

This instrument prepared by:
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STATE OF ALABAMA)
COUNTY OF SHELBY)

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CALDWELL CROSSINGS, A RESIDENTIAL SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of the 1/10, ~~2001~~²⁰⁰² by CALDWELL MILL, LLP (the "Developer").

RECITALS:

Developer presently is the owner of the Property, as described in Section 1.25 below, and desires to develop, improve, lease and sell the Property for single-family residential housing purposes subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has caused the Association, as defined in Section 1.6 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.10 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making annual, special and individual Assessments, as defined in Section 1.5 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring, or have any right, title or interest in any portion of the Property described in Exhibit A attached hereto and any of the Additional Property, as described in Section 1.1 below, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

01/14/2002-02381
02:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
042 CH 134.00

ARTICLE I

DEFINITIONS

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

1.1. Additional Property. The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or contiguous with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time approve for addition to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

1.2. ARC. The terms or letters "ARC" shall mean the Architectural Review Committee appointed pursuant to Section 5.2 hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

1.3. Architectural Standards. The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 5.4 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Lot, Dwelling or Common Area.

1.4. Articles of Incorporation. The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

1.5. Assessment. The term "Assessment" shall mean, collectively, the annual and special assessments and individual assessments and/or any other charges assessed against an Owner by the Association pursuant to the terms of this Declaration.

1.6. Association. The term "Association" shall mean Caldwell Crossings Owners' Association, Inc., an Alabama nonprofit corporation.

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

1.8. Buffer Area. The term "Buffer Area" shall mean and refer to those portions of the Property designated as Lots 99-A and 99-B on the Survey of CALDWELL CROSSINGS, FIRST SECTOR, as recorded in Map Book 29, Page 9, in the Probate Office of Shelby County, Alabama.

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

1.10. Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall also include (a) all public or private easements within the boundaries of the Property upon which public or private roadways providing ingress to and egress from the Property for use by all Owners of the Property have been constructed, (b) all signage, street lights, lightning, walkways, sidewalks, paths, gates, walls, fences, improvements, landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians within any public or private roadways, whether the same are located within the boundaries of the Property or on any public or private roadways which may be adjacent to or in close proximity with the Property which provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling), (c) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling), (d) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and, (e), excluding the Buffer Area, all parks, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

1.11. Common Expenses. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.3(c), together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.12. Declaration. The term "Declaration" shall mean and refer to this Declaration of Protective Covenants, Conditions and Restrictions for Caldwell Crossings, together with all amendments thereto.

1.13. Developer. The term "Developer" shall mean Caldwell Mill, LLP and its successors and assigns.

1.14. Development. The term "Development" shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.2 hereof.

1.15. Dwelling. The term "Dwelling" shall mean and refer to any improved Lot intended for use as single-family residential housing units.

1.16. Governmental Authority. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

1.17. Improvement. The term "Improvement" shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

1.18. Living Space. The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, unfinished attics and unfinished basements.

1.19. Lot. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided pursuant to the provisions of Section 2.4 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.20. Mortgage. The term "Mortgage", shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

1.21. Mortgagee. The term "Mortgagee" shall mean and refer to the holder of any Mortgage.

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

1.23. Owner. The term "Owner" shall mean and refer to the record owner of fee simple title to any Lot or Dwelling, whether a corporation, partnership, limited liability company, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

1.24. Property. The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.1. General Declaration. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges liens and regulations of this Declaration and the Property, any part hereof, and each Lot, Dwelling and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any lot, Dwelling and Common Area thereof.

2.2. Additional Property. Developer reserves the right in its sole and absolute discretion, at any time and from time to time during the pendent of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Shelby county, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating, where this Declaration has been recorded in the Probate Office of Shelby County, Alabama., (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer in its sole discretion, shall specify to regulate and control the use, occupance and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Shelby County, Alabama submitting any Additional Property to the terms and provisions of this Declaration, the number of

votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (a) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (b) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.2 of this Declaration.

2.3. Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Dwelling and Common Area within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.4. Subdivision Plat. Developer may record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds, and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by the Developer.

ARTICLE III

EASEMENTS

3.1. Grant of Non-Exclusive Easements to Owners

(a) Common Areas. Subject to the terms and conditions of Section 3.1(b), Developer does hereby grant to each Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other Owners, Occupants and other parties having any rights or interest therein. The easement and rights granted pursuant to this Section 3.1(a) are and shall be

permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling but are expressly subject to the rights reserved by Developer to take any action necessary or desired in order to cause any of the private roadways within the Property to be dedicated to and accepted as public roadways by an Governmental Authority as provided in Section 3.1(b) below.

(b) Power of Attorney. Notwithstanding anything provided to the contrary in this Declaration, Developer (i) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate any of the private roadways within the Property as public roadways to any Governmental Authority designated by Developer without requirement that the approval or consent of any Owner, Occupant or Mortgage be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which any of the private roadways within the Property are submitted for dedication as public roadways. Each Owner, by acceptance of any deed to a Lot or Dwelling, and each Mortgagee, by acceptance of any Mortgage on any Lot or Dwelling, shall be deemed to, and each does hereby, irrevocably appoint Developer as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of any of the private roadways within the Property to any Governmental Authority as public roadways for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and anyone having an interest in any Lot or Dwelling or in any of the easement rights created or granted in this Declaration. The rights reserved by Developer pursuant to this Section 3.1(b) may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein by Developer.

3.2. Grant of Easement to Governmental Authorities. Subject to the provisions of Section 3.1(b) above, Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon all of the private roadways within the Property forming a part of the Common Areas for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.3. Reservation of General Access Easement.

Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling

for the purpose of providing ingress to and egress from each Lot and Dwelling for (a) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or directly affected thereby.

3.4. Reservation of Easements With Respect to Common Areas

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

(b) Changes in Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns, the permanent right to change, modify and realign the boundaries of any of the Common Areas and any Lots owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.5. Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins, and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems,

equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.5 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.5 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.5 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

3.6. Reservation of Easement for Perimeter Privacy Wall. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width running parallel to and along the boundary of any Lot or Dwelling which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter privacy wall, fence, mound or berm around the perimeter boundary of the Property; provided, however, that neither Developer nor the Association shall have any obligation to construct any such perimeter privacy wall, fence, mound or berm.

3.7. Reservation of Maintenance Easement. Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any lot or Dwelling for the purpose of mowing, removing, clearing, cutting or pruning under brush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.8. Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any applicable watershed, soil erosion or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the ARC or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use of or occupancy of any Dwelling situated on any Lot.

3.9. Establishment of Buffer Area.

(a) Developer does hereby establish and declare, for the benefit Developer the ARC and the Association and their respective successors and assigns, that the Buffer Area (i) shall be and remain a natural, undisturbed buffer area, free from any Improvements of any nature except that Developer may landscape such area in a manner and to the extent determined by Developer in its sole discretion, (ii) shall not, without the prior written consent of Developer or the ARC, be used for any activities, whether as play areas for children, picnic areas, recreational areas or any other uses whatsoever, and (iii) shall not be improved with any Improvements of any nature (including without limitation, fences, walls, decks, outdoor furniture, recreational equipment or devices of any nature, equipment, tools, machinery, buildings or other structures).

(b) Developer does hereby grant to the ARC, the Association and each of their respective successors and assigns, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon the Buffer Area for the purpose of maintaining the Buffer Area; provided, however, that nothing contained in this Section 3.9 shall obligate Developer to undertake any maintenance responsibilities with respect to the Buffer Area.

ARTICLE IV

ASSOCIATION

4.1. Membership. The Owners of each Lot or Dwelling shall be a member of the Association. For purposes of determining membership in the Association, each dwelling unit situated on any portion of the Property shall be deemed a separate individual Dwelling. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws

and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.2. Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the board and any officer or officers of the Association until such time as Developer no longer is the owner of any Lot or Dwelling within the Property. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vest in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

4.3. Voting Rights. Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws (which, among other things, provide that only Developer, for so long as Developer owns any lot or Dwelling within the Property, shall be exclusively entitled to take various actions and vote on all matters to be voted on by the members of the Association) and the rights of the Association to suspend any Owner's voting, rights or privileges in the Association pursuant to Article XI below, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling owned. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any lot by Owner pursuant to Section 2.4 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 4.3, Developer shall be deemed to be the owner of and entitled to all voting rights attributable to any Lots or Dwelling owned by Developer.

4.4. Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. Except as otherwise specifically

provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and the authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.5. Agreements. Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be affiliate of Developer, such duties of the Association as may be determined by the Board. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

4.6. Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings and Common Areas so long as the same do not conflict with, contradict or attempt to superseded any of the terms and provisions of this Declaration.

4.7. Indemnification. The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the ARC and the Board harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the ARC or the Board. The officers, agents, representatives and members of the ARC or the Board shall not be liable for any mistake in judgment negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agent's, representatives and members of the ARC or the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC or the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the ARC or the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any rights to which any officer, agent, representative or member of the ARC or the Board may be entitled, including, anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability insurance and, to the extent financially feasible, officers and directors liability insurance in order to fulfill its obligations under this Section 4.7 and the costs of such insurance shall constitute a Common Expense.

ARTICLE V

ARCHITECTURAL REVIEW COMMITTEE
AND
ARCHITECTURAL STANDARDS

fiscal yr - Jan - Dec

5.1. Committee Composition. The ARC shall consist of three (3) persons, each of whom shall be appointed or elected as provided in Section 5.2 below. The members of the ARC may, but shall not be required to be, members of the Association or owners of any Lot or Dwelling. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.2 below may be removed with or without cause in the manner provided in Section 5.2 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Dwelling, shall be deemed to ratify the provisions of Section 5.2 below.

5.2. Appointment and Removal of ARC Members.

(a) For so long as Developer is the owner of any Lot or Dwellings or within the Property, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as Developer is no longer the owner of any Lot or Dwelling within the Property, or upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 5.2(a) above, then the members of the ARC shall be appointed by the Board.

(c) Any member of the ARC may be removed, with or without cause, by (i) the Developer, in its sole discretion, during the period of time that the provisions of Section 5.2(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.2(b) above are in effect. In the event of death or resignation of a member of the ARC, then Developer in the event of the provisions of Section 5.2(a) above are applicable, or the Board, in the event the provisions of Section 5.2(b) above are applicable, as the case may be, shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.3. Procedure and Meetings. The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairmen, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers,

inspectors and/or attorney in order to advise and assist the ARC in performing its functions set orth herein. Each member of the ARC may be paid a stipend or honorarium as may from time to time determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC.

5.4. Architectural Standards. The ARC is hereby authorized, but not obligated, to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvement on a Lot are to be submitted to and approved by the ARC and any other matters affect the construction, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all owners.

5.5. Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING BY ANY OWNER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.5(B) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.5(B) BELOW.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property. Prior to the commencement of any Dwelling, or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, in such form as the ARC may require.

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Property. The ARC may establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking the ARC's approval of plans and specifications. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance without the necessity or requirement that the approval or consent of the ARC be obtained.

(d) In the event the ARC fails to approve in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

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

(f) If construction of the Dwelling or the Improvements has not substantially commence (e.g., by clearing and grading, pouring of footing, and otherwise commencing framing

and other related construction work) within one (1) year of approval by the ARC of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced (or continued) on such Lot or Dwelling and the Owner of such Lot or Dwelling shall be required to resubmit all plans and specifications for any Dwelling or other Improvements to the ARC for approval in the same manner specified above.

5.6. Landscaping Approval. In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner, on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the ARC.

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

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

5.9. Subsurface Conditions. The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by Developer or the ARC to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

5.10. Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the ARC ; the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any work done according to

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

5.11. Commencement and Completion of Construction. Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities.

5.12. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors and assigns shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the development of Lots, Dwellings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as maybe approved by Developer from time to time. The right to maintain and carry on such facilities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

5.13. Enforcement and Remedies. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any owner or Occupant, then Developer, the ARC and/or the Association shall each have the right, at their option, to exercise any of the rights and remedies set forth in Article XI below.

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

5.15. Zoning Compliance. The ARC shall assure that all requirements of applicable zoning regulations, including applicable PUD regulations, are complied with in its approvals under this Declaration. The ARC shall perform the duties and obligations of the East Heatherwood Architectural Committee with respect to the Property.

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

6.1. Use Restrictions. Except as otherwise provided to the contrary in this Section 6.1, each Lot and Dwelling shall be used for single-family residential purposes only. No trade or business may be carried on in or from any Lot or Dwelling, provided, however, that the use of any portion of a Dwelling, as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association. Notwithstanding anything provided in this Section 6.1 to the contrary, (x) the Property or any portion thereof, including specifically, any Lots constituting any portion of the Property, may be used and developed for any of the uses included in the definition of Common Areas; and (y) the Property or any portion thereof, including specifically any Lots constituting any portion of the Property, may be used or developed by the Developer for any of the uses permitted by the East Heatherwood Planned Unit Development approved by the City of Hoover upon filing of an amendment to this Declaration.

6.2. Underground Utilities. All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.3. Density Limitations. The maximum number of Dwellings to be constructed on or within the Property and any Additional Property shall not exceed 340 Dwellings.

6.4. Building Setbacks. The minimum building setback lines for all Dwelling shall be as follows:

Front Setback	5 feet
Rear Setback	0 feet
Side Setback	3 feet,

provided, however, any such setback lines may be varied by the ARC and all setback lines shall be subject to approval by the Planning and Zoning Commission of the City of Hoover.

6.5. Height Limitations. The height of all Dwellings shall be compatible with all other Dwelling adjacent to such Lot or Dwelling. No Dwelling shall exceed three (3) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

6.6. Minimum Living Space. Each detached Dwelling situated within the Development shall contain a minimum Living Space of 1,500 square feet provided that any detached Dwelling having more than one floor shall have at least 750 square feet of Living Space on the first floor of the Dwelling.

Each attached Dwelling situated within the Development shall contain a minimum Living Space of 1,200 square feet provided that any attached Dwelling having more than one floor shall have at least 600 square feet of Living Space on the first floor of the Dwelling.

6.7. Land.

(a) Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot.

(b) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-line for roadways providing ingress to or egress from the Property. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners.

(c) No rocks, rock walls or other substances shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion nor such Lot or to otherwise impede or limit access to the same. No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed on or within any Lot or Dwelling which would be visible from any public or private streets providing access to the Property.

(d) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards or any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any public or private street providing access to the Property.

6.8. Roofing. No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling. All plumbing and heating vents, stacks and other projections of any nature on the roof shall, to the extent practicable, not be visible from any public or private roadways providing access to the Property.

6.9. Exterior Lighting. All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility lights attached to a Dwelling, must be approved by the ARC and must be positioned so as not to be directed toward another Lot.

6.10. Exterior Materials and Finishes.

(a) All exterior building material finishes for any Dwelling shall be approved by the ARC. All wood surfaces utilized on the exterior of any dwelling shall be painted; stained wood shall not be authorized; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors.

(b) No wooden steps, stoops or porches shall be allowed on the front or sides of any Dwellings. No concrete, concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.)

6.11. Off-Street Parking and Garages. Each Dwelling shall provide for off-street parking for at least two (2) automobiles. Garage doors shall be constructed of such materials as are approved by the ARC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC. Garage doors may open directly onto a street. Occupants residing in a Dwelling must park their automobiles off-street.

6.12. Fences. No fences of any kind or material shall be permitted within the Property except as approved by the ARC.

6.13. Windows, Window Treatments and Doors.

(a) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes.

(b) No aluminum or metal windows shall be utilized on the front or sides of any Dwelling. Screen doors shall not be used on the front or side of any Dwelling. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

6.14. Mailboxes. Only one (1) mailbox shall be allowed on any Lot or Dwelling. Mailboxes shall be of a standard size and design similar to the mailbox originally installed by the Developer. Mailboxes shall contain only the house number and the name of the Owner of the Lot

or Dwelling as approved by the ARC, but no further inscription, paintings, ornaments or artistry shall be allowed.

6.15. HVAC Equipment. No window mounted heating or air conditioning units or window fans shall be permitted.

6.16. Satellite Dishes and Antennae. No satellite dishes larger than 18" in diameter shall be allowed on any Lot or Dwelling. Any such small satellite dish shall be attached to the Dwelling on the rear or side of the Dwelling in such manner as is not visible from any public or private street providing access to the Property. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling, unless the same is contained entirely within the interior of a building or other structure, is not visible from any public or private street providing access to the Property or adjacent Lot or Dwelling and is approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.

6.17. Driveways and Sidewalks. All driveways and sidewalks shall be paved with asphalt or concrete; chert, gravel and loose stone driveways and sidewalks are prohibited. No Lot or any roadway constructed on any part of the Property may be utilized to provide access, ingress to or egress from any property lying outside the boundaries of the Property without the ARC's prior written approval, which may be given or withheld in the sole discretion of the ARC. The foregoing shall not be construed as any restriction on the ARC's right to add Additional Property to the terms of this Declaration.

6.18. Outdoor Furniture, Recreational Facilities and Clotheslines.

(a) Any yard (exterior) furniture placed, kept, installed, maintained or located on any Lot or Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any public or private street providing direct access to the Property. No interior furniture (i.e., sofas, etc.) shall be allowed outside any Dwelling.

(b) Wood piles, free-standing playhouses, children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be located so that the same are not visible from any public or private street on which the Property fronts.

(c) Basketball backboards shall be located so as not to be visible from any public or private street providing direct access to the Property. Basketball goal backboards should be clear plexiglass or acrylic.

(d) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from any public or private street providing access to the Property

and from any adjacent Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear or side of a Dwelling and shall not be visible from any public or private street providing access to the Property.

(f) Bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front or side-yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of homecrafts shall be located only at the rear of a Dwelling and shall not be visible from any public or private street providing access to the Property.

6.19. Pets and Animals. No animals, livestock, or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, Dwelling or other portion of the Property; provided, however, that not more than three (3) dogs, cats or birds (or a combination of dogs, cats and birds) may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. All structures or areas for the care, housing or confinement of any pet shall be located at the rear of a Dwelling, shall not be visible from any street providing access to the Property and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Property, including the right to assess fines for violations of such rules and regulations.

— 6.20. Trash, Rubbish and Nuisances.

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Dwellings within the Property or any real property owned or being developed by the ARC or Developer in close proximity to the Property. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and

fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Dwelling or other portion of the Property. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Dwelling or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from all public and private streets providing access to the Property and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC, unless placed at the curb on the day of pickup by the waste pickup service for the Development.

(c) Except during initial construction of a Dwelling, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or Dwelling.

6.21. Recreational Vehicles and Machinery and Equipment.

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ARC. Neither the Common Areas nor the public or private streets within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(b) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas.

6.22. Signage. No signs or advertising posters of any kind (other than one (1) "for sale" or "for rent" sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and names and address signs, shall be upon such conditions as may from time to time be determined by the ARC. Notwithstanding the foregoing, the restrictions set forth in this Section 6.22 shall not be applicable to any signage erected pursuant to Section 6.25(b) below.

6.23. Above or Below Ground Tanks and Wells. No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot, Dwelling, or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or

similar sewage facilities may be installed or maintained on any Lot or Dwellings. Only public sewage systems shall be utilized for the discharge of sewage from any Lot or Dwelling.

6.24. Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse or other outbuildings or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) any detached garages or other structures which are approved in writing by the ARC, (b) dog houses, as provided in Section 6.19, and (c) construction trailers and/or sales offices of Developer.

6.25. Construction of Improvements.

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any public or private roadways providing access to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly. Used construction materials may be burned on-site so long as such burning is conducted at the rear of such Lot or Dwelling and does not create a nuisance to other owners or violate the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any public or private street providing access to the Property.

(b) During the initial construction of any Dwelling up to two (2) signs, in size and color to be approved by the ARC, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or containing information identifying the builder of such Dwelling.

(c) Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

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

6.26. Subdivision and Interval Ownership. No Lot may be subdivided or resubdivided without the prior written approval of the ARC. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.27. Swimming Pools and Tennis Courts. No swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools or tennis courts may be constructed, installed and maintained on any Lot or Dwelling without the prior written approval of the plans for the same by the ARC.

6.28. Traffic Regulations. All vehicular traffic on the private streets and roads in the Property shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the private roads within any portion of the Property. The Board shall be entitled to enforce such rules and regulations by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof.

6.29. Variances. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot or Dwelling. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance.

6.30. Enforcement and Remedies. In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then Developer, the Association and/or the ARC shall each have the right, at their option, to exercise any of the rights and remedies set forth in Article XI below.

6.31. Street Signs, etc. The ARC shall adopt sign design standards and specifications for street signs, traffic control signs, informational and directional signs, temporary and permanent business location signs, project signs for the Development and other street-scape structures to be located within and along public and private roads, driveways, parking lots and pedestrian ways.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

7.1. Responsibilities of Owners.

(a) The maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling

shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his Lot and Dwelling in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot or Dwelling shall be landscaped in accordance with plans and specifications submitted to and approved by the ARC pursuant to Section 5.6 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner thereof in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Property.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC as provided in Sections 5.5 and 5.6.

7.2. Responsibilities of Association.

(a) The Association shall maintain and keep in good repair and condition all portions of the Common Areas. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling or (3) resulting from thief, burglary or other illegal entry onto the Property or any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (1) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder or (2) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or

negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.7 below.

ARTICLE VIII

COMMON AREA ASSESSMENTS

8.1. Assessments and Creation of Lien. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) annual Assessments, as established and to be collected as provided in Section 8.3 below, (b) special Assessments, to be established and collected as provided in Section 8.4 below, and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided in Section 8.7(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.7(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the owner of a Lot or Dwelling and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.7(a) below, court costs and attorneys' fees incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling,

all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature.

Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for any annual or special Assessments on any Lots or Dwellings which it or its affiliates own in the Development.

8.2. Uniform Rate of Assessments.

(a) Both annual and special Assessments, as described in Sections 8.3 and 8.4 below, shall be assessed against each Lot or Dwelling in the Property at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his pro rata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings in the Property at the time such annual or special Assessment is levied.

(b) Notwithstanding anything provided in Section 8.2(a) above to the contrary, in the event any Additional Property is added to the Property, the Lots and/or Dwellings within the Additional Property shall be subject to the same annual or special Assessments then being paid by the owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Property.

8.3. Computation of Annual Assessments.

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each owner shall pay his pro rata share of the same as provided in Section 8.2 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each owner.

(b) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.4 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs

incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

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

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

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

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

(v) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Property which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair;

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

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

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

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

8.4. Special Assessments. In addition to the annual Assessments authorized in Section 8.3 above and the special Assessments authorized in Sections 9.1(b) and 9.3(a)(i) below, the Board may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 9.1(b) and 9.3(a)(i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.2 above.

8.5. Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided for in this Section 8.5 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such owner. The provisions of this Section 8.5 shall apply, without limitation, to any individual Assessments levied pursuant to Section 7.2(b) above and Article XI below.

8.6. Notice of Meetings and Quorum. With respect to any meeting of the Members of the Association, including, without limitation, any meetings which are called for the purpose of approving special Assessments pursuant to Section 8.5 above, (a) written notice of such meeting shall be sent to all Owners not less than ten (10) days and not more than fifty (50) days in advance of such meeting and (b) the presence in person or by proxy of Owners entitled to cast at least fifty percent (50%) of all of the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of (i) a majority of the Owners who are voting in person or by proxy and (ii) Developer, to the extent Developer owns any Lot or Dwelling in the Property, shall be required to approve any matter submitted to the members of the Association for approval.

8.7. Effect of Non-Payment; Remedies of the Association.

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association, all annual and special Assessments provided for herein and any individual Assessments levied or assessed pursuant to the terms of this Declaration. In the event any Assessments or any portions thereof are not paid when due, the same shall be subject to a late charge in an amount determined from time to time and uniformly applied by the Board, in the case of annual Assessments, special Assessments and/or individual Assessments, and the owner of such Lot or Dwelling shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessments shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.7(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to this Section 8.7 above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of the Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, as the case may be, may, but shall not be obligated to, make written demand on such defaulting owner, which demand shall state the date and amount of

delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling, of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Shelby County, Alabama:

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

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

8.8. Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments or other charges authorized herein with respect to any Lot or Dwelling in the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.7(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion

of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Shelby County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.7(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting owner notwithstanding the foreclosure of a Mortgage by a Mortgagee on such Owner's Lot or Dwelling.

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

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

9.1. Damage or Destruction to Common Areas.

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

(b) Notwithstanding anything provided in Section 9.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall

the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.2. Damage or Destruction to Lots or Dwellings. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

9.3. Condemnation of Common Areas.

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

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

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.3(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled

to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

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

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

ARTICLE X

TERM AND AMENDMENTS

10.1. Term. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Shelby County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.2. Amendment by Developer. For so long as Developer owns any Lot or Dwelling within the Property, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Shelby County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Dwelling, or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer), or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby and any amendment made pursuant to this Section 10.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama.

10.3. Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.2 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Mortgagee must be approved by such Mortgagee, and (ii) during any period in which Developer owns any Lot or Dwelling within the Property, then Developer must approve such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.3(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Shelby County, Alabama. Notwithstanding anything provided in this Section 10.3(b) to the contrary, Developer shall have the right, at its option, to add Additional Property to the Declaration as provided in Section 2.2 above.

ARTICLE XI

ENFORCEMENT

11.1. Authority and Enforcement. In addition to the rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board of the Association from time to time, then the Association, the Board, the ARC and the Developer shall each, jointly and severally, have the power and right, at their option, to (a) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling, and shall be a personal obligation of such Owner which is guilty of such violation, (b) suspend an Owner's right to vote in the Association, (c) enjoin such violation or noncompliance and/or (d) through their respective designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Association, the Board, the ARC or Developer in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of this Declaration and all such costs shall be deemed individual Assessments pursuant to Section 8.5 above. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association, the Board, the ARC and Developer set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by any of them either at law or in equity in the event of any violation or breach by any Owner or Occupant of any of the terms or provisions of this Declaration.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. Control by Developer: NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS, OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Section 4.2 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Property, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.

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

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

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

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

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

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

12.8. No Reverter. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

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

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

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

12.12. No Partition. Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

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

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

12.15. Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within Property.

12.16. Assignment. Developer and the ARC shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer and the ARC, respectively.

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

12.18. No Waiver. All rights, remedies and privileges granted to Developer, the ARC and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.19. Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

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

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

CALDWELL MILL, LLP

By: Harbar Construction Company, Inc.

Its: Managing Partner

By: *B. J. Harris*
Its President

STATE OF ALABAMA
COUNTY OF SHELBY

I, the undersigned, a notary public in and for said County in said State, hereby certify that B. J. Harris, whose name as President of Harbar Construction Company, Inc., a corporation, the Managing Partner of CALDWELL MILL, LLP, an Alabama limited liability partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer of such Managing Partner and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal, this the 10th day of January, 2001.

[SEAL]

Notary Public *Alesia H. Ruff*

My Commission Expires: 3/19/04

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 19, 2004
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

**EXHIBIT A
TO
DECLARATION**

Lots 1 through 99 and Lots 99A and 99B according to the Survey of Caldwell Crossings, as recorded in Map Book 29, Page 9, in the Probate Office of Shelby County, Alabama, as amended by re-survey of Lots 79 and 80 recorded in Map Book 29, Page 54 in said Probate Office and as further amended by re-survey of Lots 43 through 47 recorded in Map Book 29, Page 55 in said Probate Office

071766.1

** TOTAL PAGE.02 **

Inst # 2002-02381

01/14/2002-02381
02:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
042 CH 134.00

This instrument was prepared by:

Joseph G. Stewart, Esq.
Burr & Forman LLP
3100 SouthTrust Tower
420 North 20th Street
Birmingham, Alabama 35203

Inst # 2002-02380
01/14/2002-02380
02:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 04 50.00

**ARTICLES OF INCORPORATION
OF
CALDWELL CROSSINGS OWNERS' ASSOCIATION, INC.**

The undersigned, acting as incorporators of a nonprofit corporation under the Alabama Nonprofit Corporation Act, Code of Alabama 1975 § § 10-3A-1 et seq., (the "Act"), adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation shall be Caldwell Crossings Owners' Association, Inc. (hereinafter referred to as "Association").

SECOND: The period of its duration is perpetual.

THIRD: The general nature, objects and purposes for which the Association is organized is to establish an entity:

1. To provide for the efficient preservation of the appearance, value and amenities of the property (hereinafter referred to as the "Property") which is subject to the Declaration of Protective Covenants, Conditions and Restrictions for Caldwell Crossings, a Residential Subdivision, recorded or to be recorded in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter referred to as "Declaration").

2. To own and maintain, repair and replace the general and/or Common Areas of the Property including structures, landscaping and other improvements in and benefitting the Property for which the obligation to maintain has been delegated and accepted.

3. To control the specifications, architecture, design, appearance, elevation and landscaping of all improvements and structures of any kind, including, without limitation, buildings, fences, walls, signs, lighting systems, site paving, grading, screen enclosures, sewers, drains, landscaping, landscape devices or objects and/or other structures constructed, placed or permitted to remain on the Property, as well as any alteration, improvement, addition and/or change therein, thereof or thereto, all in accordance with the Declaration.

4. To provide, purchase, acquire, own, replace, improve, maintain and/or repair such real property, buildings, structures, street lights, landscaping, paving or other improvements in and/or benefitting the Property for which the obligation to so maintain and repair has been, or may be, delegated to, and accepted by, the Association.

5. To provide services, the responsibility for which has been, or may be, delegated to, and accepted by, the Association.

6. To operate without profit for the sole and exclusive benefit of its members.

7. To perform any and all other functions contemplated of the Association or otherwise undertaken by its Board of Directors in accordance with the Declaration.

FOURTH: The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers, authority and privileges generally granted to nonprofit corporations under the laws of the State of Alabama. The Association shall have such additional powers as are reasonably necessary or appropriate to implement and effectuate the purposes of the Association and as are not inconsistent with these Articles, and the Declaration, as they may from time-to-time be amended, including, without limitation:

1. To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Association pursuant to the Declaration, Articles, By-Laws, or any Rules and Regulations adopted pursuant thereto, and to enforce the provisions thereof.

2. To maintain, repair, replace, operate and manage the Common Areas, and such other parts or parcels of the Property or other property adjacent thereto as may be delegated to, and accepted by, the Association, including the right to make further improvements to the Common Areas or such other property.

3. To purchase, lease, hold, operate, sell, trade, dedicate, transfer, mortgage or otherwise acquire or dispose of interests in real or personal property in connection with the affairs of the Association.

4. To promulgate, amend and enforce rules, regulations, By-Laws, covenants, restrictions and agreements in connection with and to effectuate the affairs and purposes of the Association and to enforce by legal means the provisions of the Articles or the Declaration.

5. To fix, levy, collect and enforce payment of all assessments or charges to be levied against Lots (as defined in the Declaration) within the Property pursuant to the terms of the Declaration and By-Laws, and to defray all costs and expenses in connection therewith, as well as the costs and expenses of effectuating the objects and purposes of the Association, and to create reasonable reserves for such costs and expenses.

6. To borrow money, and, from time to time, to make, accept, endorse, execute and issue debentures, promissory notes or other obligations of the Association for monies borrowed, in payment of property acquired, or for any of the other purposes of the Association, and to secure the repayment of any such obligation by mortgage, pledge or other instrument of trust, or by lien upon, assignment of, or agreement in regard to, all or any part of the property, rights or privileges of the Association, wherever situated.

7. To pay taxes and other charges, if any, on or against any property, if any, owned by the Association.

8. To charge recipients for services rendered by the Association and to charge the user for use of Association property when such is deemed appropriate.

9. To participate in mergers or consolidations with any other nonprofit corporation or association which may perform similar functions located within the general vicinity of the Property.

10. To employ such personnel or to enter into, make, perform or carry out contracts with others to effectuate the aforesaid purposes with any person, firm, corporation, association or other entity and so contract for the management of the Association and to delegate to such contractors all powers and duties of the Association.

11. To delegate power or powers where such is deemed to be in the interest of the Association.

12. To purchase insurance for the protection of the Association, its officers, directors or members.

13. The objects and purposes set forth in Article Third of these Articles shall be construed as powers as well as objects and purposes, and the Association shall have and may exercise such powers as if such powers were set forth in full herein.

14. The Association shall have and may exercise all powers set forth in any other Article of these Articles of Incorporation.

B. All funds and title of properties acquired by the Association and the proceeds therefrom shall be held in trust for the members in accordance with the provisions of the Declaration and the Articles and By-Laws of the Association.

FIFTH: The Members of the Association shall consist of all Owners (as defined in the Declaration), and the membership shall be appurtenant to, and may not be separated from, ownership of any Lot (as defined in the Declaration). Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama, and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted) or upon such ownership interest being divested in some other manner.

SIXTH: The affairs of the Association shall be managed by a Board of Directors consisting of the number of directors as shall be determined by the By-Laws; provided, however, that the Board of Directors shall consist of not less than three directors, and in the absence of a provision in the By-Laws shall consist of three Directors. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Notwithstanding the provisions set forth in this Article Sixth, Caldwell Mill LLP (the "Developer"), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as all Lots have been sold to Owners other than the Developer, or the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

The initial Board of Directors shall have three directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified, or until such Directors are removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Denney E. Barrow	c/o Harbar Construction Company, Inc. 5502 Caldwell Mill Road Birmingham, Alabama 35242

E. Todd Sharley, Jr.

c/o Realty South
2501 - 20th Place South
Suite 400
Birmingham, Alabama 35223

Earl M. Gibson

c/o Gibson & Anderson
Construction, Inc.
2539 Rocky Ridge Road
Birmingham, Alabama 35243

Any director may be removed, either with or without cause, at any time, by the affirmative vote of a majority of the members at a meeting called for that purpose, and the vacancy in the Board caused by any such removal may be filled by the Developer until such time as all Lots have been sold to Owners other than Developer and in that event by the members at such meeting or at any subsequent meeting in the manner prescribed in the By-Laws for the filling of vacancies on the Board.

SEVENTH: The address of the Association's initial registered office is 5502 Caldwell Mill Road, Birmingham, Alabama 35242, and the name of its initial registered agent is D. E. Barrow, with the same address.

EIGHTH: The Association shall have the right to indemnify each person who shall serve as a director, officer, employee, or agent of the Association, or shall serve at the request of the Association in a similar capacity with another corporation, joint venture, trust, or other enterprise, to the extent to which this Association is granted the power to so indemnify such persons by any and every statute of the State of Alabama or act of the Legislature of the State of Alabama.

NINTH: No contract or other transaction between the Association and any person, firm, association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors or the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or corporation. Any director of the Association individually, or any firm or association of which any director may be a member of, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or association, is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors, or of any committee of directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken; and if such fact shall be so disclosed or known, any director of the Association so related or otherwise interested may be counted in determining the presence of a quorum at any meeting of the Board of Directors, or of such

committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

TENTH:

A. Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

1. Real property contributed to the Association without the receipt of other than nominal consideration by Developer (or its predecessor in interest) shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part).

2. Remaining assets shall be distributed among the members, subject to the limitations set forth below, as tenants in common, each members' share of the assets to be determined in accordance with its voting rights.

B. Dissolution of the Association shall be accomplished as set forth in the Act.

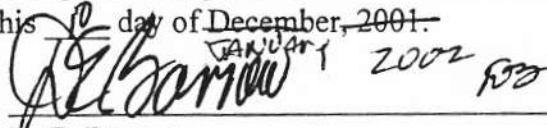
ELEVENTH: The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law, and all rights conferred upon officers and directors herein are granted subject to this reservation.

TWELFTH: The name and address of the incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
D. E. Barrow	c/o Harbar Construction Company, Inc. 5502 Caldwell Mill Road Birmingham, Alabama 35242

WHEREFORE, the incorporator files this, its Articles of Incorporation, and tenders to the Probate Judge of Shelby County, Alabama, the lawful fees and charges, and prays that these Articles may be examined and approved, and that the Association may be deemed to be incorporated for the purposes herein set out.

IN WITNESS WHEREOF, the undersigned incorporator has hereunto subscribed his signature to these Articles of Incorporation this 10 day of ~~December, 2001.~~ JANUARY 2002



D. E. Barrow
Incorporator

State of Alabama

SHELBY County

CERTIFICATE OF INCORPORATION

OF

Caldwell Crossings Owners Association, Inc.

The undersigned, as Judge of Probate of SHELBY County, State of Alabama, hereby certifies that duplicate originals of Articles of INCORPORATION of Caldwell Crossings Owners Association, Inc., duly signed and verified pursuant to the provisions of Section NON PROFIT of the Alabama Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby issues this Certificate of INCORPORATION of Caldwell Crossings Owners Association, Inc., and attaches hereto a duplicate original of the Articles of INCORPORATION.

GIVEN Under My Hand and Official Seal on this the 14th day of January, 19 02.

Patricia Yeager Schmeider

Judge of Probate



**BY-LAWS
OF
CALDWELL CROSSINGS OWNERS' ASSOCIATION, INC.**

ARTICLE I.

THE ASSOCIATION

Section 1. Identity. These are the By-Laws of Caldwell Crossings Owners' Association, Inc., a nonprofit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act [Code of Alabama 1975 §§ 10-3A-1 et seq.] by filing the Articles of Incorporation of the Association (the "Articles") with the Office of the Judge of Probate of Shelby County, Alabama, on January 14, 2002. The purposes for which the Association has been organized are set forth in the Articles. The provisions of these By-Laws are expressly subject to the terms, provisions, covenants and conditions contained in the Articles and the Declaration of Protective Covenants, Conditions and Restrictions for Caldwell Crossings, a Residential Subdivision (hereinafter referred to as the "Declaration") as filed, or to be filed, with the Office of the Judge of Probate of Shelby County, Alabama. The terms "Common Area," "Developer," "Lot," "Owner," "Property" and any other capitalized term used in these By-Laws are used with the definitions given those terms in the Declaration.

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located in the County of Shelby, State of Alabama. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3. Registered Office. The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II.

MEMBERSHIP

Section 1. Membership. The Members of the Association shall consist of all Owners (as defined in the Declaration), and the membership shall be appurtenant to, and may not be separated from, ownership of any Lot (as defined in the Declaration). Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama, and a true copy of such recorded instrument is promptly delivered to the Association.

Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted) or upon such ownership interest being divested in some other manner.

Section 2. Annual Meeting. The annual meeting of the Membership shall be held on the third Tuesday in the month of April in each year, beginning with the year 2003 at the hour of 10:00 a.m., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as conveniently may be.

Section 3. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors and shall be called by the President or the Secretary at the request of Owners of one half (½) or more of the total Lots of the Property.

Section 4. Place of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or from any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 5. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of any annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be no more than fifty (50) days and, in case of a meeting of the membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of

members entitled to vote at any meeting of the membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 7. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

Section 8. Quorum. The presence at any meeting of the Membership of the members entitled to cast at least 10% of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 9. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these By-Laws.

Section 10. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after ninety days from the date of its execution, unless otherwise provided in the proxy.

Section 11. Voting Rights. Subject to the restrictions hereinafter set forth, each member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When one or more persons holds such interest, all such persons may be members, but in no event shall more than one vote be cast with respect to any Lot. If an Owner is a corporation or other entity, the person entitled to cast the vote for the Lot shall be designated by a certificate duly executed by such corporation or other entity and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote of a Lot may be revoked at any time by any Owner of a Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of the Declaration, the Articles or these By-Laws, the

affirmative vote of Owners who own a majority of the total Lots within the Property which is represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth herein.

Section 12. Informal Action by Members. Any action required to be taken at a meeting of the membership, or any other action which may be taken at a meeting of the membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE III.

BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the Association shall consist of three (3) directors.

Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The Owner of each Lot shall be entitled to cast the number of votes fixed by Section 11 of Article II for each of as many nominees as there are vacancies to be filled at the time of election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until all Lots are owned by Owners other than the Developer or until the Developer elects, at its option, to terminate control of the Association. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all directors. The Board of Directors may

provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two directors.

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 8. Manner of Acting. The act of the majority of a majority of the directors present at a meeting at which a quorum is present is necessary to constitute the act of the Board of Directors unless a greater number is required under the Alabama Nonprofit Corporation Act.

Section 9. Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Vacancies. Subject to the provisions of subparagraph (b) of Section 3 of this Article III, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 11. Compensation. By resolution of the Board of Directors, the directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid

a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a director or both. No such payment shall preclude any director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Committees. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions or in the By-Laws of the Association shall have and may exercise all of the powers of the Board of Directors in the management of the activities and affairs of the Association and may have power to authorize the seal of the Association to be affixed to all papers which may require it; except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefore; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors of any individual director of any responsibility imposed upon it or him by law.

Section 13. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

Section 14. Place of Meeting. The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

Section 15. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

ARTICLE IV.

OFFICERS

Section 1. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officer other than a President and a Secretary shall not constitute a violation of these By-Laws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section 4. Vacancies. A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Membership. He may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice President. In the absence of the president or in the event of his death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any

designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the records of the members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 9. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

Section 10. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

ARTICLE V.

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans.

(a) No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

(b) No loans shall be made by the Association to its directors or officers. Any director or officer who assents to or participates in the making of such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE VI.

BOOKS AND RECORDS

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members of their authorized representatives for any proper purpose at any reasonable time.

Section 2. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the Common Expenses (as defined in the Declaration) and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 1 preceding the year for which the budget is made. If the budget is amended substantially, a copy of the amended budget shall be furnished to each member.

Section 3. Assessments. Assessments against the members as provided in the Declaration shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in annual, quarterly or monthly installments, as may be determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

Section 4. Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due thirty (30) days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

Section 5. Bonds. Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times the amount of the total annual assessments against members for Common Expenses. The premiums of such bonds shall be paid by the Association.

ARTICLE VII.

SEAL

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association and the state of incorporation and such other words as the Board of Directors may prescribe.

ARTICLE VIII.

WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these By-Laws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE IX.

FISCAL YEAR

The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

ARTICLE X.

INDEMNIFICATION

Section 1. Actions Not Brought By or in Right of Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any

action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Actions Brought By or in Right of Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 3. Terms of Indemnification.

(a) To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(b) Any indemnification under Sections 1 and 2 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 and 2. Such determination shall be made (i) by the Board of Directors by a majority vote of directors who were not parties to such action, suit or proceeding, or (ii) if disinterested directors so direct, by independent legal counsel in a written opinion, or (iii) by the members.

(c) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

(d) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested director or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XI.

AMENDMENT

The By-Laws may be amended, altered or repealed by the Developer until such time as all Lots are owned by Owners other than the Developer or until the Developer elects, at its option, to terminate control of the Association. Upon termination of control, the By-Laws may be amended by the members at any regular or special meeting upon the affirmative vote of the Owners of not less than two-thirds (2/3) of the total Lots of the Property.