided in Section 8.06 below and be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Board. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

8.02 UNIFORM RATE OF ASSESSMENTS.

(a) Subject to the provisions of Section 8.10 below, both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against each Lot or Dwelling at a uniform rate, with the Owner of each Lot or each Dwelling being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as determined by a fraction, the

numerator of which shall be the total number of Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings within the Property at the time such Annual Assessments or Special Assessments are levied. To the extent any Lot contains Multi-Family Dwellings, then each Multi-Family Dwelling situated on such Lot shall be considered a Dwelling and shall be subject to Assessments.

(b) Each Owner of a Lot or Dwelling, by acceptance of a deed to such Lot or Dwelling, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or any Lots or Dwellings are combined, subdivided or resubdivided pursuant to Sections 2.05 or 6.12 above or (ii) any portion of the Property becomes Common Areas.

8.03 COMPUTATION OF ANNUAL ASSESSMENTS.

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association and (ii) the amount of Annual Assessments which shall be payable by each Lot or Dwelling. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Property for the then applicable year and each Owner shall, subject to the provisions of Section 8.10 below, pay his or her prorata share of the same as provided in Section 8.02 above. As used herein, the term "Annual Assessments" with respect to each Lot or Dwelling shall mean the prorata portion of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of Section 8.02 above and this Section 8.03. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(c) The Common Expenses to be funded by the Annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, street lighting, trash collection and security services;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors' and officers' liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association (including members of the ARC);

(v) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(vii) The expenses of the ARC which are not paid in full by plan review charges;

(viii) The costs and expenses of installing, maintaining, repairing, purchasing, replacing and operating seasonal and holiday decorations and lighting for any of the Property;

(ix) The costs and expenses for conducting, promoting and advertising recreational, social, cultural or other related programs, as well as street fairs, festival and other events for the benefit of the Owners and Occupants as well as the general public;

(x) All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole and absolute discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

(xi) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board and (4) for the payment of future Common Expenses.

8.04 **SPECIAL ASSESSMENTS.** In addition to the Annual Assessments authorized in Section 8.03 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below) must be approved by a majority vote of those members of the Association (*i.e.*, Owners) who are "in good

standing", as defined in the Bylaws, and who are voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 8.04 or Sections 9.01(b) and 9.03(a)(i) below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

8.05 INDIVIDUAL ASSESSMENTS. The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot or Dwelling: (a) fines against an Owner and such Owner's Lot or Dwelling in accordance with the terms and provisions of this Declaration, (b) any costs or expenses, including, without limitation, collection costs, professional engineering and architectural fees and expenses, attorneys' fees and expenses, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors, to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association pursuant to Sections 5.12, 6.16, 7.02(b), 8.07, 11.01, 11.02 or 11.03 hereof, (c) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board, and (d) any costs, charges or other amounts payable by any Owner for any special services which the Association and such Owner may have contracted for which have been or will be provided to such Owner by the Association. The Individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner (or, as provided in Section 8.10 below, to any Sub-Association in which such Owner is a member), which due date shall be no later than 30 days from the date of such notice or billing invoice for such Individual Assessment.

8.06 DATE OF COMMENCEMENT OF ASSESSMENTS. Assessments shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board, subject to proration for the remainder of the then calendar year in which such Lot or Dwelling was conveyed to a person other than Developer or any Affiliate thereof. Notwithstanding anything provided herein to the contrary, Developer shall have the option, in its sole discretion, to either pay Annual Assessments on Lots or Dwellings owned by Developer or fund the actual cash deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses (exclusive of funding of reserves) in any particular year; provided, however, that Developer shall have no obligations to fund any reserves established from time to time by the Association or the Board. To the extent Developer elects to fund the actual cash deficits, then such funding may occur at any time during a calendar year (which may be at the end of any calendar year), as determined by Developer, in its sole and absolute discretion. At such time as Developer no longer has any interest in any Lot or Dwelling, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

8.07 EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION.

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. The Association shall provide written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by

such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). Any Individual Assessments levied or assessed against any Owner shall be separately assessed by a written notice or billing invoice sent directly by the Association to such Owner and such Individual Assessment shall be due and payable no later than 30 days from the date of such notice or billing invoice. In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of such Lot or Dwelling shall be deemed in default hereunder and (ii) a late fee in the amount of \$25.00 (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot or Dwelling. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late fee charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days following the due date for the payment of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the then applicable late fee charge and interest at the Applicable Rate, together with attorneys' fees and expenses, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Sections 8.01, 8.07(c) and 8.10 hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late fees or charges, interest at the Applicable Rate and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address, if any, of the Lot or Dwelling upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees and expenses incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

(d) In addition to the other rights and remedies provided herein, in the event any Owner fails to pay any Assessments within 30 days from the statement billing date for such Assessments, then the Association shall have the right to suspend the privileges of such Owner, his or her Occupants, family members, guests and invitees from using any of the Recreational Facilities, if any.

8.08 SUBORDINATION OF LIEN. Notwithstanding anything provided herein to the contrary, but subject to the remaining terms and provisions of this Section 8.08, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling at a foreclosure sale, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) be liable for not more than six (6) months of Annual Assessments which may be past due and owing at the time of the foreclosure of such Mortgage, (b) subject to the provisions of item (a) above, not be liable for any unpaid Assessments other than as provided in item (a) above, or any other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above, and (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by Mortgagee on such Owner's Lot or Dwelling.

8.09 **CERTIFICATES.** The Association (or any officer or authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

8.10 **ASSESSMENTS WITH REGARD TO MULTI-FAMILY DWELLINGS.**

(a) To the extent any Multi-Family Building is subject to a Sub-Declaration which also has a Sub-Association, then the Association may elect to directly bill the Sub-Association for Annual Assessments and Special Assessments and, as provided in Section 8.10(b) below, Individual Assessments, payable by the Owners of all Multi-Family Dwellings within such Multi-Family Building and such Sub-Association shall be obligated to collect from the Owners of all Multi-Family Dwellings which are subject to the Sub-Declaration under which such Sub-Association was formed all such Assessments and promptly remit the same to the Association in accordance with the billing requirements of the Association.

(b) To the extent the Association levies an Individual Assessment against all of the Multi-Family Dwellings situated on one (1) Lot as a result of (i) a violation by the Sub-Association of any of the terms and provisions of this Declaration, (ii) any fees, charges and other costs incident to the use of the Common Areas for which a charge for the use thereof has been established by the Board which is applicable to all Multi-Family Dwellings in the Multi-Family Building for which such Sub-Association has been created or (iii) any special services being rendered by the Association to the Sub-Association or to all Owners who are members of such Sub-Association, then, in any such event, (1) the Sub-Association shall be obligated to pay such Individual Assessments for all Owners of Multi-Family Dwellings subject to the Sub-Declaration for which such Sub-Association was created and (2) each Owner of each Multi-Family Dwelling in the Multi-Family Building for which such Sub-Association has been created will be subject to an Individual Assessment and a lien, as provided in Section 8.10(c) below, for such Individual Assessment.

(c) The Association is hereby granted a continuing lien, with power of sale, upon each Multi-Family Dwelling which is subject to an Individual Assessment as provided in Section 8.10(b) above, which lien secures the payment of all such Individual Assessments payable by the Sub-Association to the Association. To the extent any such lien is levied upon any of the Multi-Family Dwellings, then upon the payment of the prorata amount of such Individual Assessment by the Owner of any Multi-Family Dwelling, the Association shall release its lien as to the Multi-Family Dwelling paying such Individual Assessment. The prorata share of the Individual Assessment payable by the Owner of each Multi-Family Dwelling subject to such Individual Assessment shall equal a fraction, the numerator of which is the number of Multi-Family Dwellings in the applicable Multi-Family Building owned by each such Owner and the denominator of which is the total number of Multi-Family Dwellings within the applicable Multi-Family Building which is subject to such Individual Assessment.

(d) Each Sub-Association shall be obligated to assist the Association in collecting all Assessments levied and assessed by the Association against all Multi-Family Dwellings for which such Sub-Association has been formed. In the event the Association adopts billings procedures for direct billing of Assessments to a Sub-Association as set forth in Section 8.10(a) above, then the failure of any Sub-Association to timely pay all Assessments to the Association shall constitute a default by such Sub-Association and the Association shall have the right to exercise all of the rights and remedies set forth in Sections 8.10(b) and 8.10(c) above with respect to such defaulting Sub-Association.

8.11 TRANSFER FEES.

(a) Subject to the terms and provisions of this Section 8.11(c) below, at the closing of the transfer of title of each Lot by Developer to the first Owner of such Lot, such first Owner shall contribute and pay to the Association a transfer fee equal to the greater of (i) \$500.00 per Lot or (ii) two (2) months of the Annual Assessments then payable by such Lot for the then current calendar year. Such contribution shall be paid directly to the Association and may be utilized by the Association for the payment of any costs and expenses and shall **not** be considered to be a prepayment of any Annual Assessments.

(b) Subject to the terms and provisions of Section 8.11(c) below, at the closing of each subsequent conveyance (or resale) of any Lot by any Owner, including any conveyance by the first Owner to a third party purchaser, each such third party purchaser of any Lot shall also be required to contribute and pay to the Association a transfer fee equal to the greater of (i) \$500.00 per Lot or (ii) two (2) months of the Annual Assessments then payable by such Lot for the then current calendar year. Such contribution may be utilized by the Association for the payment of any costs and expenses of the Association and shall **not** be considered a prepayment of any Annual Assessments.

(c) Notwithstanding anything provided in this Declaration to the contrary, the transfer fees specified in Sections 8.11(a) and 8.11(b) above shall not (i) be applicable to or payable by (i) the Association, to the extent the Association purchases a Lot in any foreclosure proceeding pursuant to the provisions of Section 8.07 above or (ii) be payable by Developer or any Affiliates thereof in connection with the transfer and conveyance of any Lots by Developer or any of its Affiliates to Developer or any of its Affiliates.

8.12 EXEMPTIONS FROM ASSESSMENTS.

(a) Notwithstanding anything provided in this Declaration to the contrary, the following portions of the Property shall be exempt from the payment of Annual Assessments and Special Assessments:

(i) Any and all Common Areas and any other real property owned by Developer which is considered by Developer to be Common Areas;

(ii) Any portion of the Property which is owned by any Government Authority or public utility company; and

(iii) Any other portions of the Property (and any Lots or Dwellings thereon) which Developer or the Board may from time to time designate as being exempt from the payment of Annual Assessments and Special Assessments.

Developer may also grant to any Lots or Dwellings partial exemptions with respect to the payment of Annual Assessments and Special Assessments.

(b) To the extent any portion of the Property is exempt, in whole or part, from Annual Assessments and Special Assessments, then such portion of the Property so exempt shall, except as provided below, not be entitled to any voting rights in the Association. Notwithstanding the foregoing provisions of this Section 8.12(b) to the contrary, Developer shall have the voting rights attributable to any Lots or Dwellings owned by Developer irrespective of the same being exempt from Annual Assessments and Special Assessments.

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

9.01 DAMAGE OR DESTRUCTION TO COMMON AREAS.

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything to the contrary provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may (but without any obligation to do so) levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner equally as provided in Section 8.02 above. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

(c) Notwithstanding anything provided in this Article IX to the contrary, if, following any fire or other casualty which damages or destroys any of the Common Areas, the Board determines that is not economically feasible to repair, restore or replace any Common Areas or that the repair, restoration or replacement of such Common Areas is not essential for the benefit of the Owners, then the Board may elect not to repair such Common Areas in which event the insurance proceeds, if any, paid with respect to such fire or other casualty shall be retained by the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 DAMAGE OR DESTRUCTION TO LOTS OR DWELLINGS. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

9.03 CONDEMNATION OF COMMON AREAS.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (1) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (2) levied against each Owner equally as provided in Section 8.02 above; and

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Property cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot or Dwelling which is subject to any such taking and the Board may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

9.04 CONDEMNATION OF LOTS OR DWELLINGS. In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

9.05 INSURANCE.

(a) The Board shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Board may from time to time deem appropriate for the benefit of the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Board in its sole and absolute discretion.

(b) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his or her Lot, Dwelling and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot or Dwelling, does hereby waive and release the Association, the ARC, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Association, the ARC, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

ARTICLE X

TERM AND AMENDMENTS

10.01 TERM. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by at least eighty percent (80%) of those Owners "in good standing", as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws, agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 AMENDMENTS PRIOR TO TURNOVER DATE. Until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee; provided, however, that in the event any amendment proposed by Developer materially and adversely alters or changes the rights of any Owner to the use of his or her Lot or Dwelling, as determined solely by Developer, in its reasonable discretion, then such amendment shall be valid only upon the written consent or ballot vote of both (a) Developer and (b) at least sixty-seven percent (67%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are "in good standing" and are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Notwithstanding anything provided to the contrary in this Section 10.02, each Owner, by acceptance of a deed to any Lot or Dwelling, and each

Mortgagee, by acceptance of a Mortgage encumbering any Lot or Dwelling, acknowledges and agrees that (i) any amendments to this Declaration made by Developer pursuant to Sections 2.02, 2.03 and 2.07 above and (ii) any amendments to this Declaration to reflect the resubdivision of any Lots or Dwellings pursuant to Sections 2.05, 2.06 and 6.12 above, shall not and do not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of his or her Lot or Dwelling and shall not require the consent or approval of any Owner or Mortgagee. Any amendments to this Declaration made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.02. Except as specifically provided in Section 10.04 below and in this Section 10.02 (with respect to any amendments proposed by Developer which materially and adversely alter or change the rights of an Owner to the use of his or her Lot or Dwelling), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

10.03 AMENDMENTS AFTER TURNOVER DATE. After the occurrence of the Turnover Date, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of at least sixty-seven percent (67%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are "in good standing", as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

10.04 RESTRICTIONS ON AMENDMENT. Notwithstanding anything provided herein to the contrary, none of the terms and provisions of Articles II and III hereof may be amended or modified in any respect without the prior written consent and approval of Developer.

ARTICLE XI

DENIAL OF USE PRIVILEGES AND REPURCHASE OPTION

11.01 AUTHORITY AND ENFORCEMENT. In addition to the other rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the Rules and Regulations, then the Board shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment, (b) suspend an Owner's right, if any, to vote in the Association and (c) suspend or terminate an Owner's or Occupant's privilege (and the privilege of such Owner's or Occupant's family members, guests and tenants) to use all or any of the Common Areas. Any action to be taken by the Board pursuant to this Section 11.01 shall be subject to the satisfaction of the terms and provisions of Section 11.02 below.

11.02 PROCEDURE.

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any Rules and Regulations are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board

shall not impose a fine, suspend voting rights or infringe upon or suspend or terminate any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Section 11.02(b) below and providing such Owner the opportunity to appear before and be heard by the Board.

(b) Any notices required by Section 11.02(a) above shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation;

(iii) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions; and

(iv) The date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear before the Board and be heard.

(c) The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

11.03 REPURCHASE OPTION.

(a) In the event (i) any Owner desires to sell, transfer, convey or exchange his or her Lot to (or with) any third party (a "Third Person") prior to the completion of a Dwelling thereon or (ii) any Owner fails to commence construction or complete construction of a Dwelling on such Owner's Lot within the time periods set forth in Section 11.03(b) below then, in either such event, Developer does hereby reserve the right, at its option (but without any obligation), to either (1) repurchase such Lot (the "Repurchase Option") in accordance with the terms and provisions of Section 11.03(c) below or (2) elect to participate in any sales proceeds received by such Owner from the transfer, sale or conveyance of such Owner's Lot in accordance with the terms and provisions of Section 11.03(d) below.

(b) Unless otherwise agreed to in writing by the Developer, each Owner shall:

(i) Within ten (10) months from the date on which such Owner purchases a Lot from Developer submit to the ARC the plans and specifications required by the terms and provisions of Section 5.05(b) above;

(ii) Within twelve (12) months from the date on which such Owner purchases a Lot from Developer, commence construction of a Dwelling on such Lot in accordance with the plans and specifications therefore which have been approved by the ARC;

(iii) Following commencement of construction, each Owner agrees to diligently pursue such construction to completion; and

(iv) On or before twelve (12) months following the date on which the ARC has approved the plans and specifications for such Dwelling, substantially complete construction of such Dwelling, including all landscaping, in accordance with the plans and specifications for the same which have been approved by the ARC.

As used herein, the term "commence construction" shall mean the commencement by such Owner of construction of a Dwelling on such Lot by substantially clearing, grading and excavating such Lot and otherwise commencing to make other improvements to such Lot such as, but not limited to, pouring of footings and foundations (or a concrete slab) and commencement of framing work. If, at any time after an Owner has commenced construction, such Owner fails to make significant construction progress during any 30-day period, such failure shall be considered to be a failure to diligently pursue construction as required by the terms and provisions of Section 11.03(b)(iii) hereof. A Dwelling shall be deemed to have been substantially completed upon the issuance of a final certificate of occupancy for such Dwelling by the City and the completion of all landscaping work for such Lot in accordance with landscaping plans approved by the ARC ("Substantial Completion"). Notwithstanding anything provided in this Section 11.03(b) to the contrary, all of the time periods specified in this Section 11.03(b) shall be extended for casualty, extreme material shortages, inclement weather conditions which are not normal or customary for the time of year during which construction of such Dwelling is being undertaken and any other significant matters beyond the reasonable control of an Owner (or his or her builder); provided, however, that no extension shall be granted as a result of any inability to obtain financing or funding for the construction of such Dwelling.

(c) In the event any Owner fails to commence, diligently pursue or complete construction of a Dwelling on his or her Lot in accordance with the requirements of Section 11.03(b) above, then Developer shall have the right, at any time after the expiration of any of the time periods set forth in Section 11.03(b) above, to provide written notice to such Owner exercising the Repurchase Option in accordance with the remaining terms and provisions of this Section 11.03(c). The consummation of the Repurchase Option by Developer shall occur no later than thirty (30) days after Developer has given written notice to such Owner of Developer's election to exercise the Repurchase Option. At the closing of the purchase and sale of any Lot which is being repurchased by Developer by virtue of the terms and provisions of this Section 11.03, the Owner of such Lot subject to such Repurchase Option shall transfer and convey the Lot subject to such Repurchase Option to Developer by statutory warranty deed, free and clear of all liens, encumbrances and any other matters of title other than those matters of record in existence as of the date on which such Lot was originally conveyed by Developer to the first Owner of such Lot. Such Owner shall, at his or her sole cost and expense, be obligated to pay all sums and otherwise take all action necessary or required to remove any and all liens, encumbrances and other title matters and exceptions encumbering such Owner's Lot other than any such liens, encumbrances and other title matters and exceptions in existence as of the date on which Developer conveyed such Lot to the first Owner of such Lot. Contemporaneously with the delivery of the deed by such Owner to Developer, Developer shall pay to such Owner the lesser of (i) the purchase price which such Owner has accepted to sell such Owner's Lot to a Third Person or (ii) the Original Purchase Price, as defined in Section 11.03(d) below, paid by such Owner to Developer (or if such Owner has acquired his or her Lot from a previous Owner other than Developer, then Developer shall pay to such current Owner the Original Purchase Price paid to Developer by the first or original Owner of such Lot), in each case, without interest thereon. To the extent any such Owner has entered into a contract or agreement to sell such Owner's Lot to a Third Person, then such Owner shall deliver a fully executed copy of such contract or agreement to Developer. The Owner of such Lot subject to the Repurchase Option shall pay, prior to delivery of the deed to the Developer, any and all outstanding Assessments and any other charges due and owing under this Declaration. Real estate ad valorem taxes and any prepaid Assessments shall be prorated as of the date of delivery of such deed.

(d) In the event the Owner of any Lot desires to sell, transfer or convey his or her Lot to any Third Person prior to Substantial Completion, as defined in Section 11.03(a) above, of a Dwelling thereon, then Developer shall have the right, at its option, to either (i) exercise the Repurchase Option and repurchase the Lot in accordance with the terms and provisions of Section 11.03(a) above or (ii) elect, in writing, to waive its Repurchase Option, in which event Developer shall be entitled to receive twenty-five percent (25%) of the Net Profit, as herein defined, received by such Owner from the resale of such Lot to such Third Person, which amount will be due and payable in full upon the transfer and sale of any Lot by such Owner to any Third Person, which obligation shall be a personal obligation of the Seller of such Lot (the "Sales Participation Option"). As used in this Section 11.03(d), the following terms shall have the following meanings:

(1) "Gross Resale Price" means the total amount paid to such Owner by a Third Person in connection with the resale of such Owner's Lot, including compensation in any form paid to such Owner regardless of whether the same is reflected in the Gross Resale Price for such Lot, but without deduction for any costs of sale, prorations or other deductions from the Gross Resale Price received by such Owner in any such resale;

(2) "Net Profit" means the Gross Resale Price, as herein defined, for such Lot, less the Original Purchase Price, as herein defined, for such Lot; and

(3) "Original Purchase Price" means the gross amount originally paid to Developer by the first Owner of such Lot (increased by the actual costs or fair market value, whichever is less, of any Improvements made by the then current Owner to such Lot in accordance with plans approved by the ARC) but without deduction for any costs of sale, prorations or other adjustments to the Original Purchase Price paid to Developer by the first Owner of such Lot.

(e) The Repurchase Option and the Sales Participation Option of Developer set forth herein shall be binding on the first Owner of each Lot and all of the heirs, executors, successors and assigns of such Owner and may be enforced by Developer by an action for specific performance. In the event any Owner fails to timely and promptly perform all of such Owner's obligations set forth in this Section 11.03 with respect to the exercise by Developer of the Repurchase Option or the Sales Participation Option, such Owner shall also pay to Developer any and all costs and expenses incurred by Developer in enforcing the terms and provisions of this Section 11.03 including, without limitation, reasonable attorneys' fees and expenses and court costs. The Repurchase Option and the Sales Participation Option shall be and are covenants running with the land which shall be binding on the Owner of each Lot and such Owner's heirs, executors, successors and assigns.

11.04 NON-EXCLUSIVE REMEDIES. Notwithstanding anything provided to the contrary in this Declaration, rights and remedies granted to Developer, the ARC and the Association pursuant to the terms and provisions of this Declaration upon the occurrence of any default by any Owner or the failure of any Owner to timely and completely perform all obligations required to be performed hereunder by any Owner are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which Developer, the ARC or the Association would have the right to exercise at law or in equity.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.01 CONTROL BY DEVELOPER. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT OTHERWISE PROVIDED TO THE CONTRARY IN SECTION 10.02 ABOVE).

12.02 LEGAL EXPENSES. In addition to all of the other rights and remedies set forth in this Declaration, in the event Developer, the Board, the Association, the ARC or any of their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The Association and its agents and representatives, including the ARC, and the Board are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure any such violation or breach by any Owner.

12.03 SEVERABILITY. If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

12.04 CAPTIONS AND HEADINGS. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

12.05 PRONOUNS AND PLURALS. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

12.06 BINDING EFFECT. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns and shall inure to the benefit of Developer, the Association, the ARC, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

12.07 CONFLICT OR AMBIGUITY. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity

or inconsistency between the *Code of Alabama*, any Governmental Requirements, this Declaration, the Articles of Incorporation, the Bylaws or any Rules and Regulations adopted from time to time by the Association, then, subject to the provisions of Section 12.09 below, the provisions of the *Code of Alabama*, any Governmental Requirements, this Declaration, the Articles of Incorporation, the Bylaws and any Rules and Regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency.

12.08 **NO REVERTER.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer; provided, however, that nothing herein shall be deemed to alter or affect the Repurchase Option and the rights of Developer created in Section 11.03 above.

12.09 **INTERPRETATION.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

12.10 **RIGHTS OF THIRD PARTIES.** This Declaration shall be recorded for the benefit of Developer, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

12.11 **NO TRESPASS.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

12.12 **NO PARTITION.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

12.13 **STANDARDS FOR REVIEW.** Whenever in this Declaration the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of the ARC or the Association, as the case may be.

12.14 **ORAL STATEMENTS.** Oral statements or representations by Developer, the Association, the ARC, or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the Association or the ARC.

12.15 **NOTICES.** Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot or Dwelling of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot or Dwelling shall have been designated

in writing, then all notices and demands shall be mailed or delivered to the Lot or Dwelling of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Association that all notices be submitted to such Owner by facsimile transmission or through the Internet utilizing a specific electronic mailbox for that particular Owner. All notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Association (or if no address has been furnished, then to the Lot or Dwelling of such Owner), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the Dwelling, if any, situated on an Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of such Lot or Dwelling, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such facsimile notice or (d) sent by Internet to an electronic mailbox address provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Association. All notices to the Association (or to the ARC) shall be delivered or sent to the following address:

The Colony at The Grand Owners' Association, Inc.
c/o Daniel Corporation
3660 Grandview Parkway
Suite 100
Birmingham, Alabama 35243
Attention: Sheila D. Ellis

or to such other address as the Association (or the ARC) may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other address as Developer may notify the Association.

12.16 **ASSIGNMENT**. Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity that shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

12.17 **FURTHER ASSURANCES**. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

12.18 **NO WAIVER**. All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure by Developer, the ARC or the Association at any time to enforce

any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.19 **PERPETUITIES.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

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IN WITNESS WHEREOF, Developer, Bayview II and the Association have caused this Declaration to be duly executed as of the day and year first above written.

POINT CLEAR PARTNERS, LLC, a Delaware limited liability company

By: Daniel Management Corporation, an Alabama corporation, Its Manager

By: 
Its: Sr. Vice President

BAYVIEW II DEVELOPER, LLC, an Alabama limited liability company

By: Daniel Management Corporation, an Alabama corporation, Its Manager

By: 
Its: Sr. Vice President

THE COLONY AT THE GRAND OWNERS' ASSOCIATION, INC., an Alabama nonprofit corporation

By: 
Its: President

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that John D. Gunderson whose name as Sr. Vice President of DANIEL MANAGEMENT CORPORATION, an Alabama corporation, as Manager of POINT CLEAR PARTNERS, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this the 6th day of June, 2012.

Nancy R. Echols
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 3-27-13

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that John D. Gunderson whose name as Sr. Vice President of DANIEL MANAGEMENT CORPORATION, an Alabama corporation, as Manager of BAYVIEW II DEVELOPER, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this the 6th day of June, 2012.

Nancy R. Echols
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 3-27-13

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that John D. Gunderson whose name as President of THE COLONY AT THE GRAND OWNERS' ASSOCIATION, INC., an Alabama nonprofit corporation, 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.

Given under my hand and official seal this the 6th day of June, 2012.

Nancy R. Echols
Notary Public
My Commission Expires: 3-27-13

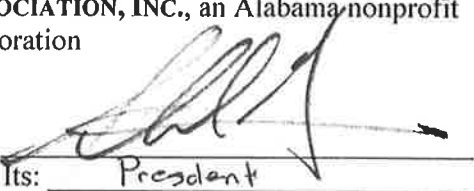
[NOTARIAL SEAL]

CONSENT OF ASSOCIATION

The undersigned, The Colony at The Grand Owners' Association, Inc., an Alabama nonprofit corporation, has joined in the execution of this Declaration in order to (a) consent to and agree to be bound by all of the terms and provisions of this Declaration and (b) subject the Association Property to the terms and provisions of this Declaration, including, specifically, consenting to the Association Property being part of the Common Areas.

Dated as of the 6th day of June, 2012.

**THE COLONY AT THE GRAND OWNERS'
ASSOCIATION, INC.**, an Alabama nonprofit
corporation

By: 

Its: _____

President

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John D. Gunderson, whose name as President of The Colony at The Grand Owners' Association, Inc., an Alabama nonprofit corporation, 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.

Given under my hand and official seal this 6th day of June, 2012.

Nancy R. Echols

Notary Public

[NOTARIAL SEAL]

My commission expires: 3-27-13

EXHIBIT A

Legal Description of Property

Parcel 1: Legal Description of Bayview II Property

All of Bayview II's right, title and interest in all condominium units (and the Allocated Interest attributable to the same) owned by Bayview II in the Bayview II Condominium Building which is situated on the following described real property:

The Bayview II Condominium Building is situated on the following described real property:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA; THENCE RUN N-89°50'14"-W, 669.89 FEET TO A POINT; THENCE RUN N-00°07'46"-W, 20.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF OLD BATTLES ROAD (A.K.A. BALDWIN COUNTY ROAD NUMBER 34); THENCE RUN N-00°08'20"-W, LEAVING SAID NORTH RIGHT-OF-WAY OF OLD BATTLES ROAD, 1131.22 FEET TO A POINT; THENCE RUN N-90°00'00"-W, 431.34 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTHWESTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 870.00 FEET; A DELTA ANGLE OF 17°49'55", A CHORD OF WHICH BEARS S-04°43'35"-W, 269.68 FEET, AN ARC DISTANCE OF 270.77 FEET TO A POINT; THENCE RUN S-13°38'32"-W, 239.25 FEET TO A POINT; THENCE RUN N-62°50'58"-W, 339.67 FEET TO A POINT; THENCE RUN N-06°06'48"-E, 375.00 FEET TO A POINT; THENCE RUN S-85°32'18"-E, 341.99 FEET TO THE POINT OF BEGINNING; CONTAINING 3.51 ACRES, MORE OR LESS.

Parcel 2: Legal Description of Association Property

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA; THENCE RUN N-89°50'14"-W, 669.89 FEET TO A POINT; THENCE RUN N-00°07'46"-W, 20.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF OLD BATTLES ROAD (A.K.A. BALDWIN COUNTY ROAD NUMBER 34); THENCE RUN N-89°50'50"-W ALONG SAID NORTH RIGHT-OF-WAY OF OLD BATTLES ROAD (A.K.A. BALDWIN COUNTY ROAD NUMBER 34), 861.94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N-89°50'50"-W ALONG SAID NORTH RIGHT-OF-WAY OF OLD BATTLES ROAD (A.K.A. BALDWIN COUNTY ROAD NUMBER 34), 167.94 FEET TO A POINT; THENCE RUN N-00°09'10"-E, LEAVING SAID NORTH RIGHT-OF-WAY OF OLD BATTLES ROAD (A.K.A. BALDWIN COUNTY ROAD NUMBER 34), 22.50 FEET TO A POINT; THENCE RUN NORTHEASTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 30.50 FEET, A DELTA ANGLE OF 81°56'59", A CHORD OF WHICH BEARS N-49°10'41"-E, 40.00 FEET, AN ARC DISTANCE OF 43.62 FEET TO A POINT; THENCE RUN NORTHEASTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET, A DELTA ANGLE OF 10°03'25", A CHORD OF WHICH BEARS N-12°31'00"-E, 52.65 FEET, AN ARC DISTANCE OF 52.70 FEET TO A POINT; THENCE RUN NORTHEASTERLY ALONG A

NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, A DELTA ANGLE OF $50^{\circ}22'01''$, A CHORD OF WHICH BEARS $N-42^{\circ}00'50''-E$, 255.31 FEET, AN ARC DISTANCE OF 263.72 FEET TO A POINT; THENCE RUN $N-67^{\circ}11'50''-E$, 79.25 FEET TO A POINT; THENCE RUN $N-64^{\circ}54'24''-E$, 66.06 FEET TO A POINT; THENCE RUN NORTHEASTERLY ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 270.00 FEET, A DELTA ANGLE OF $51^{\circ}15'51''$, A CHORD OF WHICH BEARS $N-39^{\circ}16'28''-E$, 233.60 FEET, AN ARC DISTANCE OF 241.58 FEET TO A POINT; THENCE RUN $N-13^{\circ}38'12''-E$, 340.00 FEET TO A POINT; THENCE RUN NORTHEASTERLY ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 870.00 FEET, A DELTA ANGLE OF $21^{\circ}28'50''$, A CHORD OF WHICH BEARS $N-02^{\circ}54'07''-E$, 324.26 FEET, AN ARC DISTANCE OF 326.17 FEET TO A POINT; THENCE RUN $N-07^{\circ}50'18''-W$, 299.54 FEET TO A POINT; THENCE RUN $N-82^{\circ}09'42''-E$, 60.00 FEET TO A POINT; THENCE RUN $S-07^{\circ}50'18''-E$, 299.54 FEET TO A POINT; THENCE RUN SOUTHWESTERLY ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 930.00 FEET, A DELTA ANGLE OF $17^{\circ}49'55''$, A CHORD OF WHICH BEARS $S-04^{\circ}43'35''-W$, 288.27 FEET, AN ARC DISTANCE OF 289.44 FEET TO A POINT; THENCE RUN $S-13^{\circ}38'32''-W$, 340.00 FEET TO A POINT; THENCE RUN SOUTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 330.00 FEET, A DELTA ANGLE OF $51^{\circ}15'51''$, A CHORD OF WHICH BEARS $S-39^{\circ}16'28''-W$, 285.51 FEET, AN ARC DISTANCE OF 295.26 FEET TO A POINT; THENCE RUN $S-64^{\circ}54'24''-W$, 66.06 FEET TO A POINT; THENCE RUN $S-62^{\circ}36'57''-W$, 26.62 FEET TO A POINT; THENCE RUN SOUTHWESTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 292.89 FEET, A DELTA ANGLE OF $49^{\circ}38'57''$, A CHORD OF WHICH BEARS $S-38^{\circ}24'50''-W$, 245.94 FEET, AN ARC DISTANCE OF 253.80 FEET TO A POINT; THENCE RUN SOUTHEASTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 34.50 FEET, A DELTA ANGLE OF $104^{\circ}18'56''$, A CHORD OF WHICH BEARS $S-37^{\circ}41'22''-E$, 54.49 FEET, AN ARC DISTANCE OF 62.81 FEET TO A POINT; THENCE RUN $S-00^{\circ}09'10''-W$, 18.50 FEET TO THE POINT OF BEGINNING; CONTAINING 2.63 ACRES, MORE OR LESS.