

May 13 1 10 PM '96

DEED — MORTGAGE —
MIN. TAX — INCORP. —
RECORDED IN PLAT BOOK 1648-B-5
JUDGE OF PROBATE

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
d'ESTREHAN, UNIT ONE**

STATE OF ALABAMA :

COUNTY OF BALDWIN :

This DECLARATION made on the date hereinafter set forth by D'ESTREHAN DEVELOPMENT, L.L.C., an Alabama Limited Liability Company, (the "DECLARANT").

R E C I T A L S;

(1) DECLARANT is the owner of that certain real property which is known as d'ESTREHAN, UNIT ONE, a Subdivision, as per plat thereof recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Slide 1648-B, together with all improvements and appurtenances (sometimes hereinafter referred to as the "PROPERTY"). The PROPERTY does not include d'ESTREHAN, UNIT TWO, unless or until d'ESTREHAN, UNIT TWO, is annexed into the PROPERTY by SUPPLEMENTAL AMENDMENT, as provided for in this DECLARATION.

(2) DECLARANT intends to develop the PROPERTY as a Subdivision and to subject the PROPERTY to this DECLARATION.

(3) DECLARANT has caused the d'ESTREHAN PROPERTY OWNER'S ASSOCIATION, INC. (the "ASSOCIATION") to be formed for the purpose of providing an Alabama non-profit corporation to serve as representative of the DECLARANT and OWNERS of the PROPERTY.

(4) The ASSOCIATION and the PROPERTY shall be subject to the terms and conditions of this DECLARATION.

NOW, THEREFORE, DECLARANT hereby declares that the PROPERTY shall be held, sold and conveyed or encumbered, rented, used, occupied and improved, mortgaged or otherwise encumbered subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the PROPERTY subject to this DECLARATION and which shall be binding on all parties having any right, title or interest in the PROPERTY or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The following words and terms as used in this DECLARATION (unless the context clearly shall indicate otherwise) shall have the following meaning:

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

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

Section 1.3 "**ASSESSMENTS**" shall mean and refer to the ASSESSMENTS referred to in this DECLARATION.

Section 1.4 "**ASSOCIATION**" shall mean and refer to d'ESTREHAN PROPERTY OWNER'S ASSOCIATION, INC., a non-profit Corporation, its successors and assigns.

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

Section 1.6 "BY-LAWS" shall mean and refer to the BY-LAWS of the ASSOCIATION.

Section 1.7 "COMMON AREA" or "COMMON PROPERTY" shall mean and refer to all real property so designated on any recorded subdivision plat of the PROPERTY or any property, building, fixtures, facilities or other personal property now owned or otherwise acquired by the ASSOCIATION by purchase, gift, lease or otherwise to be devoted to the common use and enjoyment of the OWNERS of the PROPERTY. The COMMON AREA to be owned by the ASSOCIATION is as described on the recorded subdivision Plat of the PROPERTY.

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

Section 1.9 "DECLARANT" shall mean and refer to D'ESTREHAN DEVELOPMENT, L.L.C., an Alabama Limited Liability Company, and the successors and assigns of DECLARANT, if such successors and assigns should acquire more than one (1) undeveloped LOT from the DECLARANT for the purpose of development.

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

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

Section 1.12 "LOT" shall mean and refer to any improved or unimproved plot, parcel or portion of land shown upon any recorded final subdivision map of the PROPERTY, with the exception of the COMMON PROPERTY as herein defined, and shall include, where the context may indicate, any improvement or fixture located thereon.

Section 1.13 "MAJORITY" shall mean and refer to those eligible votes, OWNERS or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

Section 1.14 "MEMBER" shall mean and refer to every person or entity who holds membership in the ASSOCIATION, as provided herein.

Section 1.15 "MORTGAGE" shall mean and refer to any MORTGAGE, DEED with vendor's lien reserved and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.16 "OWNER" of "OWNERS" shall mean and refer to the record OWNER or OWNERS, whether one (1) or more persons or entities, of a fee simple title to any LOT which is a part of the PROPERTY, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.17 "PERSON" shall mean and refer to a natural person, corporation, partnership, trustee or other legal entity.

Section 1.18 "PROPERTY" or "PROPERTIES" or "SUBDIVISION" shall mean and refer to that certain real property described in Paragraph (1) in the RECITALS on Page 1 of this DECLARATION, and such additions thereto as may hereafter be brought within the jurisdiction of the ASSOCIATION and this DECLARATION.

Section 1.19 "SUPPLEMENTAL DECLARATION" shall mean and refer to an amendment or supplement to this DECLARATION which subjects additional property to this DECLARATION or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

ARTICLE II

MUTUALITY OF BENEFIT AND OBLIGATION

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

ARTICLE III

COMMON AREA PROPERTY RIGHTS AND EASEMENTS

Section 3.1 COMMON AREA. The ASSOCIATION shall own and maintain the COMMON AREA subject to the following provisions:

A. The right of the DECLARANT, with regard to the PROPERTY which may be owned for the purpose of development, to grant easements in and to the COMMON AREA to any public agency, authority or utility for such purposes as benefit only the PROPERTY or portions thereof and OWNERS or LOTS contained therein.

B. The right of the ASSOCIATION to borrow money for the purpose of improving the COMMON PROPERTY, or any portion thereof, for acquiring additional COMMON PROPERTY, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a MORTGAGE conveying all or any portion of the COMMON PROPERTY, provided two-thirds (2/3) of the total votes entitled to be cast by MEMBERS of the ASSOCIATION present at a meeting called for such purpose shall approve; provided, however, the lien and encumbrance of any such MORTGAGE given by the ASSOCIATION shall be subject and subordinate to any and all rights, interests, options, easements and privileges reserved or established in this DECLARATION for the benefit of DECLARANT or any OWNER, or the holder of any MORTGAGE, irrespective of when executed, given by DECLARANT or any OWNER encumbering any LOT or other property located within the SUBDIVISION.

C. The right of the ASSOCIATION to dedicate or transfer all or any part of the COMMON AREA to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the MEMBERS. No such dedication or shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds (2/3) of the total votes entitled to be cast by MEMBERS of the ASSOCIATION who are present or represented by proxy at a meeting duly called for such purpose.

D. The right of the ASSOCIATION to adopt and promulgate reasonable rules and regulations pertaining to the use of the COMMON AREA which, in the discretion of the ASSOCIATION, shall serve to promote the best interests of the OWNERS and residents in the SUBDIVISION.

E. The right of the DECLARANT to amend or supplement this DECLARATION and subject ADDITIONAL PROPERTY to this DECLARATION and to impose, expressly or by reference, additional restrictions and obligations on the COMMON AREA, or both.

F. The entrance at the intersection of Boothe Road, Manor Boulevard, d'Estrehan Road and Harvey Circle contains a COMMON AREA which is located within a public right of way. The ASSOCIATION shall be obligated to maintain the COMMON AREA located within the right of way so long as the governmental authority having jurisdiction allows the COMMON AREA to be located within the public right of way and allows said maintenance. If, for any reason, the governmental authority prohibits the COMMON AREA from being located within the public right of way or prohibits the maintenance of said COMMON AREA, then, in that event, the ASSOCIATION shall no longer be obligated to maintain the COMMON AREA located within the public right of way.

G. The right of the ASSOCIATION to repair and maintain any fence that may be located within the area designated on the Plat of d'ESTREHAN, UNIT ONE and designated as the private fence easement.

H. The right of the ASSOCIATION to repair and maintain any sign that may be located within the area designated on LOT 23 of the Plat of d'ESTREHAN, UNIT ONE and designated as the private sign easement.

I. The right of the DECLARANT or the ASSOCIATION to enter into contracts with third (3rd) parties and/or other property owner's associations affecting the SUBDIVISION and/or the COMMON AREA.

Section 3.2 COMMON AREA. The COMMON AREA designated on the plat of the subdivision is not donated, dedicated nor granted to the public, but shall be conveyed by the DECLARANT to the ASSOCIATION for use as COMMON PROPERTY for the benefit of the ASSOCIATION. PROVIDED, HOWEVER, the DECLARANT may file the SUPPLEMENTAL DECLARATION provided for in this DECLARATION and subject ADDITIONAL PROPERTY or COMMON AREA to this DECLARATION. PROVIDED, FURTHER, the ASSOCIATION may acquire ownership to additional COMMON AREA the title to which may be held in joint ownership with third (3rd) parties or other property owner's associations.

The COMMON AREA shall be maintained by the ASSOCIATION and neither the recording of the subdivision plat nor any other act of DECLARANT shall be construed as a dedication of the COMMON AREA to the public.

Section 3.3 Drainage Easements. Except with prior written permission from DECLARANT, or (when so designated by DECLARANT) from the ARCHITECTURAL COMMITTEE, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to this DECLARATION or any part thereof. DECLARANT may cut drainways for surface water wherever and whenever such action may appear to DECLARANT to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that the right of DECLARANT to cut drainways on the property of an OWNER shall terminate when the principal structure and approved landscaping on such property have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installment and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon DECLARANT to cut such drainways.

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Section 3.4 Grading. DECLARANT may at any time make such cuts and fills upon any LOT or other part of the PROPERTY and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the access areas or roads in or adjacent to the PROPERTY and to drain surface waters therefrom; and may assign such rights to the appropriate governmental authority; provided, however, that after plans for the principal structure upon a LOT shall have been approved by the ARCHITECTURAL COMMITTEE as provided herein, the rights of DECLARANT under this Section 3.4 shall terminate with respect to all parts of such LOT other than the easement area thereof, except that DECLARANT or any such municipal or public authority shall thereafter have the right to maintain existing roads and drainage structures.

Section 3.5 Easements for Utility. There is hereby reserved to the ASSOCIATION blanket easements upon, across, above and under all property within the SUBDIVISION for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the SUBDIVISION or any portion thereof, including but not limited to gas, water, sanitary sewer, telephone, cable television and electricity, as well as storm drainage and any other service which the ASSOCIATION might decide to install to serve the SUBDIVISION. It shall be expressly permissible for the ASSOCIATION or its designee, as the case may be, to install, repair, replace and maintain or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment relating to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the BOARD shall have the right to grant such easement.

Section 3.6 Easement for Governmental, Health, Sanitation and Emergency Services. There is hereby granted to the appropriate governmental authorities and to the appropriate private organizations supplying health, sanitation, police services and any emergency services such as fire, ambulance and rescue services, a nonexclusive easement, for purposes of ingress and egress over the COMMON AREA. In furtherance of the foregoing, the ASSOCIATION shall save harmless the appropriate governmental authority from damages to any persons arising out of the use of the COMMON AREA by said governing authority for the uses which are stated in this Section.

Section 3.7 Reserved Easement for DECLARANT. Notwithstanding any provisions contained in this DECLARATION to the contrary, DECLARANT hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege and easement with respect to the SUBDIVISION for the benefit of the DECLARANT, its successors and assigns, over, under, in and/or on the SUBDIVISION, without further obligation and without charge to the DECLARANT, for the purposes of construction, installation, relocation, development, sale, maintenance, replacement, use and enjoyment and/or otherwise dealing with the SUBDIVISION. The reserved easement shall constitute a burden on the title to the SUBDIVISION and specifically includes, but is not limited to:

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

2. The right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole

opinion of DECLARANT, may be required, convenient or incidental to the construction and sale by DECLARANT of the improvements in the SUBDIVISION or in any portion of the ADDITIONAL PROPERTY; and

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

This Section may not be amended without the written consent of DECLARANT.

ARTICLE IV

ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL

Section 4.1 Architectural Committee. The Architectural Committee (the "ARCHITECTURAL COMMITTEE") shall be composed of at least three (3) (but not more than five (5)) individuals designated and redesignated from time to time (i) by DECLARANT until control of the ARCHITECTURAL COMMITTEE is specifically delegated by the DECLARANT to the ASSOCIATION, and (ii) by the ASSOCIATION after delegation of such control. Delegation of control of the ARCHITECTURAL COMMITTEE from the DECLARANT to the ASSOCIATION shall be evidenced by an instrument signed by the DECLARANT and filed for record in the Probate Records of Baldwin County, Alabama.

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

Section 4.2 Approval Required. No structure shall be commenced, erected, placed, moved on to or permitted to remain on any LOT, nor shall any existing structure upon any LOT be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any LOT, unless plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the ARCHITECTURAL COMMITTEE. Such plans and specifications shall be in such form and shall contain such information as may be required by the ARCHITECTURAL COMMITTEE, including: (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all structures proposed for the LOT; (ii) a site plan of the LOT showing the location with respect to the particular LOT (including proposed front, rear and side setbacks and free spaces, if any are proposed) of all structures, the location thereof with reference to structures on adjoining portions of the PROPERTY, and the number and location of all parking spaces and driveways on the LOT; (iii) a grading plan for the particular LOT; (iv) a drainage plan; (v) a plan for landscaping; (vi) Corp of Engineers or other appropriate governmental permit. All of said plans shall address the matters set forth in ARTICLE V, as applicable.

Section 4.3 Basis for Disapproval of Plans. The ARCHITECTURAL COMMITTEE shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (a) Failure of such plans or specifications to comply with this DECLARATION;
- (b) failure to include information in such plans and specifications as may have been reasonably requested;

(c) objection to the exterior design, appearance or materials of any proposed structure;

(d) incompatibility of any proposed structure or use with existing structures or uses upon other LOTS in the vicinity;

(e) objections to the location of any proposed structure upon any LOT or with reference to other LOTS in the vicinity;

(f) objection to the site plan, grading plan, drainage plan or landscaping plan for any LOT;

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

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

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

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

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

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

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

Section 4.4 Retention of Copy of Plans. Upon approval by the ARCHITECTURAL COMMITTEE of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARCHITECTURAL COMMITTEE, and shall be retained for a period of no more than six (6) months after completion of the improvement, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 4.5 Rules of ARCHITECTURAL COMMITTEE; Effect of Approval and Disapproval; Time for Approval. The ARCHITECTURAL COMMITTEE may promulgate Rules governing the form and content of plans to be submitted for approval or requiring specific improvements on LOTS, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval.

Such Rules and such statements of policy may be amended or revoked by the ARCHITECTURAL COMMITTEE at any time, and no inclusion, omission from or amendment of any such rule or statement shall be deemed to bind the ARCHITECTURAL COMMITTEE to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the discretion of the ARCHITECTURAL COMMITTEE as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any LOT of any plans or specifications shall not be deemed a waiver of the right of the ARCHITECTURAL COMMITTEE, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other LOT or LOTS. Approval of any such plans and specifications relating to any LOT, however, shall be final as to that LOT and such approval may not be revoked or rescinded thereafter, provided, (i) that the structure or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this DECLARATION, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all structures on and uses of the LOT in question.

In the event that the ARCHITECTURAL COMMITTEE fails to approve, disapprove or approve conditionally any plans and specifications as herein provided within thirty (30) days after proper submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

Section 4.6 Certificate of Compliance. Upon completion of the construction or alteration of any structure in accordance with plans and specification or alteration of any structure in accordance with plans and specifications approved by the ARCHITECTURAL COMMITTEE, the ARCHITECTURAL COMMITTEE shall, upon written request of the OWNER thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure and the LOT on which such structure is placed, and stating that the plans and specifications, the location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies with the requirements of the ARCHITECTURAL COMMITTEE. Preparation and recording of such certificate shall be at the expense of such OWNER. Any certificate of compliance issued in accordance with the provisions of this Section 4.6 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that, as of the date of the certificate, all structures on the LOT, and the use or uses described therein comply with all the requirements of this ARTICLE IV, and with all other requirements of this DECLARATION as to which the ARCHITECTURAL COMMITTEE exercises any discretionary or interpretive powers.

Section 4.7 Inspection and Testing Rights. Any agent of DECLARANT, ASSOCIATION or the ARCHITECTURAL COMMITTEE may at any reasonable time or times enter upon and inspect any LOT and any improvements thereon for the purpose of ascertaining whether the maintenance of such LOT and the maintenance, construction, or alteration of the structures thereon are in compliance with the provisions hereof; and neither DECLARANT, ASSOCIATION nor the ARCHITECTURAL COMMITTEE nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Without limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines, each OWNER agrees to notify the ARCHITECTURAL COMMITTEE prior to its installation of the sanitary sewer service lines and to permit such inspection and testing thereof by the ARCHITECTURAL COMMITTEE both before and after backfill as is required by the ARCHITECTURAL COMMITTEE. Any such inspection shall be for the sole purpose of determining compliance with this DECLARATION, and neither the making of any such inspection, nor the failure to make any such

inspection, shall be relied upon by the OWNER of a LOT or any third persons or entities for any purpose whatsoever; nor shall any such inspection obligate the DECLARANT, the ASSOCIATION or the ARCHITECTURAL COMMITTEE to take any particular action based on the inspection.

Section 4.8 Waiver of Liability. Neither the ARCHITECTURAL COMMITTEE nor any architect nor agent thereof, nor the ASSOCIATION, nor the DECLARANT, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of structures to comply with requirements of this DECLARATION, although a certificate of compliance has been issued, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section 4.8 for any cause arising out of the matters referred to in this Section 4.8 and further agree to and do hereby release said entities and persons for any and every such cause.

ARTICLE V

ZONING AND SPECIFIC RESTRICTIONS

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

ARTICLE VI

SITE DEVELOPMENT

Section 6.1 Site to be Staked Prior to Tree Cutting. After the plan for the structure is approved, the site of the structure must be staked out and such site approved by the ARCHITECTURAL COMMITTEE before tree cutting is done. Existing vegetation shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the ARCHITECTURAL COMMITTEE. Removal of "underbrush" from the corded areas is expressly prohibited except on ARCHITECTURAL COMMITTEE approval. No tree may be cut or removed without consent of the ARCHITECTURAL COMMITTEE until the building plans, site plans and site staking are approved by the ARCHITECTURAL COMMITTEE.

Section 6.2 Erosion Control. Erosion control measures shall be taken by the OWNER of a LOT, or contractors of OWNER, to protect adjacent property during construction on such LOT and thereafter until the soil is stabilized on the LOT. This may be accomplished by the use of temporary retention ponds, silt fencing, or other protective measures intended to intercept and filter the excess storm water runoff from the LOT. All erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the ARCHITECTURAL COMMITTEE prior to commencement of grading activities.

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

Section 6.3 Utility Lines and Appurtenances. All gas, water, sewer, telephone, television cable and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the ARCHITECTURAL COMMITTEE. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the ARCHITECTURAL COMMITTEE; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the OWNER of a LOT, the OWNER of a LOT will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, television cable or telephone service on the PROPERTY (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the ARCHITECTURAL COMMITTEE. Nothing herein shall be construed to prohibit overhead road lighting or ornamental yard lighting, where serviced by underground wires or cables. Where underground electric service is to be installed, in order to permit installation of underground electric service to each LOT for the mutual benefit of all OWNERS therein, no OWNER of any such LOT will commence construction of any improvement on any such LOT until such OWNER (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral on such LOT, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission.

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

Section 6.4 Connection Points for Utility Service Lines. To the extent of the interests of the OWNER of each LOT, each OWNER agrees to connect utility service lines (including, but not limited to, gas, water, sewer, telephone, television cable and electricity) at points designated by ARCHITECTURAL COMMITTEE.

Section 6.5 Sanitary Sewer Service Lines. The material for sanitary sewer service lines must be approved by the ARCHITECTURAL COMMITTEE.

Section 6.6 Landscaping. The landscape plan must be approved by the ARCHITECTURAL COMMITTEE prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the LOT. The OWNER must faithfully execute the landscape plan as submitted to and approved by the ARCHITECTURAL COMMITTEE. If the OWNER should fail to faithfully execute the landscape plan, the ASSOCIATION shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost thereof shall be a binding, personal obligation of the OWNER when billed by the ASSOCIATION as well as a lien upon the LOT in question. The lien provided in this Section 6.6 shall have the same enforceability and priority as the lien provided for in ARTICLE X below.

Section 6.7 Colors; Architectural Styles. All exterior building materials and colors must be approved by the ARCHITECTURAL COMMITTEE. Excessively bright colors or objectionable noticeable colors are prohibited. All architecture must be compatible with surrounding buildings within the PROPERTY.

Section 6.8 Exterior Lighting. Exterior lighting plans must be set forth on the architectural or landscape plans for a LOT, and must be approved by the ARCHITECTURAL COMMITTEE. Exterior lighting shall be "low-key" and shall be compatible with lighting used on other residential structures in the development.

ARTICLE VII

COVENANTS FOR MAINTENANCE

Section 7.1 Responsibility of ASSOCIATION. The ASSOCIATION shall maintain and keep in good repair the COMMON PROPERTY, such maintenance to be funded as hereinafter provided.

Section 7.2 Responsibility of OWNER. Each OWNER shall keep all LOTS owned by him or her, and all improvements therein or thereon, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the ASSOCIATION, any OWNER fails to perform the duties imposed by the preceding sentence after fifteen (15) days' written notice from the ASSOCIATION to the OWNER to remedy the condition in question, the ASSOCIATION shall have the right, through its agents and employees, to enter upon the LOT in question and to repair, maintain, repaint and restore the LOT or such improvements and the cost thereof shall be a binding, personal obligation of such OWNER when billed by the ASSOCIATION as well as a lien upon the LOT in question. The lien provided in this Section shall have the same enforceability and priority as the lien provided for in ARTICLE X below.

ARTICLE VIII

GENERAL COVENANTS AND RESTRICTIONS

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

Section 8.1 Permitted Uses and Structures. All LOTS in the PROPERTY and each and every one thereof are hereby declared to be residential LOTS, and no LOT shall be used except for single-family residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any LOT other than a single-family dwelling, not to exceed the height limitations imposed by law or regulation (except that an attic or a basement floor under the ground surface shall not be considered a story for this purpose) and a private enclosed garage for not more than two (2) automobiles.

Section 8.2 Business Use. Except as herein provided, no trade or business may be conducted in or from any LOT. Notwithstanding the above, the leasing of a LOT for residential purposes shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to the sales office or model home of DECLARANT.

Section 8.3 Minimum Dwelling Area. The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred (1,800) square feet in the

case of a one (1) story building or structure, or not less than one thousand two hundred (1,200) square feet in the case of anything greater, with a total minimum square footage for the main building or structure of one thousand eight hundred (1,800) square feet, unless otherwise approved in writing by the ARCHITECTURAL COMMITTEE. For the purpose of this Section 8.3, a basement floor or other area beneath the ground surface and/or an attic shall not be included in computing the designated minimum square footage. No building, structure or residence shall be erected, altered, remodeled, reconstructed or added to without the prior written approval of the ARCHITECTURAL COMMITTEE.

Section 8.4 Minimum Building Setback Lines. No building, structure or residence located on any of the LOTS shall be erected, altered, remodeled, constructed or added to so as to be located any nearer to any PROPERTY boundary line than the setback lines shown on the recorded plat of the PROPERTY, but the ARCHITECTURAL COMMITTEE, in its sole discretion, shall have the power to grant exceptions.

Section 8.5 Subdivision of LOT and Time Sharing. No LOT shall be split, divided or subdivided or its boundary lines changed except with the prior written approval of the ARCHITECTURAL COMMITTEE. The ARCHITECTURAL COMMITTEE may permit a division in ownership of any LOT intended for a single family detached residence as shown on a plat, but solely for the purpose of increasing the size of the adjacent LOTS. In the event of a division of any LOT, the OWNERS among whom the ownership is divided shall be treated as co-owners of the divided LOT for purposes of voting and shall be jointly and severally liable for all assessments hereunder against the LOT. DECLARANT hereby expressly reserves the right to replat any LOT or LOTS owned by DECLARANT. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

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

Section 8.6 Minimum Lot Ownership. For the purposes of this instrument, any owner having two or more adjoining lots may treat, use and build on them as though they were one (1) after making written application and receiving written approval by the ARCHITECTURAL COMMITTEE. Said approval shall be recorded and operate as an amendment to this instrument.

Section 8.7 Parking. An OWNER of a LOT shall provide space for the parking of at least two (2) automobiles, unless modified by the ARCHITECTURAL COMMITTEE, per LOT off public streets. Parking must be confined to the interior of the LOT and not on the public right of way.

Parking in the PROPERTY shall be restricted to private automobiles and passenger vans, and only within the parking areas designed and/or designated for that purpose. No OWNER shall conduct repairs (except in an emergency) or restorations of any motor vehicle or other vehicle upon any portion of the PROPERTY, except in an enclosed area with the doors to that area closed at all times.

No commercial vehicles or campers, mobile homes, motor homes, house trailers or trailers of any type, recreational vehicles, motorcycles, mopeds, boats, or vans shall be permitted to be parked or to be stored at any place within the PROPERTY, except in spaces for some or all of the above specifically designated by the DECLARANT. No OWNER shall keep any vehicle on the COMMON AREA which is deemed a nuisance by the BOARD. For purposes of this Section, "commercial vehicles" shall mean those which are not

designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive of whether it is a commercial vehicle. The prohibitions on parking contained in this Section shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services nor to any vehicles of the DECLARANT. No overnight on-street parking or parking on lawns shall be permitted.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained in these Use Restrictions or in the Rules and Regulations of the ASSOCIATION may be towed by the ASSOCIATION at the sole expense of the OWNER of the vehicle if the vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The ASSOCIATION shall not be liable to the OWNER of that vehicle for trespass, conversion, or otherwise, nor guilty of any criminal act, by reason of the towing, and once the notice is posted, neither its removal, nor failure of the OWNER to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this Paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

Section 8.8 Use of Common Area. The ASSOCIATION shall have full control over the COMMON AREA and may establish such rules and regulations and conditions for the use of the COMMON AREA as it may deem adequate or necessary and the ASSOCIATION shall have full power and authority to suspend or revoke the privilege and license of any such OWNER, and any MEMBER of the household of an OWNER or any of the guests, tenants, or invitees of an OWNER, from using the COMMON AREA, should any such party, while in said Area, conduct himself in such a manner as to warrant such action in the sole discretion of the majority of the ASSOCIATION. Provided, however, nothing herein shall be construed to allow the ASSOCIATION to prohibit any LOT OWNER from ingress and egress to and from the LOT owned by OWNER.

Section 8.9 Driveways. Each PURCHASER of a LOT from DECLARANT shall be responsible for building, at the sole expense of PURCHASER, a concrete or brick driveway. Each driveway must be completed on or prior to the completion of the dwelling. All driveways must connect with the adjoining road and the parking area on the LOT. The location, design and construction of all driveways must be approved in writing by the ARCHITECTURAL COMMITTEE prior to construction.

Unless otherwise approved by the ARCHITECTURAL COMMITTEE all driveways located on the LOTS must access to and from and all houses must front a public street.

Section 8.10 Preservation of Trees. No tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any LOT without the express written authorization of the ARCHITECTURAL COMMITTEE. The ARCHITECTURAL COMMITTEE, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the PROPERTY. If it shall deem it appropriate, the ARCHITECTURAL COMMITTEE may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 8.10, the DECLARANT, the ASSOCIATION and the ARCHITECTURAL COMMITTEE and the respective agents of each may come upon any LOT during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the ASSOCIATION, nor the ARCHITECTURAL COMMITTEE, nor DECLARANT, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of

any such entry or inspection.

Section 8.11 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on any PROPERTY or on the exterior of any portion of any improvement on the PROPERTY. Exterior sculpture, fountains, flags and similar items must be approved by the ARCHITECTURAL COMMITTEE; provided, however, that nothing herein shall prohibit the appropriate display of the American Flag.

Section 8.12 Permitted Animals. No animals, livestock or other poultry of any kind shall be raised, bred, harbored or kept on any LOT except that the OWNER may keep two (2) domesticated household pets. No such pets shall be kept for any commercial purpose, and any such pets may be kept only so long as they or any of them do not become an annoyance or nuisance to the neighborhood. All pets shall be kept under the close supervision of their OWNERS and shall, at the written request of the ARCHITECTURAL COMMITTEE, be kept behind a fence (see fence requirement).

Section 8.13 Signs. Except as provided in this DECLARATION, no sign, billboard or advertising device of any nature shall be placed upon any LOT except as provided herein. The ARCHITECTURAL COMMITTEE may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the PROPERTY, if approved by the ARCHITECTURAL COMMITTEE, as to color, location, nature, size and other characteristics of such signs or devices. A sign identifying the SUBDIVISION may be located on LOT 23, d'ESTREHAN, UNIT ONE and shall be a COMMON PROPERTY. PROVIDED, HOWEVER, the DECLARANT may erect signs or other advertising devices without the approval of the ARCHITECTURAL COMMITTEE.

Section 8.14 Temporary Structures. No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a residence or temporary housing or the like on any LOT. If approved by the ARCHITECTURAL COMMITTEE, such a structure may be used as a security station during construction or other special purpose.

Section 8.15 Pipes. To the extent of the interest of the OWNERS of a LOT, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any LOT above the surface of the ground.

Section 8.16 Wall and Window Air Conditioning Units. Wall and window air conditioning units shall not be permitted.

Section 8.17 Chimney Flues. Chimney flues shall be enclosed.

Section 8.18 Garages. Except on corner LOTS, no garages shall open toward a road unless approved by the ARCHITECTURAL COMMITTEE. All garages shall be enclosed.

Section 8.19 Play Equipment, Strollers, Etc. All bicycles, tricycles, scooters, skateboards and other play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from roads or PROPERTY adjacent to the LOT. No such items shall be allowed to remain on the COMMON AREA or on LOTS so as to be visible from adjacent PROPERTY or the road when not in use. Notwithstanding the above, the BOARD may, but shall not be obligated to, permit swing sets and similar permanent playground equipment to be erected on LOTS provided it is approved by the ARCHITECTURAL COMMITTEE. No baseball cages or similar recreational facilities shall be permitted without approval of the ARCHITECTURAL COMMITTEE.

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Section 8.20 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or energy conservation equipment shall be constructed or installed on any LOT unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARCHITECTURAL COMMITTEE. Under no circumstances shall solar panels be installed that will be visible from any road or COMMON AREA in the PROPERTY.

Section 8.21 Oil or Gas Tanks, Pools, Swimming Pool Equipment. All swimming pool equipment and housing must be placed in walled-in or screened areas or landscaped area so that they are not visible from any COMMON AREA, road or adjoining PROPERTY. No oil tanks or bottled gas tanks shall be allowed on any LOT or on the COMMON AREA, provided, however, two (2) bottled natural gas tanks no larger than five (5) gallons in size may be kept on a LOT for the purpose of cooking with a gas grill and so long as said natural gas tank is placed in a screened area and so that they are not visible from any COMMON AREA, road or adjoining PROPERTY.

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

A. Composition to be of material thoroughly tested and accepted by the industry for such construction;

B. Pool screening may not be visible from the street in front of the LOT; and

C. All screening material shall be of a color in harmony with the LOT. No raw aluminum color screen will be allowed.

Section 8.22 Outside Installations. Except as provided below, no exterior antennas, aerials, satellite dishes, towers or other apparatus, or support thereof, for the reception or transmission of television, radio or other signals of any kind shall be erected, installed, placed, allowed or maintained upon any portion of the PROPERTY. PROVIDED, HOWEVER, that the OWNER of a LOT shall be allowed to install one (1) eighteen inch (18") diameter satellite dish (or smaller diameter dish) on a building so long as said satellite dish is not visible from the street and so long as said satellite dish is approved by the ARCHITECTURAL COMMITTEE. The DECLARANT and/or the ASSOCIATION shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna or cable system for the benefit of all or a portion of the PROPERTY, should master system or systems to be used by the ASSOCIATION require any such exterior apparatus. No radio transmissions of any kind shall be made from any building, LOT or COMMON AREA, except for communication equipment used by the ASSOCIATION. No machinery shall be placed or operated upon any LOT except such machinery as is usual in maintenance of a private residence. No roof penetrations, such as vents and pipes, shall be placed on any roof so as to be visible from any road or COMMON AREA.

Section 8.23 Irrigation. No sprinkler or irrigation system of any type that draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the PROPERTY shall be installed, constructed or operated within the PROPERTY by any PERSON, other than the ASSOCIATION or the DECLARANT, or to be utilized by any group of LOTS, unless prior written approval has been received from the ARCHITECTURAL COMMITTEE. All sprinkler and irrigation systems must be installed underground and shall be subject to approval of the ARCHITECTURAL COMMITTEE. This Section shall not apply to the DECLARANT.

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Section 8.24 Wells and Drainage. No private water system shall be constructed on any LOT except private irrigation wells not to exceed three inches (3") in diameter approved by the ARCHITECTURAL COMMITTEE. Any such private irrigation well must be screened from public view and is subject to the approval of the ARCHITECTURAL COMMITTEE. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No community wells or community water systems shall be allowed except the water system provided by any governmental entity.

Section 8.25 Storm Precautions. No hurricane or storm shutters shall be permanently installed on any structure on a LOT unless first approved by the ARCHITECTURAL COMMITTEE. Hurricane or storm shutters may be installed temporarily, and other storm precautions may be taken to protect structures on a LOT, while the threat of a hurricane or similar storm is imminent; provided, all such shutters and other exterior alterations or additions made as a storm precaution shall be promptly removed once the storm or imminent threat of the storm has passed.

Section 8.26 Window Coverings, Etc. Reflective window coverings are prohibited. No awnings, canopies, shutters, patio cover, building or storage unit of any kind shall be erected, placed or permanently installed on any LOT unless first approved by the ARCHITECTURAL COMMITTEE.

Section 8.27 Firearms. The discharge of firearms within the PROPERTY is prohibited except with the prior approval of the BOARD OF DIRECTORS. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size, notwithstanding anything to the contrary contained herein or in the BY-LAWS. The ASSOCIATION shall not be obligated to take action to enforce this Section.

Section 8.28 Insurance Rates. Nothing shall be done or kept on any LOT or in any improvement or the COMMON AREA which will increase the rate of insurance on any PROPERTY insured by the ASSOCIATION without the approval of the BOARD nor shall anything be done or kept on any LOT which would result in the cancellation of insurance on any PROPERTY insured by the ASSOCIATION or which would be in violation of any law.

Section 8.29 Construction and Option to Purchase. All homes and other structures, landscaping and other improvements must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the OWNER or builder due to strikes, fires, national emergencies or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. During the continuation of construction, the OWNER shall require the contractor to maintain the LOT in a reasonably clean and uncluttered condition. Upon completion of construction, the OWNER shall cause the contractor to immediately remove all equipment, tools, construction material and debris from the LOT. Any damage to roads, paths, sidewalks, COMMON AREA or any other property owned by any person or entity caused by the OWNER or the agent of the OWNER, contractor or other party providing labor or services to the OWNER shall be repaired by the OWNER. All homes or other structures and other improvements must be made by an Alabama licensed contractor.

In the event that a purchaser of a LOT or the heirs, successors or assigns of a purchaser, other than DECLARANT, does not, within three (3) years of the date of the deed from DECLARANT to the purchaser, commence construction of and thereafter prosecute with diligence to completion a residence on such property, then DECLARANT shall have the right and option for a period of three (3) years after the expiration of such three (3) year period to

repurchase the property from the purchaser or the heirs, successors or assigns of purchaser, free and clear of all liens and encumbrances of every kind and description, except such as are in existence on the date of the deed from the DECLARANT to the purchaser, for the purchase price originally paid to DECLARANT without interest or other cost. Upon the exercise of the option to purchase provided for in this paragraph and at closing, the purchaser shall convey the LOT to the DECLARANT by warranty deed free and clear of all liens and encumbrances of every kind and description, except such as are in existence on the date of the deed from the DECLARANT to the purchaser.

Section 8.30 Occupants Bound. All provisions of the DECLARATION and BY-LAWS and of any rules and regulations or use restrictions promulgated pursuant hereto that govern the conduct of OWNERS and that provide for sanctions against OWNERS shall also apply to all occupants, guests and invitees of any LOT. Every OWNER shall cause all occupants of the OWNER'S LOT to comply with the DECLARATION and BY-LAWS and the rules and regulations adopted pursuant hereto, and shall be responsible for all violations and losses to the PROPERTY caused by those occupants, notwithstanding the fact that those occupants of a LOT are fully liable and may be sanctioned for any violation of the DECLARATION and BY-LAWS and rules and regulations adopted pursuant hereto.

Section 8.31 Accumulation of Refuse. No lumber, metals or bulk materials (except lumber, metals and bulk materials as is usual in the maintenance of a private residence and which must be stored in such a manner so that it cannot be seen from adjacent and surrounding property), refuse or trash shall be kept, stored or allowed to accumulate on any LOT, except building materials during the course of construction of any approved structure. No harmful or noxious materials shall be stored, either inside any structure, or outside any structure, if said materials pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such structures. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open only on a public street on any day a pick-up is to be made. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the ARCHITECTURAL COMMITTEE. All trash and garbage containers shall be kept in a clean and sanitary condition. The ARCHITECTURAL COMMITTEE, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage and screening of the same on the PROPERTY.

Section 8.32 Mineral Operations Prohibited. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind whatsoever shall be permitted upon any LOT, nor shall oil wells, derricks, tanks, tunnels, mineral excavations or shafts be erected or permitted to remain on any LOT; however, it is understood that this prohibition does not affect the rights of mineral OWNERS or OWNERS of any interest in minerals that may have been previously reserved or conveyed to others.

Section 8.33 Fences, Walls, Hedges and Ornamental Structures. No fence, wall, ornamental structure, gazebo or hedge shall be located nearer the front PROPERTY line of any LOT than the front of the dwelling on such LOT without the written approval of the ARCHITECTURAL COMMITTEE, and no fence, wall, ornamental structure or gazebo, shall be constructed without the prior written approval of the ARCHITECTURAL COMMITTEE. No chain link, wire or metal fence may be constructed on any LOT. No fenced in animal pens may be constructed or maintained on any LOT. The ASSOCIATION shall have the right to enter upon any LOT and trim or prune, at the expense of the OWNER, any hedge or other planting which in the opinion of the ASSOCIATION, by reason of its location upon the LOT

or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of road traffic or is unattractive in appearance; provided, however, that the OWNER shall be given fifteen (15) days prior written notice of such action.

Section 8.34 Clothes Lines. No clothing or any other household fabric shall be hung in the open on any LOT and no clothes lines or clothes hanging devices shall be kept or maintained on any LOT.

Section 8.35 Mail or Newspaper Boxes. The design of all mailboxes and newspaper boxes must be approved by the ARCHITECTURAL COMMITTEE and free-standing mail boxes and newspaper boxes may be required in some or all sections of the PROPERTY.

Section 8.36 Nuisance. No obnoxious, offensive or illegal activities shall be carried on upon any LOT nor shall anything be done on any LOT which may be or may become an annoyance or nuisance to the neighborhood.

Section 8.37 No Discrimination. No action shall at any time be taken by the ASSOCIATION or its BOARD OF DIRECTORS which in any manner would discriminate against any OWNER or OWNERS in favor of the other OWNERS.

ARTICLE IX

MEMBERSHIP AND VOTING RIGHTS

Section 9.1 The ASSOCIATION. The operation and administration of the PROPERTY shall be by the ASSOCIATION of LOT OWNERS. The ASSOCIATION shall be a not-for-profit Alabama Corporation incorporated by ARTICLES OF INCORPORATION recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The ASSOCIATION shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or nonexercise of its powers. The ASSOCIATION shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of LOT OWNERS of the PROPERTY with reference to the common elements and with reference to any and all other matters in which all of the LOT OWNERS have a common interest. The ASSOCIATION shall have all the powers and duties granted to or imposed on it under its ARTICLES OF INCORPORATION and BY-LAWS and under this DECLARATION as they may be amended from time to time. The ASSOCIATION is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. The ASSOCIATION shall have the right to grant permits, licenses and easements over the COMMON AREAS for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the PROPERTY. The BOARD shall have the authority and duty to levy and enforce the collection of general and specific assessments for common expenses and is further authorized to provide adequate remedies for failure to pay such assessments.

Section 9.2 Membership. Each LOT OWNER shall be a MEMBER of the ASSOCIATION so long as he is a LOT OWNER. The membership of a LOT OWNER shall immediately terminate when the LOT OWNER 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.

Section 9.3 Voting. Each LOT shall be entitled to one (1) vote, which vote is not divisible. The vote shall be cast by the LOT OWNER in the manner provided for herein and in the BY-LAWS. PROVIDED, HOWEVER, that until four (4) months after the DECLARANT has completed and sold seventy-five percent (75%) of all LOTS in all phases of the property or until five (5) years from the date the first LOT is sold or until the DECLARANT elects to terminate

its control of the ASSOCIATION, whichever shall first occur, the BY-LAWS and rules adopted by the DECLARANT shall govern and there shall be no meeting of the MEMBERS of the ASSOCIATION, unless a meeting is called by the BOARD OF DIRECTORS of the ASSOCIATION, and neither the LOT OWNERS nor the ASSOCIATION, nor the use of the PROPERTY by LOT occupants shall interfere with the completion of the contemplated improvements and the sale of the LOTS, and the control of the ARCHITECTURAL COMMITTEE shall remain with the DECLARANT. 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.

Section 9.4 Rules and Regulations. The ASSOCIATION, through its BOARD OF DIRECTORS, may make and enforce reasonable Rules and Regulations governing the use of the PROPERTY, which Rules and Regulations shall be consistent with the rights and duties established by this DECLARATION. Copies of such Rules and Regulations and amendments thereto shall be furnished by the ASSOCIATION to all OWNERS. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the COMMON AREA. The BOARD shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the BY-LAWS of the ASSOCIATION. In addition, the ASSOCIATION, through the BOARD, may, by contract or other agreement, enforce local ordinances on the PROPERTY for the benefit of the ASSOCIATION and its MEMBERS.

Section 9.5 Implied Rights. The ASSOCIATION may exercise any other right or privilege given to it expressly by this DECLARATION or the BY-LAWS, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 9.6 Self-Help. In addition to any other remedies provided for herein, the ASSOCIATION or its duly authorized agent shall have power to enter upon a LOT or any portion of the COMMON PROPERTY to abate or remove, using such force as may be reasonably necessary, anything or condition which violates this DECLARATION, the BY-LAWS, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the BOARD shall give the violating LOT OWNER ten (10) days written notice of its intent to exercise self-help. All cost of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating LOT OWNER and shall be collected as provided for herein for the collection of ASSESSMENTS.

Section 9.7 Right of Entry. The ASSOCIATION shall have the right, in addition to and not in limitation of the rights it may have, to enter into LOTS for emergency, security or safety purposes, which right may be exercised by the BOARD, its officers, agents, employees, managers and all police officers, fire fighters, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be during reasonable hours and after reasonable notice to the OWNER or occupant of the LOT.

Section 9.8 Contracts. The ASSOCIATION shall not be bound, either directly or indirectly, to any professional management contracts or leases entered into prior to passage of control unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, with not more than ninety (90) days notice to the other party.

Section 9.9 Assignment. The share of a MEMBER in the funds and assets of the ASSOCIATION cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his LOT.

Section 9.10 BOARD OF DIRECTORS. The affairs of the ASSOCIATION shall be conducted by a BOARD OF DIRECTORS which shall consist of such number not less than three (3) nor more than five (5) as shall, from time to time, be determined and fixed by a majority of the voting rights present at any annual meeting of the MEMBERS.

Section 9.11 BY-LAWS. The ASSOCIATION and its MEMBERS shall be governed by the BY-LAWS which shall be adopted by the MEMBERS.

Section 9.12 Availability of Records. The ASSOCIATION shall make available to LOT OWNERS, prospective purchasers, first MORTGAGEES and insurers of first MORTGAGEES of any LOT, current copies of this DECLARATION, BY-LAWS, Rules and Regulations and other books, records, financial statements and the most recent annual audited or unaudited financial statement of the ASSOCIATION, if such audited or unaudited financial statement is prepared. "Available" shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

Section 9.13 Reserve Fund. The ASSOCIATION shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the COMMON AREAS. The fund shall be maintained out of regular assessments for common expenses.

ARTICLE X

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 10.1 Creation of the Lien and Personal Obligation of Assessments. The DECLARANT, for each LOT owned within the PROPERTY, hereby covenants, and each OWNER of any LOT by acceptance of a DEED therefor, whether or not it shall be so expressed in such DEED, is deemed to covenant and agree to pay to the ASSOCIATION: (i) annual and special assessments or charges, and (ii) special assessments for capital improvements to the COMMON AREA, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the LOT and shall be a continuing lien upon the PROPERTY against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the OWNER of such PROPERTY at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to successors in title.

Section 10.2 Special Assessments for Capital Improvements Upon COMMON AREA. In addition to the annual and special assessments authorized above, the ASSOCIATION may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the COMMON AREA, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of three-fourths (3/4) of the votes of MEMBERS who are voting in person or by proxy at a meeting duly called for this purpose.

Section 10.3 Maximum Annual Assessment. Until the first day of January of the year immediately following the conveyance of the first LOT to an OWNER, the maximum annual ASSESSMENT shall be \$100.00 per LOT.

A. From and after the first day of January of the year immediately following the conveyance of the first LOT to an OWNER, the maximum annual ASSESSMENT may be increased each year not more than three percent (3%) above the maximum ASSESSMENT for the previous year without a vote of the membership.

B. From and after January 1st of the year immediately following the conveyance of the first LOT to an OWNER, the maximum annual ASSESSMENT may be increased above three percent (3%) by a vote of two-thirds (2/3) of each class of MEMBERS who are voting in person or by proxy, at a meeting duly called for that purpose.

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

Section 10.4 Uniform Rate of Assessment. The assessments herein described shall be fixed at a uniform rate for all LOTS.

Section 10.5 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all LOTS on the first day of the month following the date of this DECLARATION. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The BOARD shall fix the amount of the annual assessment against each LOT at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every OWNER subject thereto. The due date of any assessment shall be fixed by the BOARD in the resolution authorizing such assessment, and any such assessment shall be payable in advance in monthly, quarterly, semiannually or annual installments as determined by the BOARD. The ASSOCIATION shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the ASSOCIATION, setting forth whether the assessments on a specified LOT have been paid. A properly executed certificate of the ASSOCIATION as to the status of assessments on a LOT is binding upon the ASSOCIATION as of the date of its issuance.

Section 10.6 Effect of Nonpayment of Assessments: Remedies of the ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest thereon at a rate to be set by the BOARD OF DIRECTORS of the ASSOCIATION, but in no event greater than the maximum percentage rate as may then be permitted under the Laws of the State of Alabama. The ASSOCIATION may bring an action at law or in equity against the OWNER personally obligated to pay the same, foreclose a lien against the PROPERTY or seek injunctive relief, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such OWNER, by his acceptance of a DEED to a LOT, hereby expressly vests in the ASSOCIATION the right and power to bring all actions against such OWNER personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the ASSOCIATION in a like manner as a MORTGAGE lien on real property, and such OWNER hereby expressly grants to the ASSOCIATION a power of sale in connection with said lien. The lien provided for in this Section 10.6 shall be in favor of the ASSOCIATION and shall be for the benefit of all LOT OWNERS. The ASSOCIATION, acting on behalf of the LOT OWNERS, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, MORTGAGE and convey the same. No OWNER may waive or otherwise escape liability for the assessments provided for herein by non-use of the COMMON AREA or abandonment of his LOT.

Section 10.7 Subordination of the Lien to MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first MORTGAGE or vendor's lien. Sale or transfer of any LOT shall not affect the assessment lien. However, the sale or transfer of any LOT pursuant to MORTGAGE or vendor's lien foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such LOT from liability for any assessments thereafter becoming due or from the lien thereof or relieve the prior OWNER from any personal liability for any unpaid assessments occurring prior to said sale

or transfer.

Section 10.8 Notice and Quorum For Any Action Authorized Under Sections 10.2 and 10.3 above. Written notice of any meeting called for the purpose of taking any action authorized under **Section 10.2** and **Section 10.3** above shall be sent to all **MEMBERS** not less than thirty (30) days and no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of **MEMBERS** or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10.9 Capitalization of ASSOCIATION. Upon acquisition of record title to a LOT from **DECLARANT**, each **OWNER** shall contribute to the capital of the **ASSOCIATION** an amount equal to one-sixth (1/6) of the amount of the annual **ASSESSMENT** for that LOT as determined by the **BOARD**. This amount shall be deposited by the buyer into the purchase and sales escrow and disbursed therefrom to the **ASSOCIATION**.

Section 10.10 Effect on DECLARANT. Notwithstanding any provision that may be contained to the contrary herein, for so long as **DECLARANT** (or any of the affiliates of **DECLARANT**) is the **OWNER** of any LOT, the **DECLARANT** shall have the option, at the sole discretion of **DECLARANT**, to (a) pay **ASSESSMENTS** on the LOTS owned by **DECLARANT**, or (b) not pay **ASSESSMENTS** on any LOTS and in lieu thereof fund any resulting deficit in the operating expense of the **ASSOCIATION** not produced by **ASSESSMENTS** receivable from **OWNERS** other than **DECLARANT**. The deficit to be paid under option (b), above, shall be the difference between (i) actual operating expenses of the **ASSOCIATION** (exclusive of capital improvement costs, reserves and management fees), and (ii) the sum of all monies receivable by the **ASSOCIATION** (including, without limitation, **ASSESSMENTS**, interest, late charges, fines, incidental income and any surplus carried forward from the preceding year(s)). The **DECLARANT** may from time to time change the option stated above under which the **DECLARANT** is making payments to the **ASSOCIATION** by written notice to such effect to the **ASSOCIATION**. When all LOTS within the **PROPERTY** are sold and conveyed to purchasers, neither the **DECLARANT**, nor the affiliates of **DECLARANT**, shall have further liability of any kind to the **ASSOCIATION** for the payment of **ASSESSMENTS**, deficits or contributions. In no event shall **DECLARANT** ever be obligated to pay a Special **ASSESSMENT**.

ARTICLE XI

INSURANCE AND CASUALTY LOSS

Section 11.1 The ASSOCIATION. The **ASSOCIATION** is hereby authorized to purchase and maintain insurance on the **COMMON AREA** in such forms and such amounts, with such deductibles, and with such companies as the **BOARD OF DIRECTORS** shall deem appropriate.

A. Hazard Insurance. All hazard insurance policies obtained by the **ASSOCIATION** shall designate the **ASSOCIATION** as the named insured as insurance trustee for the benefit of all **OWNERS** and their mortgagees and the **DECLARANT**, as their respective interests may appear. In the event of loss or damage, all insurance proceeds paid pursuant to a policy purchased by the **ASSOCIATION** shall be paid to the **ASSOCIATION** as insurance trustee under the provisions of this **DECLARATION**.

B. Public Liability Insurance. The **ASSOCIATION** may obtain comprehensive public liability insurance with limits and provisions as it deems desirable.

C. Workers' Compensation Insurance. The ASSOCIATION shall obtain workers' compensation insurance to meet the requirements of Alabama Law.

D. Premiums. All premiums upon insurance policies purchased by the ASSOCIATION shall be assessed to the OWNERS as a ASSESSMENT of the ASSOCIATION.

E. Adjustment. Each OWNER shall be deemed to have delegated to the ASSOCIATION his or her right to adjust with insurance companies all losses under policies purchased by the ASSOCIATION, subject to the rights of mortgagees.

Section 11.2 The OWNER.

A. Public Liability Insurance. Each OWNER shall obtain, maintain and pay for comprehensive public liability insurance on his or her interest in the PROPERTY with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limits, covering the activities of such OWNER on or about the PROPERTY. The ASSOCIATION may, from time to time, increase minimum limits required of all OWNERS. The deductibles allowed on said insurance shall be in an amount approved by the ASSOCIATION. Each comprehensive public liability insurance policy shall name the ASSOCIATION, DECLARANT and any management company as additional insureds under said policy.

B. Hazard Insurance. Each LOT OWNER shall be and is hereby deemed responsible for maintaining sufficient hazard insurance upon the improvements on his or her LOT so as to provide full replacement value thereof in the event of a casualty, including, without limitation: (1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location, and use as the buildings on the land, including, but not limited to, vandalism, malicious mischief, and windstorm; and (3) flood insurance, if necessary and it can reasonably be obtained. Each LOT OWNER shall provide the ASSOCIATION with evidence that such insurance is in full force and effect. In the event an OWNER of any LOT in the PROPERTY shall fail to maintain sufficient insurance as provided for herein, the ASSOCIATION, after approval by two-thirds (2/3) of the BOARD OF DIRECTORS, shall have the right to purchase said insurance, the cost of which shall become the personal obligation of the LOT OWNER and a lien on the LOT.

C. Miscellaneous. All insurance policies provided for in this Section 11.2 shall include, however, provisions waiving (i) any right of the insured to subrogation claims against the ASSOCIATION and against individual OWNERS, as well as their agents, servants, employees and guests; and (ii) any right of the insurer to contribution or proration because of a master hazard policy.

Section 11.3 Reconstruction Or Repair After Casualty. In the event of the damage or destruction of all or part of the improvements on a LOT, the LOT OWNER shall be responsible for the prompt reconstruction and repair of the improvements after such casualty; provided that should the LOT OWNER fail to repair or replace the improvements within a reasonable period, the ASSOCIATION may do so for his or her account and may assess his or her PROPERTY accordingly and, thereafter, be subrogated to any insurance proceeds.

In the event of the damage or destruction of all or part of the improvements on the COMMON AREA, the ASSOCIATION shall be responsible for the prompt reconstruction and repair of the improvements after such casualty.

Reconstruction or repair shall be mandatory unless seventy-five percent (75%) or more of the votes of the ASSOCIATION, and the DECLARANT so long as DECLARANT owns any PROPERTY in the

SUBDIVISION, elect not to repair or reconstruct. Any reconstruction or repair must follow substantially the original plans and specifications of the improvements unless seventy-five percent (75%) or more of the votes of the ASSOCIATION, and the DECLARANT so long as DECLARANT owns any PROPERTY in the SUBDIVISION, vote to adopt different plans and specifications.

ARTICLE XII

AMENDMENT

This DECLARATION shall be amended in the following manner:

Section 12.1 Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the ASSOCIATION at which a proposed amendment is to be considered.

Section 12.2 Resolution. An amendment may be proposed by either a majority of the BOARD or by MEMBERS holding one-third (1/3) of the votes of the ASSOCIATION. A resolution adopting a proposed amendment must be adopted by an affirmative vote of not less than a majority of the BOARD and the consent of the OWNERS of the LOTS to which sixty-seven percent (67%) of the votes in the ASSOCIATION are allocated and the approval of fifty-one percent (51%) of the holders of first MORTGAGES on LOTS. PROVIDED, HOWEVER, that until four (4) months after the DECLARANT has completed and sold seventy-five percent (75%) of all LOTS in all phases of the property or until five (5) years from the date the first LOT is sold or until the DECLARANT elects to terminate its control of the ASSOCIATION, whichever shall first occur, no amendment may be made unless DECLARANT shall join in the execution of such amendment, nor shall any amendment make any change that would in any way affect the rights, privileges or powers of the DECLARANT unless the DECLARANT shall join in the execution thereof.

Section 12.3 Recording. A copy of each amendment shall be certified by the President and Secretary of the ASSOCIATION as having been duly adopted and shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

Section 12.4 Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all record OWNERS, including all first MORTGAGEES of LOTS in the PROPERTY in the manner required for the execution of a DEED, and such amendment shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

ARTICLE XIII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first MORTGAGES on LOTS in the PROPERTIES. The provisions of this ARTICLE apply to both this DECLARATION and to the BY-LAWS, notwithstanding any other provisions contained therein.

Section 13.1 Notices of Action. An institutional holder, insurer, or guarantor of a first MORTGAGE who provides written request to the ASSOCIATION (such request to state the name and address of such holder, insurer or guarantor and the LOT number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the PROPERTIES or which affects any LOT on which there is a first MORTGAGE held, insured or guaranteed by such eligible holder;

- (b) any delinquency in the payment of assessments or charges owed by an OWNER of a LOT subject to the MORTGAGE of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first MORTGAGE, upon request, is entitled to written notice from the ASSOCIATION of any default in the performance by an OWNER of a LOT of any obligation under the DECLARATION or BY-LAWS of the ASSOCIATION which is not cured within sixty (60) days;
- (c) any lapse, cancellation or material modification of any insurance policy maintained by the ASSOCIATION; or
- (d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 13.2 Special FHLMC COMMITTEE Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first MORTGAGEES and VOTING MEMBERS representing at least two-thirds (2/3) of the total ASSOCIATION vote entitled to be cast thereon consent, the ASSOCIATION shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the COMMON AREA which the ASSOCIATION owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the COMMON AREA shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an OWNER of a LOT (A decision, including contracts, by the BOARD or provisions of any declaration subsequently recorded on any portion of the PROPERTY shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this DECLARATION);
- (c) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of LOTS and of the COMMON AREA (The issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision);
- (d) fail to maintain insurance, as required by this DECLARATION; or
- (e) use hazard insurance proceeds for any COMMON AREA losses for other than the repair, replacement, or reconstruction of such property.

First MORTGAGEES may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the COMMON AREA and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an ASSOCIATION policy, and first MORTGAGEES making such payments shall be entitled to immediate reimbursement from the

ASSOCIATION.

Section 13.3 No Priority. No provision of this DECLARATION or the BY-LAWS gives or shall be construed as giving any OWNER or other party priority over any rights of the first MORTGAGEE of any LOT in the case of distribution to such OWNER of insurance proceeds or condemnation awards for losses to or a taking of the COMMON AREA.

Section 13.4 Notice to ASSOCIATION. Upon request, each OWNER shall be obligated to furnish to the ASSOCIATION the name and address of the holder of any MORTGAGE encumbering the LOT of a OWNER.

Section 13.5 Amendment by BOARD. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this ARTICLE or make any such requirements less stringent, the BOARD, without approval of the OWNERS, may cause an amendment to this ARTICLE to be recorded to reflect such changes.

Section 13.6 Applicability of ARTICLE XIII. Nothing contained in this ARTICLE shall be construed to reduce the percentage vote that must otherwise be obtained under the DECLARATION, BY-LAWS or Alabama Corporate Law for any of the acts set out in this ARTICLE.

Section 13.7 Failure of MORTGAGEE to Respond. Any MORTGAGEE who receives a written request from the BOARD to respond to or consent to any action shall be deemed to have approved such action if the ASSOCIATION does not receive a written response from the MORTGAGEE within thirty (30) days of the date of the request by the ASSOCIATION.

ARTICLE XIV

ANNEXATION OF ADDITIONAL PROPERTY

Section 14.1 Existing Property. The PROPERTY which is and shall be held, transferred, sold, conveyed, leased and occupied subject to this DECLARATION is located in Baldwin County, Alabama, and is referred to as d'ESTREHAN, UNIT ONE, A SUBDIVISION, and is herein referred to as the PROPERTY and is also herein referred to as the "EXISTING PROPERTY".

Section 14.2 Additions to EXISTING PROPERTY. Lands in addition to the EXISTING PROPERTY described above may hereafter become subject to this DECLARATION in the following manner:

A. Additions in Accordance with General Plan of Development. The DECLARANT, its successors and assigns, shall have the right at any time or times at the sole discretion of DECLARANT and without the further consent of the ASSOCIATION, to bring within the scheme and operation of this DECLARATION ADDITIONAL PROPERTY; provided, however, that such additions shall be limited to lands which are contiguous to the EXISTING PROPERTY, and which ADDITIONAL PROPERTY is to be developed as part of the SUBDIVISION known as d'ESTREHAN, UNIT ONE, A SUBDIVISION, subject to the covenants and restrictions herein set forth. Such ADDITIONAL PROPERTY shall be deemed to be "contiguous" even though separated from the EXISTING PROPERTY by roads, highways, rivers, streams, rights-of-way, railroads, utilities or other intervening physical features or property interests not inconsistent with the general contiguity of the lands in question. Such ADDITIONAL PROPERTY shall be developed in a manner consistent with a general plan of development of the EXISTING PROPERTY prepared prior to the sale of any LOT and made known to every PURCHASER (which may be done by brochure made available to the PURCHASER) prior to such sale.

The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Judge of Probate of Baldwin County, Alabama, a **SUPPLEMENTARY DECLARATION** with respect to such **ADDITIONAL PROPERTY** which shall extend the operation and effect of the Covenants and Restrictions of this **DECLARATION** to such **ADDITIONAL PROPERTY**.

The **SUPPLEMENTARY DECLARATION** may contain such complementary additions and modifications of the Covenants and Restrictions contained in this **DECLARATION** as may be necessary or convenient, in the judgment of the **DECLARANT**, to reflect and adapt to any difference in character of the added **PROPERTY** and as are not inconsistent with the scheme of this **DECLARATION**. In no event, however, shall such **SUPPLEMENTARY DECLARATION** revoke, modify or add to the covenants established by this **DECLARATION** so as to affect the **EXISTING PROPERTY**. The **DECLARANT** shall not be obligated to develop **ADDITIONAL PROPERTY** as provided for herein. The discretion to develop future lands shall be solely with the **DECLARANT**.

B. **Additional COMMON PROPERTY.** The **DECLARANT**, its successors and assigns, shall have the right at any time or times at the sole discretion of **DECLARANT** and without the further consent of the **ASSOCIATION**, to bring within the scheme and operation of this **DECLARATION** additional **COMMON PROPERTY**. The additional **COMMON PROPERTY** may or may not be contiguous and may or may not be owned in joint ownership with other property owner's associations or other parties and may or may not be subject to contractual obligations, which may include assessments and liens for assessments on the **PROPERTY**, to maintain said **COMMON PROPERTY**.

C. **Other Additions.** Upon approval in writing of the **ASSOCIATION**, pursuant to authorization of two-thirds (2/3) of the vote of all of its **MEMBERS**, voting as provided for herein, the **OWNER** of any property who desires to add such property to the scheme of this **DECLARATION** and subject such property to the jurisdiction of the **ASSOCIATION** may file of record a **SUPPLEMENTARY DECLARATION**.

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

ARTICLE XV

MISCELLANEOUS

Section 15.1 **Unrestrictive Right of Transfer.** The right of a **LOT OWNER** to sell, transfer or otherwise convey his **LOT** shall not be subject to any right of first refusal or a similar restriction.

Section 15.2 **Leasing.** **LOTS** may be leased by the **LOT OWNERS**, provided, however, that such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the **ASSOCIATION** to prescribe reasonable rules and regulations relating to the lease and rental of **LOTS** and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the **BOARD** deems appropriate, including eviction.

Section 15.3 No Restrictions on Mortgaging. Anything construed in any of the PROPERTY documents to the contrary, there shall be no restrictions on a LOT OWNER'S right to MORTGAGE his LOT.

Section 15.4 Acceptance by Grantee. The grantee of any LOT subject to the coverage of this DECLARATION, by acceptance of the DEED or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from DECLARANT or a subsequent OWNER of such LOT, shall accept such DEED or other contract upon and subject to each and all of the terms and conditions set out in this DECLARATION.

Section 15.5 Indemnity for Damages. Each and every LOT OWNER and future LOT OWNER, in accepting a DEED or contract for any LOT subject to this DECLARATION, agrees to indemnify DECLARANT for any damage caused by such OWNER, or the contractor, agent or employees of such OWNER, to private access areas, roads, streets, gutters, walkways or other aspects of private or public ways, including all surfacing thereon or to water, drainage or storm sewer lines or sanitary sewer lines owned by DECLARANT, or for which DECLARANT has responsibility, at the time of such damage.

Section 15.6 Severability. If any ARTICLE, part, clause, provision or condition of this DECLARATION is held to be void, invalid or inoperative, such voidness, invalidity or inoperativeness shall not affect any other ARTICLE, clause, provision or condition hereof; but the remainder of this DECLARATION shall be effective as though such ARTICLE, clause, provision or condition had not been contained therein.

Section 15.7 Right of DECLARANT to Modify Restrictions with Respect to Unsold LOTS. With respect to any unsold LOT, DECLARANT may include in any contract or DEED hereinafter made or entered into such modifications and/or additions to this DECLARATION as DECLARANT in its discretion desires; provided, however, that this DECLARATION may not be modified in any contract or DEED to except a LOT from the assessment provisions of ARTICLE X or to lessen or extend the voting rights as provided in this DECLARATION or in the ARTICLES OF INCORPORATION and BY-LAWS of the ASSOCIATION.

Section 15.8 Captions. The captions preceding the various Sections, paragraphs and subparagraphs of this DECLARATION are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision in this DECLARATION. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 15.9 Effect of Violation on MORTGAGE Lien. No violation of any of the terms and conditions of this DECLARATION shall defeat or render invalid the lien of any MORTGAGE or vendor's lien made or reserved in good faith and for value upon any portion of the PROPERTY; provided, however, that any MORTGAGEE or vendor in actual possession, or any purchaser at any MORTGAGEE'S or vendor's lien foreclosure sale shall be bound by and subject to this DECLARATION as fully as any other OWNER of any portion of the PROPERTY.

Section 15.10 No Reverter. No provision of this DECLARATION is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 15.11 Duration and Amendment. The covenants and restrictions of this DECLARATION shall run with and bind the PROPERTY, and shall inure to the benefit of and shall be enforceable by the ASSOCIATION or the OWNER of any PROPERTY subject to this DECLARATION, their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from

the date this **DECLARATION** is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then **OWNERS**, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this **DECLARATION** shall be modified or terminated as specified therein.

Section 15.12 Enforcement. In the event of a violation or breach of any of this **DECLARATION** or any amendments thereto by any residential **OWNER**, or employee, agent or lessee of such **OWNER**, the **OWNER(S)** of **LOT(S)**, the **ASSOCIATION**, **DECLARANT** (so long as it is a **MEMBER** of the **ASSOCIATION**), their successors and assigns, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of this **DECLARATION**, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

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

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

Section 15.13 Certificate of Violation. In addition to any other rights or remedies available to the **ASSOCIATION** hereunder or at law or equity, the **ASSOCIATION** shall have the right to file in the records of Baldwin County, Alabama, a Certificate or Notice of Violation of this **DECLARATION** (which violation shall include, without limitation, nonpayment of the annual charges and/or failure to comply with architectural guidelines) upon failure of a **LOT OWNER** to correct a violation of this **DECLARATION** within thirty (30) days after written notice of the violation has been given by the **ASSOCIATION** to the **LOT OWNER**.

Section 15.14 Interpretation by ASSOCIATION. The **ASSOCIATION** shall have the right to construe and interpret the provisions of this **DECLARATION**, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or **PROPERTY** benefited or bound by the provisions hereof.

Section 15.15 Assignment by ASSOCIATION. The **ASSOCIATION** shall be empowered to assign its rights hereunder to any successor nonprofit membership corporation (herein referred to as the "**SUCCESSOR CORPORATION**") and, upon such assignment the **SUCCESSOR CORPORATION** shall have all the rights and be subject to all the duties of the **ASSOCIATION** hereunder.

Section 15.16 No Waiver. The failure of any party entitled to enforce this **DECLARATION** to do so shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to **ARTICLE IV** shall be binding on any and all parties as a conclusive determination that such plans are in conformity with this **DECLARATION**.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein, has set the hand and seal of DECLARANT on this 8TH day of MAY, 1996.

DECLARANT:

D'ESTREHAN DEVELOPMENT, L.L.C., an
Alabama Limited Liability Company

By: W. Harold Avant
W. HAROLD AVANT
Its: Member

By: Thomas R. Avant
THOMAS R. AVANT
Its: Member

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that W. HAROLD AVANT, whose name as Member of D'ESTREHAN DEVELOPMENT, L.L.C., 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 Member and with full authority, executed the same voluntarily for and on behalf of said Company.

Given under my hand and seal on this 8th day of May, 1996.

W. Kenneth Heard
NOTARY PUBLIC

My Commission Expires: 8/1/97

STATE OF ALABAMA :

COUNTY OF Jeff. :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that THOMAS R. AVANT, whose name as Member of D'ESTREHAN DEVELOPMENT, L.L.C., 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 Member and with full authority, executed the same voluntarily for and on behalf of said Company.

Given under my hand and seal on this 6 day of May, 1996.

Spitzer Stewart
NOTARY PUBLIC

My Commission Expires: 8/2/97

MY COMMISSION EXPIRES AUGUST 2, 1997

JOINDER OF MORTGAGEE

The undersigned, COMPASS BANK, being the holder of the first MORTGAGE on the PROPERTY covered by this DECLARATION, does hereby consent to this DECLARATION.

Dated this 8TH day of May, 1996.

COMPASS BANK

By: *Philip R. Webb*
Its: VICE PRESIDENT

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Philip R. Webb, whose name as Vice President of COMPASS BANK 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, , as such officer and with full authority, executed the same voluntarily for and on behalf of said Bank.

Given under my hand and seal on this 8th day of May, 1996.



Patricia M. Bailey
NOTARY PUBLIC
My Commission Expires: 11-29-99

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JOINDER OF MORTGAGEE

The undersigned, RIVER OAKS DEVELOPMENT, L.L.C., an Alabama Limited Liability Company, being the holder of the second MORTGAGE on the PROPERTY covered by this DECLARATION, does hereby consent to this DECLARATION.

Dated this 9th day of MAY, 1995.

RIVER OAKS DEVELOPMENT, L.L.C., an Alabama Limited Liability Company

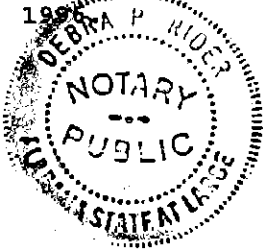
By: *Roy J. Barnes*
ROY J. BARNES
Its: Member

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that ROY J. BARNES, whose name as Member of RIVER OAKS DEVELOPMENT, L.L.C., 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 Member and with full authority, executed the same voluntarily for and on behalf of said Company.

Given under my hand and seal on this 9th day of May, 1998



Debra P. Rider
NOTARY PUBLIC
My Commission Expires: 12-12-98

THIS INSTRUMENT PREPARED BY:
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