

DECLARATION OF PROTECTIVE COVENANTS FOR
COTTAGES ON THE GREENE,
A PLANNED UNIT DEVELOPMENT

TABLE OF CONTENTS

I.	DEFINITIONS
II.	GENERAL APPLICABILITY OF DECLARATION
1.	General Applicability
2.	Annexation of Additional Property
III.	IMPROVEMENTS
1.	Land Use and Building Type
2.	Drainage
IV.	GENERAL USE AND OTHER RESTRICTIONS
1.	Nuisances
2.	Temporary Structures
3.	Signs
4.	Livestock and Poultry
5.	Pets
6.	Garbage and Refuse Disposal
7.	Maintenance of Property
8.	Utilities
9.	Mailboxes and Property Identification Markers
10.	Vehicles
11.	Boat and Boat Trailers
12.	Recreational Vehicles
13.	Clotheslines
14.	Miscellaneous
15.	Subdividing of Property
16.	Rentals
17.	Speed Limit
18.	No Drive Through
19.	Time Limit for Construction of Dwelling
V.	ARCHITECTURAL CONTROL
1.	Membership of the Architectural Review Board
2.	Approval of Architectural and Landscape Plans
3.	Landscape
4.	Architectural Guidelines
5.	Variances
VI.	PROPERTY OWNERS ASSOCIATION
1.	Powers and Duties
2.	Membership
3.	Voting Rights
4.	Governance
5.	Election to the Board of Directors

931273

6. Indemnification
7. Limitation of Liability
8. By-laws
9. Quorum Required for any Action Authorized at Regular or Special Meeting of the Association
10. Proxies
11. Ballots by Mail
12. Proviso
13. Availability of Records
14. Reserves for Replacements

VII. MEMBERS' RIGHTS IN THE COMMON AREAS

1. Members' Easements of Enjoyment in Common Areas
2. Title to Common Areas
3. Extent of Members' Easements

VIII. COVENANTS FOR ASSESSMENTS

1. Creation of the Lien and Personal Obligations for Assessments
2. Purpose of the Assessments and Payment to Declarant
3. Application of "Maximum Assessment"
4. Special Assessment for Improvements and Additions
5. Reserve Funds
6. Date of Commencement of Annual Assessments
7. Duties of the Board of Directors
8. Subordination of the Lien of Mortgage
9. Exempt Property
10. Annual Statements
11. Annual Budget

IX. FUNCTIONS OF ASSOCIATION

1. Ownership and Maintenance of Common Areas
2. Services
3. Reduction of Services
4. Obligations of the Association
5. Mortgage and Pledge
6. Transfer of Authority
7. Waiver

X. AMENDMENT

1. Plans
2. Declaration

XI. MISCELLANEOUS

1. Covenants, Conditions and Restrictions
2. Severability
3. Notice
4. Governing Law and Arbitration
5. Waiver
6. Ratification
7. Captions
8. Enforcement

9. Costs and Attorney's Fees
10. Conflicting Provisions

EXHIBIT "A"

Architectural Guidelines

**DECLARATION OF PROTECTIVE COVENANTS FOR
COTTAGES ON THE GREENE,
A PLANNED UNIT DEVELOPMENT**

THIS DECLARATION OF PROTECTIVE COVENANTS, made and published this 21st day of October, 2005, by GULF ISLAND DEVELOPMENT, LLC, a Florida limited liability company, having a registered office in Gulf Shores, Alabama ("Declarant").

WITNESSETH:

THAT, WHEREAS, the said Declarant is the owner of COTTAGES ON THE GREENE, a planned unit development, located in Foley, Baldwin County, Alabama, as shown on the plat thereof recorded in the records of the Judge of Probate of Baldwin County, Alabama, at Instrument Number 931163.

WHEREAS, it is for the interest, benefit and advantage of the Declarant and the future owner(s) of each lot hereafter purchased and lying in said planned unit development that certain protective covenants governing and regulating the use and occupancy of the same be established, set forth and declared to be covenants running with the land;

NOW THEREFORE, for and in consideration of the promises and of the benefits to be derived by the Declarant, these protective covenants are hereby established and promulgated and shall apply to all of said lots and to any owners of property located in the Planned Unit Development. These protective covenants shall become effective immediately upon the sale of Lots in the Planned Unit Development by the Declarant and shall run with the land and such Lots and shall be binding on all persons claiming under or through the Declarant.

ARTICLE I

DEFINITIONS

1. "ARCHITECTURAL REVIEW BOARD" or "A.R.B." means that certain committee originally appointed by the Declarant but will be elected by the Members once the Association is turned over to the Members that has the right and authority to approve any and all architectural and landscaping plans prior to any Lot Owner constructing a Dwelling or any other structure on a Lot and further prior to any Lot Owner installing any landscaping on a Lot.

2. "ARTICLES" means the Articles of Incorporation of the Association, recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

3. "ASSESSMENT" means proportionate share (or share derived by formula) of the funds required for the maintenance of the Common Areas which from time to time may be levied against each Lot Owner.

4. "ASSOCIATION" means Cottages on the Greene Owners Association, Inc., an Alabama not for profit corporation, and its successors, which is organized under § 10-3A-1, et seq. Code of Alabama (1975).

5. "BOARD" means the Board of Directors of the Association.

6. "BY-LAWS" means the duly adopted By-Laws of the Association.

7. "COMMON AREAS" means all portions of the Planned Unit Development other than the Lots.

8. "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

9. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.

10. "DECLARATION" means this Declaration of Protective Covenants and any amendments thereto which may be made from time to time.

11. "DEVELOPER" or "DECLARANT" means GULF ISLAND DEVELOPMENT, LLC, and its successors and assigns.

12. "DEVELOPMENT" shall have the same meaning as "Planned Unit Development Property" or "Property."

13. "DEVELOPMENT DOCUMENTS" mean collectively the Declaration, Articles and By-laws.

14. "DWELLING" means any house or residence constructed on a Lot in the Planned Unit Development.

15. "LOT" means any individual parcel of real property that has been created by recording the plat for Cottages on the Greene in the records of the Judge of Probate of Baldwin County, Alabama

16. "LOT OWNER" means any individual who owns a lot in the Planned Unit Development.

17. "MEMBER" means a member of the Association, membership in which is confined to Lot Owners.

18. "PERSON" means a natural person, a corporation, a limited liability company, a partnership, a limited partnership, the Association, a Trustee or other legal entity.

19. "PLANS" mean the design and layout of the Lots, Common Areas and other portions of the Property and shall include the Plat for Cottages on the Greene.

20. "PLANNED UNIT DEVELOPMENT" shall mean Cottages on the Greene and the Lots, Common Areas and other property that comprises Cottages on the Greene.

21. "PROPERTY" means all property, both real, personal or mixed, which comprises the Planned Unit Development and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.

22. "REAL PROPERTY" means the Real Property which has been subdivided by recording the plat for Cottages on the Greene in the records of the Judge of Probate of Baldwin County, Alabama.

23. "UTILITY SERVICES" shall include but not be limited to electrical power, cable, internet, telephone, gas, garbage and sewage disposal.

When the context permits, use of the plural shall include the singular, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

ARTICLE II

GENERAL APPLICABILITY OF DECLARATION

1. GENERAL APPLICABILITY. This Declaration shall apply to all lots, common areas, streets and easements shown upon said plat and shall apply to any future addition to or extension of the Planned Unit Development by proper amendment to this Declaration, if such addition or extension shall be made by the Declarant, its successors and/or assigns. Under no circumstances shall this Declaration be deemed or construed to apply to any other adjacent portions of property which are and shall remain the separate property of the Declarant. The imposition of these restrictions shall in no way be construed as a representation that the Planned Unit Development may be expanded or additional subdivisions or extensions thereto be made. Each of the restrictions, covenants, limitations, conditions, reservations, and easements made and set forth herein shall apply as if this Declaration were set forth in its entirety in each deed from the Declarant to any person, firm or corporation conveying or affecting any of the Lots, areas or streets and by the acceptance of any deed to said property, any purchaser or grantee agrees and binds itself to make all deeds of land in the Planned Unit Development and all contracts of sale or contracts for deeds conveying land in said Planned Unit Development, subject to this Declaration.

2. ANNEXATION OF ADDITIONAL PROPERTY. The Declarant shall have the right to incorporate additional property into the Planned Unit Development by recording a plat of the property to be recorded in the records of the Office of the Judge of Probate of Baldwin County, Alabama and by further recording an amendment to this Declaration providing that such additional property shall be governed by this Declaration, the Articles and the By-laws.

ARTICLE III

IMPROVEMENTS

1. LAND USE AND BUILDING TYPE. Except for a sales office and display models by the Declarant, no lot shall be used except for residential purposes. No residence shall be erected, altered, placed or permitted to remain on any lot other than one (1) single family dwelling and a garage or carport. A Lot Owner shall, however, be allowed to construct an apartment or "bonus room" above the garage.

2. DRAINAGE. The Association, which will be created to maintain the common areas of the Planned Unit Development and to perform such other duties as are set forth herein, in the Articles and in the By-laws, shall be responsible for maintaining the drainage system of the Planned Unit Development pursuant to the ordinances of the City of Foley, as follows:

- a. The Association shall inspect all drainage structures monthly and clean said structures periodically as is necessary to remove all silt and other debris.
- b. The Association shall maintain all swales and detention ponds in the same state as their original construction by repairing and/or replacing sod and/or grass as necessary to maintain all slopes and berms.
- c. The Association shall repair and/or replace all concrete culverts, flumes, swales and/or headwalls as necessary to maintain said structures as originally constructed.
- d. The Association shall be required to perform such other maintenance and/or repair to the drainage systems of the Planned Unit Development as are reasonably necessary for the drainage system to function properly.

ARTICLE IV

GENERAL LAND USE AND OTHER RESTRICTIONS

1. NUISANCES. No noxious or offensive activity shall be carried upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Builders and Contractors shall refrain from playing loud music or using inappropriate language on construction sites.

2. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, shack, garage, barn or other outbuilding shall be used on any Lot at any time either temporarily or permanently, except for those buildings constructed by the Declarant for the use in marketing and selling Lots in the Planned Unit Development or for use in construction of improvements in the Planned Unit Development by the Declarant.

3. SIGNS. No sign of any kind shall be displayed to the public view on any Lot, except a professional sign designed by the Architectural Review Board advertising the Lot for sale. Each Lot Owner shall be allowed to erect one site identification/contractor sign while his/her dwelling is under construction. For sale signs shall be allowed on the front and rear of each Lot. The Declarant shall be exempt from this section.

4. LIVESTOCK AND POULTRY. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot.

5. PETS. Dogs, cats, or other household pets in a reasonable number, may be kept on a Lot provided that they are not kept, bred or maintained for any commercial purposes, nor shall they be bred for non-commercial purposes so as to become a nuisance. No Lot Owner shall allow any pet to roam unattended on the common areas of the Planned Unit Development. All pets are required to be on a leash if outside a dwelling or outside a fenced area on a Lot. Pet owners are required to pick up and remove any pet droppings from the common areas of the Planned Unit Development. No pet owner shall allow his pet to make such noises so as to become a nuisance to neighboring Lot Owners.

6. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish, garbage, trash or other waste. All such waste shall be kept in sanitary, covered containers with locking lids, which shall be maintained in a clean and sanitary condition, and which shall, unless required to be placed elsewhere on certain days for pickup, be kept from public and from the view of any street and adjoining Lots. On garbage pick up days garbage containers may be placed by the street for pick up but shall be removed from the street immediately as soon as the garbage is picked up.

Each builder or contractor performing work on any Lot shall be responsible for maintaining

a clean site. Each builder or contractor shall be required to have a construction debris container on site and shall keep all garbage and debris off the Lot on which construction is being performed and the Property. Each builder or contractor shall further be responsible for toilet facilities for his entire crew. No alcoholic beverages shall be allowed on a construction site.

Each Lot Owner shall be responsible for informing the builder or contractor performing work on his Lot of the rules promulgated herein.

7. MAINTENANCE OF PROPERTY. Each Lot Owner shall keep his or her respective Lots and all improvements thereon in good appearance and repair, free of debris. All lawns shall be mowed. All trees and shrubbery shall be pruned. Lawns shall be kept free of noxious insects, and infectious and spreading weeds, all in a manner consistent with good property management. In the event the Lot Owner shall fail to comply with these provisions, the Association, upon thirty (30) days written notice to the Lot Owner, shall have the right to enter upon said Lot to correct same and shall be entitled to levy a special assessment against the Owner of said Lot to cover the cost thereof.

8. UTILITIES. All utilities shall be placed underground. Each Lot Owner is required to connect to said utilities at his or her expense.

9. MAILBOXES AND PROPERTY IDENTIFICATION MARKERS. Each Lot Owner shall provide, at the Lot Owner's expense, a standardized mailbox and post with appropriate property identification markers, which shall be the only mailbox permitted on the Lot. The Lot Owner shall not place any additional lettering on the mailbox, except as required by the Postal Service. All mailboxes will be of the same design as determined by the Architectural Review Board and shall be in a location on the Lot determined by the Architectural Review Board. A Lot Owner may choose the color of the mailbox from the Architectural Review Board's approved list of colors. All mailbox posts shall be wood, completely painted white and shall be of a design approved by the Architectural Review Board. All mailbox posts must further be set in concrete.

10. VEHICLES. The immobilization of any vehicle for repairing or overhauling at a resident's site or on any street within the Planned Unit Development is hereby prohibited, except for those repairs performed within a Lot Owner's garage.

11. BOAT AND BOAT TRAILERS. Boat trailers or boats may not be stored on a Lot or on the Property except in enclosed garages or in a screened area approved by the Architectural

Review Board.

12. RECREATIONAL VEHICLES. Recreational Vehicles may not be stored or kept on a Lot or on the Property except in enclosed garages or in a screened area approved by the Architectural Review Board.

13. CLOTHESLINES. No clotheslines shall be maintained on any Lot.

14. MISCELLANEOUS. Wood piles, wood storage facilities, storage sheds, dog houses, kennels, or like structure, shall be approved by the Architectural Review Board.

15. SUBDIVIDING OF PROPERTY. No Lot shall be or subdivided and no Lots shall be unified except as approved by the Architectural Review Board.

16. RENTALS. Lot Owners shall only be allowed to rent their dwellings for terms of ninety days or more. Only one rental unit per Lot shall be allowed.

17. SPEED LIMIT. The maximum speed limit in the Development shall be fifteen miles per hour.

18. NO DRIVE THROUGH. There shall be no access created or allowed to adjoining properties from the Development without the Association's approval.

19. TIME LIMIT FOR CONSTRUCTION OF DWELLING. Each Lot Owner must construct a Dwelling on his Lot within two (2) years of the purchase of such Lot, unless the Architectural Review Board approves a longer period of time. If a Lot Owner sells his Lot prior to the expiration of the said two (2) year period, the two (2) year period shall begin to run anew upon the closing on the purchase of such Lot by such subsequent Lot Owner.

ARTICLE V

ARCHITECTURAL CONTROL

1. MEMBERSHIP OF THE ARCHITECTURAL REVIEW BOARD. The initial membership in the Architectural Review Board, hence A.R.B., shall be Jack L. Whitt, Jeannette Whitt, J. Wayne Musgrove and Betty Musgrove. At such time as Jack L. Whitt, Jeannette Whitt, J. Wayne Musgrove and Betty Musgrove, in their sole discretion should elect to relinquish the duties and responsibilities of the A.R.B., then in that event the A.R.B. shall be appointed by, and serve at, the pleasure of the Lot Owners of the Planned Unit Development. A majority of the A.R.B. may designate a representative to act for it. The initial A.R.B. shall serve subject to the power of the

Declarant as hereinafter set forth. The A.R.B. may charge a review fee to offset the expense of making a review, which review fee shall be assessed against the Lot Owner for whom such plans, etc., are reviewed, and may be collected by the Association in the same manner as any other Assessment.

When the A.R.B. is appointed by the Lot Owners, there shall be at least five (5) members of the A.R.B., two (2) of which may not be Members of the Association. Members of the A.R.B. shall be elected by a majority of the Members present in person or by proxy at meeting held for the purpose of election of members of the A.R.B. A member of the A.R.B. may also be a director or officer of the Association. Once elected, any member of the A.R.B. may be removed and a new member elected to his place by a majority vote of the Members present in person or by proxy at any meeting called for that purpose.

2. APPROVAL OF ARCHITECTURAL AND LANDSCAPE PLANS. No building or residence, fences, walls, driveways, parking areas, service courts, satellite dishes, antennas, dog houses, flagpoles or other structures shall be commenced, erected or maintained nor shall any addition to or exterior change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, material, floor plan, structural specifications, exterior color scheme, location, square footage and grading shall have been submitted to and approved by a majority of the members of the A.R.B., or its successors or assigns, and a copy of the plans and building specifications to be lodged permanently with A.R.B. Upon submission of the plans as herein specified, the A.R.B. shall have fourteen (14) days to approve or disapprove any such building plans and specifications, and may in its absolute discretion, reject any or all the plans which are not suitable or desirable for any reason, including purely aesthetic reasons. In approving or passing upon such plans and specifications, the A.R.B. shall have the absolute and discretionary right to take into consideration the stability of the proposed building, the materials from which it is to be constructed, the Lot upon which it is proposed to be erected, the harmony thereof with the surrounding properties as planned and taking into consideration the outlook from the adjacent or neighboring properties. All such building plans and specifications shall consist of not less than section details, floor plans of all floors, elevation drawings of all exterior walls fronting any street, sidewalk or greenspace (park), roof plans and a plot plan showing the location and orientation of the building on the Lot,

with all setbacks and shall also show the location of driveways, service courts, parking and all other proposed construction upon the Lot. At the same time, a preliminary landscape development plan shall be submitted to the A.R.B. for approval concurrently with the building plans. A final landscape plan shall be submitted and approved before planting. The A.R.B. reserves the absolute right to establish and enforce the general development criteria for the approval of construction of a residence on the property which is subject to these restrictions, said right to include general or specific requirements concerning the nature, kind, shape, height, width, materials, color schemes, as well as the architectural and structural requirements thereof.

3. LANDSCAPE. Each Lot Owner is granted a "Landscape Easement" that is located between the front property line of such Lot Owner's Lot and the pathway, which is on the Greene in front of such Lot Owner's home and is depicted on the Plans. Plans for all landscaping shall be provided the A.R.B. for all portions of the Lot, including, without limitation, the landscape easement, which is the Lot Owner's responsibility. Lot Owners shall maintain their landscape in a presentable manner consistent with the established patterns and decor of the Planned Unit Development, preserving where practicable all trees on their respective Lots. All landscaping, including sodding the front and side yards and planting as shown on the landscape plan shall be kept and well maintained thereafter for the duration of this Declaration.

4. ARCHITECTURAL GUIDELINES. The A.R.B. has enacted a set of architectural guidelines, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, that shall govern the construction of any dwelling or other structure in the Planned Unit Development. The Architectural Guidelines may be amended by the A.R.B. by a simple majority vote of the members of the A.R.B. by recording an amendment hereto.

5. VARIANCES. The A.R.B. may issue variances from any architectural guideline or building covenant, except setback requirements. The A.R.B. may issue special exceptions to dwelling size covering the construction or alteration of improvements on the property provided such improvements substantially comply with the provisions hereof and provided the A.R.B. acts in accordance with adopted and published guidelines and procedures.

ARTICLE VI

PROPERTY OWNERS ASSOCIATION

The Declarant has formed Cottages on the Greene Property Owners Association, Inc., an Alabama non-profit corporation.

1. **POWERS AND DUTIES.** The operation and administration of the Common Areas of the Development shall be by the Association, membership in which shall consist of the Lot Owners only. The Association shall be a not for profit Alabama corporation incorporated by Articles of Incorporation recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or nonexercise of its powers. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Lot Owners of the Planned Unit Development with reference to the Common Areas; and with reference to any and all other matters in which all the Lot Owners have a common interest. The Association shall have all the powers and duties set forth in § 10-3A-1, et seq. Code of Alabama (1975), as well as all the powers and duties granted to or imposed on it under the By-Laws, the Articles and this Declaration as they may be amended from time to time. The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other Person or Persons. The Association shall have the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development. The Board shall have the authority and duty to levy and enforce the collection of general and specific Assessments for Common Expenses and is further authorized to provide adequate remedies for failure to pay such Assessments.

2. **MEMBERSHIP.** Each Lot Owner shall be a Member of the Association, so long as he is a Lot Owner. A Lot Owner's membership shall immediately terminate when he ceases to be a Lot Owner. The membership of a Lot Owner cannot be assigned or transferred in any manner except as an appurtenance to his Lot.

3. **VOTING RIGHTS.** The Association shall have one (1) class of regular voting membership. Members shall all be Owners (including the Declarant) of Unimproved Lots and

Improved Lots. Each Member who has presented to the Association satisfactory proof that such Member is an Owner of any such Lot prior to the close of business on the Record Date established in accordance with the Association's By-Laws, shall be entitled to notice of and shall be entitled to one (1) vote for each Unimproved or Improved Lot owned, which vote is not divisible, in all matters in which membership voting is authorized in this Declaration, the Association's By-Laws or any other rules and regulations that shall be binding upon the Association and its Members with respect to Members' voting rights.

Each Member who has provided satisfactory proof of ownership as set forth above prior to the applicable Record Date, so long as such Member is not then delinquent in the payment of assessments, shall be entitled to vote at any meeting of Members, or on any matter requiring a vote of Members, occurring subsequent to the date upon which the Member becomes an Owner, and each such Member shall be entitled to the number of votes calculated above as if each Member had been a Member for a full year and had paid the Regular Annual Assessment for the year in which the vote takes place. Payment of any Special Assessment shall not entitle Members to additional votes.

When any Lot entitling the Owner thereof to membership in the Association has an Owner which is a corporation, trust, partnership, or where two or more person or entities are Owners, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, one officer, trustee, person or entity shall be designated the Voting Member to bind all the others. Written evidence of such designation in a form satisfactory to the Board shall be delivered to the Board prior to the exercise of a vote of such Owners.

4. GOVERNANCE. The Association shall be governed by a Board of Directors, consisting of not fewer than three (3) nor more than five (5) Members. Initially, the Board shall consist of three (3) Members appointed by the Declarant, with the number in subsequent years to be determined by the Members of the Board of Directors as provided in the By-Laws of the Association.

5. ELECTION TO THE BOARD OF DIRECTORS.

- a. The Board of Directors shall be elected by the Members.
- b. In electing Directors of the Association, each Member shall be entitled to cast one (1) vote per Lot owned by such Member for each Director's position to be filled. No cumulative voting is permitted.

6. INDEMNIFICATION. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which such Director or officer may be entitled.

7. LIMITATION OF LIABILITY. Notwithstanding the liability of the Association to maintain and repair parts of the Common Areas, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association, nor for injury or damage caused by the elements, or other Owners or Persons.

8. BY-LAWS. The Association and its Members shall be governed by the By-Laws.

9. QUORUM REQUIRED FOR ANY ACTION AUTHORIZED AT REGULAR OR SPECIAL MEETINGS OF THE ASSOCIATION. The quorum required for any action which is subject to a vote of the Members at a meeting of the Association shall be as follows:

With respect to any particular proposed action, the presence at the meeting of the Association of Members or proxies entitled to cast fifty-one percent (51%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, one or more subsequent meetings may be called, subject to ten (10) days written notice of each such subsequent meeting being provided to all Members. The required quorum at any such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If a quorum is present, a majority of the votes which are properly voted at any meeting shall determine any matter coming before the meeting unless a different vote is required by statute, by this Declaration, by the Articles or the By-Laws. The Members at a meeting at which a quorum is once present may continue

to transact business at the meeting or any adjournment thereof, notwithstanding the withdrawal of enough Members to have less than a quorum. Notwithstanding the foregoing, except with respect to an amendment effected by the Declarant to add property to the Planned Unit Development, no action to amend this Declaration shall be effective unless taken at a meeting at which Members entitled to cast sixty-seven percent (67%) or more of the total vote of the Membership are present, either in person or by proxy.

10. PROXIES. Each Member of the Association entitled to vote may vote in person or by proxy at any meeting of the Association. Each proxy shall be executed in writing by the Member or by his duly authorized attorney-in-fact, shall state the meeting for which such proxy is given and shall be filed with the Secretary of the Association. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date.

11. BALLOTS BY MAIL. When authorized by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for a vote of the Members and a ballot on which each Member may vote for or against the motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in this Declaration. However, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

12. PROVISIO. Subject to the provisions herein, until the Declarant sells each Lot in Phase I of the Planned Unit Development and each Lot in any additional phase that may be added by the Declarant by amendment, the By-Laws and rules adopted by the Declarant shall govern and the Declarant shall have the exclusive right to appoint, remove and designate the officers and members of the Board of Directors, and neither the Lot Owners nor the Association nor the use of the Common Areas by Lot Owners shall interfere with the completion of the contemplated improvements and the sale of the Lots. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board; but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

The Declarant may make such use of the unsold Lots and of the Common Areas and

facilities as may facilitate such completion and sale, including but not limited to showing of the Property and the display of signs. The Declarant may maintain sales offices, management offices, leasing and operations offices, and models on any Lot of the Development or on Common Areas in the Development without restriction as to the number, size or location of said sales offices, management offices, leasing and operations offices and models. The Declarant shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one Lot location to another or from one area of the Common Areas to another area of the Common Areas in the Development. The Declarant may maintain signs on the Common Areas advertising the Development. The rights of the Declarant as provided for in this paragraph shall cease and terminate when the Declarant relinquishes control of the Association.

13. **AVAILABILITY OF RECORDS.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with § 10-3A-43 Code of Alabama (1975). The Association shall make reasonably available in the county where the Planned Unit Development is located for examination by Lot Owners or their authorized agents, current copies of the Declaration, Articles, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

14. **RESERVES FOR REPLACEMENTS.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The fund shall be maintained out of regular Assessments for Common Expenses.

ARTICLE VII

MEMBERS' RIGHTS IN THE COMMON AREAS

1. **MEMBERS' EASEMENTS OF ENJOYMENT IN COMMON AREAS.** Subject to the provision of this Declaration, the rules and regulations of the Association, and any fees or charges established by the Association, every Member and every guest or lessee of such Member shall have an easement of enjoyment in and to the Common Areas in the Planned Unit Development, and such easement shall be appurtenant to and shall pass with the title to every Lot. A Member's or

lessee's spouse and children who reside with such Member or lessee in the Development shall have the same easement of enjoyment hereunder as a Member. The easement of enjoyment herein shall pass from a Member to a lessee during the lease term; provided, however, the Association may adopt additional restrictions to its rules and regulations limiting the easement of enjoyment of guests and lessees, including, but not limited to, the specification of minimum lease terms, the number of guests allowed, or the prohibition or use by lessees or guests as to specific Association properties.

2. TITLE TO COMMON AREAS. The Declarant has or will convey the Common Areas, or any part or parts thereof, including, without limitation, the retention pond area(s) by statutory warranty deed to the Association, subject to all restrictions and limitations of record and to all additional restrictions and covenants set forth in the deed of conveyance. The Association shall be required to accept such conveyance of the Common Areas and shall, after such conveyance, immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Association's Board of Directors subject to this Declaration. The Common Areas shall also be conveyed subject to all easements and restrictive covenants of record at the time of conveyance and the rights that others may have to use certain Common Areas.

3. EXTENT OF MEMBERS' EASEMENTS. The easements of enjoyment created hereby shall be subject to the following:

a. the right of the Association, in accordance with its By-Laws, to place mortgages or other encumbrances on the Common Areas as security for borrowings by the Association;

b. the right of the Association, in accordance with its By-Laws, to take such steps as are reasonably necessary to protect Common Areas against foreclosures;

c. the right of the Association, in accordance with its By-Laws, to suspend the voting rights and easements of enjoyment of any Member lessee or guest of any Member for any period during which the payment of any assessment against the property owned by such Member is delinquent, and for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Members' obligation to pay such

assessment, and provided that the Association shall not suspend the right to use any roadways belonging to the Association although such use shall be subject to the rules and regulations established by the Association for such use;

d. the right of the Association, in accordance with its By-Laws and subject to the general covenants, to place any reasonable restrictions upon the use of the roadways shown on the Plat as being within the Development, subject to a Lot Owner's or lessee's right of ingress and egress, including, but not limited to the types and sizes of the vehicles permitted to use said roadways, the maximum and minimum speeds of vehicles using said roadways, all other necessary traffic and parking regulations, and the maximum noise level of vehicles using said roadway. The fact such restrictions on the use of the roadways shall be more restrictive than the laws of a state or local government shall not make such restrictions unreasonable;

e. the right of the Association, in accordance with its By-Laws, to adopt and publish rules and regulations governing the use of the Common Areas, and the conduct of Members, their lessees or guests, and to establish penalties for the infraction of such rules and regulations;

f. the right of the Declarant, or the Association in accordance with its By-Laws, to dedicate or transfer to any public or private utility company, utility or drainage easements on, over or under any part of the Common Areas;

g. the right of the Association, in accordance with its By-Laws, to give or sell all or any part of the Common Areas, for the purposes of the common good of the Planned Unit Development, including a leasehold interest, to any public agency, public authority, public service district, utility company or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift of sale or determination as to the purposes or as to the conditions thereof shall be effective unless such gift, sale or determination as to the purposes or as to the conditions shall be authorized by the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the votes cast at a duly constituted meeting of the Association. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President, and Secretary or Assistant Secretary of the Association, and such certificate shall be annexed to any instrument or dedication or transfer affecting the Common Areas prior to the recording thereof. Such certificates shall be conclusive evidence of Authorization by the

Members;

h. restrictions and limitations affecting later phases, if any, as set forth in this Declaration as it may be later amended by the Declarant; and

i. the rights that others may have to use Common Areas.

ARTICLE VIII

COVENANTS FOR ASSESSMENTS

1. CREATION OF THE LIEN AND PERSONAL OBLIGATIONS FOR ASSESSMENTS. Each Lot Owner, except the Declarant, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Declarant or the Association as provided below the following: (1) annual assessments or charges ("Annual Assessment" or "Regular Assessment"); and (2) special assessments or charges for the purposes set forth in this Article ("Special Assessment"), both such assessments to be fixed, established and collected from time to time provided for herein and in the By-laws. The Annual and Special Assessments, along with all costs of collection and additional charges as set forth herein, shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with interest thereon at the maximum percentage rate as may then be permitted under the laws of the State of Alabama from the date of delinquency until collected (unless waived by the Board), and the cost of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the Owner of such real property at the time when the assessment first becomes due and payable. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment, interest, penalties and costs of collection. If an assessment is not paid within thirty (30) days after the due date, such assessment shall then be delinquent and interest shall be added to the amount as provided herein and in the By-laws and a penalty in an amount to be determined annually by the Board of Directors of the Association and consistently applied shall be added to such assessment, and further, the Association may bring an action at law against the Lot Owner personally and there shall be added to the amount of such assessment the Association's actual attorney's fees, costs and disbursements related to such action. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and

such actual attorney's fees and disbursements together with the costs of the action. Unless otherwise provided by the Board of Directors, Annual Assessments, which shall be prorated and payable on a monthly basis, i.e., one-twelfth (1/12) of such yearly assessment shall be due and payable each month, shall be due and payable on or before the first day of the month for which the assessment is due. The yearly assessment for any Lot purchased after January 1 of any year in which the Planned Unit Development is in existence shall be prorated from the date of the closing on such purchase, which prorated amount shall be paid in equal monthly payments for the remainder of the year in which the purchase is made.

2. PURPOSE OF THE ASSESSMENTS AND PAYMENT TO DECLARANT.

Notwithstanding any provision contained herein, until such time that the Declarant has in fact conveyed to the Association all of the Common Areas, all Assessments of any nature provided for herein shall be due and payable to the Declarant, its successors and/or assigns, and all rights hereby established on behalf of the Association, including all remedies in event of default by a Lot Owner, shall accrue to the benefit of the Declarant. The Assessments levied by the Association or the Declarant shall be used exclusively for the improvement, replacement, maintenance, repair, enhancement, enlargement and operation of the recreational amenities, common landscaping, roadways, paths, sidewalks, boardwalks, bridges, security systems, patrols and gates, insect control, vegetation control, drainage systems and similar purposes which are for the benefit of Lot Owners, including Common Areas, and to provide all services which the Declarant or Association is authorized to provide hereunder; including, but not limited to, payment of taxes and insurance, cost of labor and equipment, erosion control devices, materials, management supervision, accounting and Lot Owner information services, repayment of loans and such other action as is necessary to carry out its authorized functions. Such Assessments shall not be used to maintain or repair any property not belonging to the Association or comprising a portion of the Common Areas.

3. APPLICATION OF "MAXIMUM" ASSESSMENT. The annual Assessments (which are payable on an equal monthly basis as previously set forth herein) as set forth in the schedule hereinbelow, and as annually increased pursuant to the provisions of subparagraph (c) below, shall be levied by the Association or by the Declarant pursuant to this Declaration. If, however, the Board

of Directors of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by annual Assessments less than those set out below, it may levy such lesser Assessments. However, so long as the Declarant is engaged in the Development of properties which are subject to the terms of this Declaration, the Association may not reduce annual Assessments below those set out in subparagraph (a) of this section without prior written consent of the Declarant. The levy of annual Assessments less than the maximum regular annual Assessments in one (1) year shall not affect the Board's right to levy the maximum regular annual Assessments in subsequent years. If the Board of Directors shall levy less than the maximum regular annual Assessments for any Assessment year and if thereafter, during such Assessment year, the Board of Directors shall determine that the important and essential functions of the Association cannot be funded by such lesser Assessments, the Board may, by majority vote, levy supplemental Assessments.

a. The maximum regular annual Assessment shall be the sums determined by the Board of Directors. The regular annual Assessment for the year ending December 31, 2005, is One Thousand Two Hundred and No/100ths Dollars (\$1,200.00), payable at the rate of One Hundred and No/100 Dollars (\$100.00) per month and due no later than the first day of each month. As previously set forth herein, the yearly Assessment for any Lot purchased after January 1 of any year in which the Planned Unit Development is in existence shall be prorated from the date of the closing on such purchase, which prorated amount shall be paid in equal monthly payments for the remainder of the year in which the purchase is made.

b. All Assessments charged by the Association shall be rounded to the nearest dollar.

c. The maximum regular annual Assessment for Improved Lots and for Unimproved Lots may be increased, adjusted or reduced from year to year by the Board of Directors of the Association as the Board in its sole judgement, may require.

4. SPECIAL ASSESSMENTS FOR IMPROVEMENTS AND ADDITIONS. In addition to the maximum regular annual Assessment authorized herein, the Association may also levy special Assessments against the Lot Owners for the following purposes:

- a. construction or reconstruction, repair or replacement of capital improvements upon the Common Areas including the necessary fixtures and personal property related thereto;
- b. additions to the Common Areas;
- c. facilities and equipment required to offer the services authorized herein;
- d. repayment of any loan made to the Association to enable it to perform the duties and functions authorized herein.

The proportion of each special Assessment to be paid to the Lot Owners of the assessable property shall be equal to their respective proportions of the annual Assessments made for the Assessment year during which such special Assessments are levied.

5. RESERVE FUNDS. The Association may establish reserve funds from its annual Assessments to be held in reserve in an interest-bearing account or in obligations of the United States, State of Alabama, or any agency of either, or in Triple-A debt, or in prime commercial paper with a maturity of not more than nine (9) months, as a reserve for (a) major rehabilitation or major repairs; (b) emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss; (c) recurring periodic maintenance; and (d) initial costs of any new service to be performed by the Association.

6. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. Notwithstanding anything in the foregoing to the contrary, the annual Assessments, which are payable one-twelfth (1/12) per month, provided for herein shall commence pro rata on the date the Lot is purchased.

7. DUTIES OF THE BOARD OF DIRECTORS. The Board of Directors of the Association shall fix the amount of the annual Assessment against each Lot, in accordance with the Assessment schedule as provided hereinabove, which is based on an estimate of annual expenses necessary to maintain the Development in its maximum condition, and shall at that time direct the preparation of an index of the properties and Assessments applicable thereto which shall be sent promptly to every Member subject thereto.

The Association shall upon written demand from any Lot Owner at any time furnish to such Lot Owner liable for any Assessment a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence

against all but the Lot Owner of Payment of any Assessment therein stated to have been paid.

8. SUBORDINATION OF THE LIEN OF MORTGAGE. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon the properties subject to Assessment; provided, however, that such subordination shall apply only to the Assessments occurring subsequent to the date such mortgage becomes of record, and, provided further, that upon a sale or transfer of such property pursuant to foreclosure, or any other proceeding or deed in lieu of foreclosure, the title acquired by the purchaser of such property is subject to the lien of such subsequent Assessments.

9. EXEMPT PROPERTY. The following property, individuals, partnerships or corporations subject to this Declaration shall be exempted from the Assessments, charges and lien created herein:

- a. the Declarant and any Lots(s) owned by the Declarant;
- b. the Grantee in conveyances made for the purpose of granting utility and drainage easements;
- c. the Common Areas; and
- d. property which is used in the maintenance and service of facilities within Common Areas, or by non-profit, governmental or charitable institutions.

10. ANNUAL STATEMENTS. The President, Treasurer or such other officer as may have custody of the funds of the Association, within ninety (90) days after the close of each fiscal year of the Association, shall prepare and execute general itemized statements as of the close of such fiscal year showing the actual assets and liabilities of the Association, and a statement of revenues, costs and expenses. The name of any creditor to which an amount of more than Two Hundred Fifty and No/100ths Dollars (\$250.00), is owed by the Association, and a statement of revenues, costs and expenses. The name of any creditor to the Association shall be set out in such statement. The Association shall furnish to each Member of the Association who may make a request therefor in writing, a copy of such statement within thirty (30) days after receipt of such request. Such copies may be furnished to the Member either in person or by mail.

11. ANNUAL BUDGET. The Board of Directors shall cause to be prepared and make

available to all Members at the office of the Association at least sixty (60) days prior to the first day of the Association's following fiscal year, a budget outlining anticipated receipts and expenses for such fiscal year. The financial books of the Association shall be available for inspection by all Members at the office of the Association at all reasonable times.

ARTICLE IX

FUNCTIONS OF ASSOCIATION

1. **OWNERSHIP AND MAINTENANCE OF COMMON AREAS.** The Association shall be authorized to own and/or operate and maintain Common Areas and equipment, furnishings, and improvements devoted thereto. Land included in "Common Areas" shall be used in the manner set forth by the Declarant and/or the Association.

2. **SERVICES.** The Association shall be authorized, but not required, to provide the following services which shall not limit or affect any services provided by any municipality, county, state or federal agency:

- a. employment of a manager, an independent contractor, or such other employees as are necessary to perform services for the Association;
- b. cleanup and maintenance of all roadways, road medians and Common Areas within the Planned Unit Development and also public properties which are located within or in a reasonable proximity to the Planned Unit Development such that their deterioration would affect the appearance of the Planned Unit Development as a whole;
- c. landscaping and landscape maintenance of roadways, sidewalks, walking and bicycle paths, and any Common Areas;
- d. lighting of roadways, sidewalks and paths through the Phase II Property;
- e. administrative services, including but not limited to legal, accounting and financial services; and communication services informing Members of activities, notice of meetings, referenda and other matters incident to the above listed services;
- f. liability and hazard insurance covering improvements and activities on the Common Areas;
- g. water, sewage and any necessary utility services not provided by a public

body, private utility or the Declarant;

h. maintenance of water pollution and shoreline erosion abatement measures;

i. exercise of any rights reserved by the Declarant and transferred by the Declarant to the Association including, but not limited to, all rights and functions of the Declarant under the general covenants;

j. taking of any and all actions necessary in the discretion of the Board of Directors to enforce this Declaration and all other covenants and restrictions authorized by the Board of Directors.

3. REDUCTION OF SERVICES. The Board of Directors of the Association shall periodically define and list a minimum level of services of the sort described herein to be furnished by the Association in any given year.

4. OBLIGATIONS OF THE ASSOCIATION. The Association shall not be obligated to carry out or offer any of the functions or services specified by the provisions of this Article. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association or set forth in the By-Laws, taking into consideration the funds available to the Association and the needs of the Members of the Association.

5. MORTGAGE AND PLEDGE. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association to perform its authorized functions. The Declarant may make loans to the Association, subject to approval by the Declarant of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the limits of the maximum regular annual Assessments at any time there are any outstanding amounts owing the Declarant from loans made by the Declarant to the Association.

6. TRANSFER OF AUTHORITY. This Declaration provides the Declarant with various controls and rights, to be exercised (if at all) at the discretion of the Declarant. This Declaration further provides that any of the Declarant's rights and powers set forth herein may be specifically assigned to the Association. In the event that such powers are assigned of record to the

Association, the Association shall promptly provide for appropriate procedures to perform its obligations pursuant to the powers transferred to it.

7. WAIVER. No provisions contained in this Declaration, the By-laws, the Articles or any rules and regulations promulgated by the Board shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE X

AMENDMENT

1. PLANS. The Declarant shall have the right to amend or alter the Development so long as it has control of the Association.

2. DECLARATION.

a. By the Declarant. The Declarant shall have the right to amend this Declaration so long as it has control of the Association.

b. By the Association. Once the Declarant has relinquished control of the Association, the Association shall have the right to amend this Declaration upon the agreement of Members, present in person or by proxy, entitled to cast sixty-seven percent (67%) or more of the votes available to the Members at any meeting called for that purpose.

c. Exhibit "A" may be amended as set forth in Article V, Paragraph 4 hereof.

ARTICLE XI

MISCELLANEOUS

1. COVENANTS, CONDITIONS AND RESTRICTIONS. All provisions of the Development Documents shall to the extent applicable, and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to be covenants running with the Planned Unit Development, the Property, the Lots and with every part thereof and interest therein; and all of the provisions of the Development Documents shall be binding on and inure to the benefit of any Lot Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Lot Owners shall be subject to and shall comply with the provisions of the Development Documents and any rules and

regulations promulgated thereunder.

2 SEVERABILITY. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this Declaration, the Articles, the By-Laws, any rules and regulations of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portions thereof.

3. NOTICE. The following provisions shall govern the construction of the Development Documents, except as may be specifically provided to the contrary herein: All notices required or desired under the Development Documents to be sent to the Association shall be delivered in person or sent by first-class mail to the address of the Association, which may be designated from time to time by notice in writing to all Lot Owners. All notices to any Lot Owner shall be delivered in person or sent by first-class mail to the address of such Lot Owner at the Planned Unit Development, or to such other address as he may have designated from time to time, in a writing to the Association. Proof of such mailing or personal delivery to a Lot Owner by the Association may be provided by the affidavit of the Person or by a post office certificate of mailing. All notices to the Association by a Lot Owner shall be deemed to have been given when delivered to the addressee in person or by a post office certificate of mailing of the date of the mailing.

4. GOVERNING LAW AND ARBITRATION. Any dispute or litigation arising between any of the parties concerning matters, rights, or duties affected or determined by the Development Documents, shall be governed by the laws of the State of Alabama, and such dispute, disagreement, or question between the parties, including any between the Association and Declarant, except a dispute concerning the filing or enforcement of a lien by the Association against a Lot and the collection of Assessments and other charges as provided for elsewhere in this Declaration, shall be submitted to arbitration under the Rules of the American Arbitration Association unless the concerned parties otherwise agree in writing. The arbitrator(s) shall render a decision which shall be binding on all parties to the arbitration, based on traditional and standard interpretation of the laws of the State of Alabama. Except as to the enforcement of liens and the collection of Assessments

and other charges, all parties subject to this Declaration forego all right to take legal action thereunder except to enforce any arbitration award, which award shall be a condition precedent to any right of legal action that any party may have against the other. It shall be deemed that each party who takes title subject to this Declaration stipulates that this Development and contracts arising from and related to the same have a substantial effect on interstate commerce.

5. WAIVER. No provisions contained in the Development Documents shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

6. RATIFICATION. Each Lot Owner, by reason of having acquired ownership of his Lot, whether by purchase, gift, operation of law or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Development Documents, and any Rules and Regulations promulgated thereunder, are fair and reasonable in all material respects.

7. CAPTIONS. The captions used in the Development Documents are inserted solely as a matter of convenience and reference and shall not be relied on and/or used in construing the effect or meaning of any of the text of the Development Documents.

8. ENFORCEMENT. In the event any Lot Owner fails to comply with any provision contained in this Declaration, the By-laws or the Articles, the Association, through its Board of Directors, shall have the right to enforce such provision by any means available at law or in equity, including, without limitation, the right to impose a fine on the Lot owned by the non-complying party. If a fine is imposed, such fine may be collected in the same manner provided for the collection of Assessments in this Declaration and in the By-laws.

9. COSTS AND ATTORNEY'S FEES. In any proceeding arising because of an alleged default under any of the provisions of the Development Documents by a Lot Owner or any failure to comply with any of the provisions of the Development Documents by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court or Arbiter.

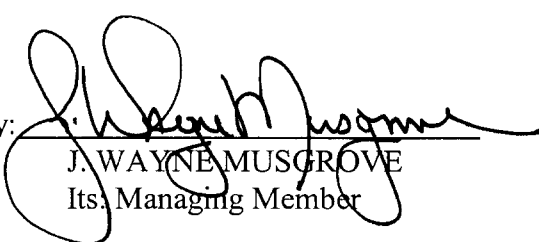
10. CONFLICTING PROVISIONS. In the event of any conflict between the provisions of this Declaration, the By-Laws or the Articles, this Declaration shall govern.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed on

this the 21st day of October, 2005.

GULF ISLAND DEVELOPMENT, LLC
A Florida limited liability company

By:

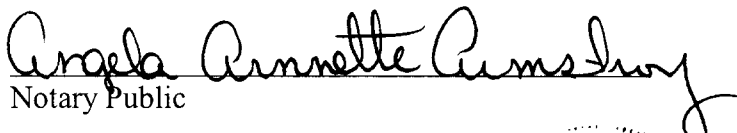

J. WAYNE MUSGROVE
Its Managing Member

STATE OF Alabama)

COUNTY OF Baldwin)

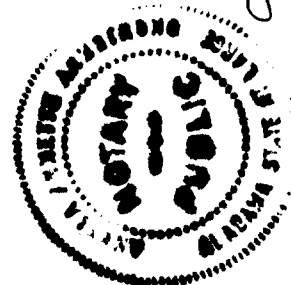
I, Angela Annette Armstrong the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. WAYNE MUSGROVE, whose name as Manager of GULF ISLAND DEVELOPMENT, LLC, a Florida limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, he, as such manager duly authorized, has executed the same voluntarily for and as the act of the company on the day the same bears date.

Given under my hand and seal this the 21st day of October, 2005.


Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: June 13, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS



THIS INSTRUMENT PREPARED BY:

C. Andrew Harrell, Jr.
Herbert & Harrell LLC
1544 West 2nd Street, Suite 110
Post Office Drawer 3889
Gulf Shores, AL 36547
(251) 968-4764

EXHIBIT "A"
to the foregoing
DECLARATION OF PROTECTIVE COVENANTS FOR COTTAGES ON THE
GREENE, A PLANNED UNIT DEVELOPMENT

ARCHITECTURAL GUIDELINES

1. **BUILDING LOCATION.** No building or structure shall be located on any lot nearer to any lot line than the setback line noted or shown on the recorded planned unit development plat, unless approved by the Architectural Review Board and a variance is obtained from the City of Foley. If no such setback line is noted or shown on the plat, then all minimum set backs shall be in conformity with the Foley Zoning Ordinances as they pertain to this planned unit development.

2. **EXTERIOR FINISHES.** Exterior finish materials shall be of high quality and durable, such as wood, cement based plank, brick, stucco for accent. No materials constructed out of vinyl or fiberglass shall be allowed, except for fiberglass insulation. All exterior materials, including roofing, windows and other materials shall be approved by the Architectural Review Board before use.

3. **DETACHED BUILDINGS.** Any detached building must be architecturally in keeping with the main dwelling and be approved by the Architectural Review Board.

4. **TRAFFIC HAZARDS.** No fence, wall hedge, shrub, bush, tree or other thing, natural or artificial, shall be placed, maintained, or permitted to remain on any lot or area, if the location of such item obstructs the vision of a motorist.

5. **RESTRICTIONS OF EASEMENTS.** No title to land in any street is intended to be conveyed, or shall be conveyed to the grantee under any deed, or the purchaser under any contract of purchase, unless expressly so provided in such deed or contract or purchase.

Easements for installation and maintenance of utilities and drainage facilities are reserved as noted or shown on the recorded plat.

No dwelling house, garage, outbuilding or other structure of any kind shall be built, erected or maintained upon any such easements, and said easements shall, at all times, be open and accessible to public or quasi-public utility corporation, and other persons erecting, constructing or servicing such utilities and Declarant, its successors and assigns, all of whom shall have the right of ingress and egress thereto, and therefrom and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said

easements, reservations and rights-of-way are reserved, or may hereinafter be reserved.

6. DWELLING QUALITY, SIZE AND DESIGN. The main structure shall be not less than one thousand five hundred (1,500) square feet of heated and air conditioned space and shall be not more than three (3) stories or a maximum of fifty (50) feet in height above grade. Application may be made to the Architectural Review Board for special exceptions to the square footage requirement in order to approve the construction of a dwelling with less square footage. The primary roof pitch of the main structure shall not be less than 7/12, unless the main structure is a full two (2) stories. If the main structure is a full two (2) stories, then the primary roof pitch of the main structure shall not be less than 6/12. All building plans shall be approved by the Architectural Review Board.

7. DRAINAGE. Drainage flow shall not be obstructed nor be diverted from drainage or utility easements as designated on said plat. Each lot shall be developed in such a manner as to carry away surface water that may exist either prior to, or as a result of, the development of the lot. Each lot shall further be developed in such a manner as to include common lot line swales and designed to prevent water from draining onto neighboring lots. No fences or other structure shall be erected in a manner that will hinder or prohibit the free flow from the drainage easement, and the owner will keep the same clean and free from obstruction. For a period of five (5) years from the date of conveyance of any lot, Declarant reserves a blanket easement on, over and under the ground within the Planned Unit Development to maintain and correct drainage or surface water in order to maintain health, safety and appearance. Such right expressly includes the right to cut trees, bushes and shrubbery, make any grading of the road or take similar action, following which Declarant will restore the property as nearly as possible to its original condition.

8. FENCES. All proposed fences must be submitted to the Architectural Review Board for approval. Any fence to be constructed in the front yard of a dwelling shall be no higher than thirty-six (36) inches. Fences must be constructed on the Lot Owner's deeded property. When an approved fence is installed in front of or between dwellings or to the rear of a dwelling along an alleyway, the finished side of the fence shall face outward.

9. EXTERIOR COLOR SCHEMES. Exterior color schemes shall be submitted to the Architectural Review Board for approval, this requirement shall also include all exterior maintenance painting, unless the original color scheme is retained. The Architectural Review Board shall maintain a list of approved colors from which to choose to paint the exterior of a dwelling.

10. GARAGES AND CARPORTS. All home sites will provide for parking automobiles or other motorized vehicles either in an enclosed garage or a permanent covered area or carport that includes a garden storage room of not less than 100 square feet. The garden storage room and exterior of the garden storage room shall be constructed of the same material as the home and shall be the same color as the home.

11. ROOFS. Roofs shall only be constructed out of either metal shingles, metal roofing ("standing seam" or "crimped"), slate or high definition, thirty-year, double glue tab, composition shingles.

12. PORCHES. Every dwelling will have either a front or a side porch with a minimum five (5) foot depth.

13. DECKS. All decks must be architecturally consistent with the dwelling. All underpinnings exposed to the elements must be pressure treated or greater.

14. WINDOWS. All windows shall be foam sealed and must be constructed out of wood, vinyl clad or vinyl construction that meets all applicable building code requirements, have double panes and be marine glazed to withstand wind loads of up to at least 140 miles per hour and must further meet all applicable building codes.

15. STRUCTURE. All exterior walls must be constructed using a minimum of two inch by six inch studs on sixteen inch centers, and all interior walls shall be framed with at least 2 inch by four inch wall studs on 16 inch centers.

16. FOUNDATION. All first floor elevations will be a minimum of thirty-six inches above site grade, and each plan review shall contain a foundation drawing stamped by an engineer licensed in the State of Alabama.

17. HEATING, VENTILATION AND AIR CONDITIONING. All heating, ventilation and air conditioning equipment located outside of a dwelling must be placed to the rear of the dwelling and enclosed in such a manner so as to be hidden from view and to muffle the sound.

18. ANTENNAS AND SATELLITE DISHES. All antennas and satellite dishes must be located to the rear of the dwelling and must not exceed eighteen inches in diameter. No exterior pole antenna will be allowed.

19. DOGHOUSES. All doghouses must be located to the rear of the dwelling and must be approved by the Architectural Review Board.

20. TRASH CONTAINERS. Must be kept in an enclosure hidden from plain view.

21. SCREENS. There shall be no front (main floor level) porches screened. All other screened porches, patios or balconies must approved by the Architectural Review Board, and any such screened porch, patio or balcony must meet or exceed quality and framing standards set by the Architectural Review Board.

22. EXTERIOR WALL FLOOR PLATES. All exterior wall floor plates shall be pressure treated and sealed.

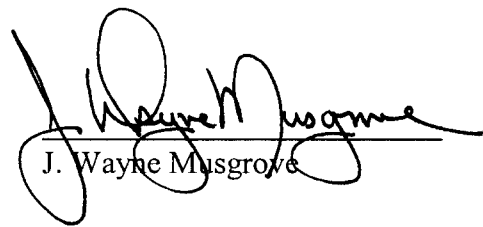
23. UP LIFT TECHNIQUES. Extensive use of metal ties, uplift hold down rods and other hold down techniques shall be required on all structures.

24. PREVENTION OF MOISTURE INTRUSION. The exterior of all dwellings shall be caulked in order to prevent moisture intrusion.

25. GABLE ENDS. All gable ends shall require hurricane strong ties, and the first run of roof sheeting shall be nailed with #8 sinker nails or greater on 4 inch spacing. In addition to the foregoing, the first run of roof sheeting shall be glued with liquid nails to the rafters.

26. CRAWL SPACES. There shall be no exposed crawl spaces under a dwelling. If there is a space or gap between the floor of the dwelling and the ground, such space or gap shall be dressed to grade with acceptable material.

I certify that the above set out Architectural Guidelines were adopted by the Architectural Review Board for Cottages on the Greene, a planned unit development at its regular meeting held on the 21st day of October, 2005.


J. Wayne Musgrove