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2015 5589  
Recorded in the Above  
DEED Book & Page  
04-02-2015 10:37:16 AM  
Source Of Title: DEED 2013 / 180  
W. Hardy McCollum - Probate Judge  
Tuscaloosa County, Alabama

Source of Title: Deed Book 2013, Page 180

STATE OF ALABAMA §  
TUSCALOOSA COUNTY §

**RESIDENTIAL DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR BRISTOL PARK**

THIS RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRISTOL PARK sometimes referred to herein as the "Declaration" is made as of this the 15<sup>th</sup> day of April, 2015, by MITT LARY PARTNERS, L.L.C., an Alabama Business Corporation (hereinafter "Developer").

**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 in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may, but shall not be required, from time to time, at Developer's option, submit and add to the provisions of this Declaration. The Additional Property may also include additional Phases of the same Subdivision and/or additional Common Areas.

**1.2 Architectural Guidelines.** The term "Architectural Guidelines" shall mean the guidelines prepared, issued and amended from time to time by the DACC 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.

**1.3 Articles of Incorporation.** The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, which will be placed of Record in the Probate Office of Tuscaloosa County, Alabama, and all amendments thereto.

**1.4 Assessment.** The term "Assessment" shall mean the various Annual and Special

Assessments and any other charges assessed by the Association against a Lot Owner.

**1.5 Association.** The term "Association" shall mean The Bristol Park Homeowner's Association, Inc., an Alabama nonprofit corporation.

**1.6 Association Documents.** The term "Association Documents" shall mean the Articles of Incorporation, Bylaws and Rules and Regulations of the Association.

**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 Association Documents.

**1.8 Bylaws.** The term "Bylaws" shall mean and refer to the Bylaws of the Association, which will be placed of Record, as the same may be amended from time to time.

**1.9 Common Areas.** The term "Common Areas" shall mean and refer to all real property now or hereafter owned by the Association, and all personal property (e.g. equipment, furniture, fixtures) owned by the Association.

**1.10 Common Area Expenses.** The term "Common Area Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association including, without limitation, expenses incurred in connection with the Common Areas the Landscape Easement Area and the Median Areas, whether Regular Common Area Expenses or Special Common Area Expenses, including, without limitation, all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration or any of the Association Documents.

**1.11 City.** The term "City" shall mean the City of Northport and all agencies, departments, or subdivisions thereof.

**1.12 DACC.** The term or letters shall mean the Developer's Architectural Control Committee appointed with the rights and obligations conferred upon such Developer's Architectural Control Committee pursuant to this Declaration.

**1.13 Declaration.** The term "Declaration" shall mean this document, The Residential Declaration of Covenants, Conditions and Restrictions for Bristol Park, and all amendments thereto.

**1.14 Developer.** The term "Developer" shall mean Mitt Lary Partners, L.L.C., an Alabama Limited Liability Company.

**1.15 Development.** The term "Development", with an initial capital letter, shall mean and refer to the Property and all Improvements thereon, any Additional Property submitted to the provisions of this Declaration and any paved streets and Median Areas.

**1.16 Dwelling.** The term "Dwelling" shall mean and refer to any improved Lot intended for use as a single-family detached residential housing unit which may be constructed or situated upon any portion of any Lot.

**1.17 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.

**1.18 Improvement.** The term "Improvement" shall mean and include all Dwellings, and building, structure or device constructed, erected or placed upon any Lot, Common Area, Landscape Easement Area, or Median Area which in any way affects the exterior appearance of any Lot, Dwelling, Common Area, Landscape Easement Area, or Median 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, Dwelling, Common Area, Landscape Easement Area, or Median Area.

**1.19 Institutional Mortgagee.** The term "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which hold a first mortgage on any Lot or Dwelling which has been duly and properly Recorded.

**1.20 Landscape Easement Area.** The term "Landscape Easement Area" shall mean any area labeled on the Plat as a Landscape Easement or Landscape Easement Area.

**1.21 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, attics and basements.

**1.22 Lot.** The term "Lot" shall mean and refer to a lot as shown on the Plat and any other Lot contained in any Additional Property or Plat(s) submitted to the provisions of the Declaration. A parcel of land identified as a Lot on the Plat 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 by Developer, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

**1.23 Median Areas.** The term "Median Areas" shall include the areas located in the City right-of-way which do not consist of paved street areas.

**1.24 Mortgage.** The term "Mortgage" shall mean and refer to any mortgage, deed or trust or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly placed of Record.

**1.25 Mortgagee.** The term "Mortgagee", with an initial capital letter, shall mean and refer to the

holder of any Mortgage and shall include any Institutional Mortgagee.

**1.26 Occupant.** The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitee of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling.

**1.27 Owner or Lot Owner.** The term "Lot Owner" or "Owner", with an initial capital letter, shall mean and refer to the Record Owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, 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.

**1.28 Plat.** The term "Plat", with an initial capital letter, shall mean and refer to the Plat of the Development as recorded in Plat Book 2015, at Page 42 in the Probate Office of Tuscaloosa County, Alabama, and all amendments thereto, and any Plat(s) for any Additional Property submitted to this Declaration, and all amendments thereto.

**1.29 Property.** The term "Property", with an initial capital letter, shall mean and refer to the Lots and all property (including Common Areas) comprising the Development as shown on the Plat. The Property shall also include any Additional Property or Lots made subject to this Declaration by the Developer.

**1.30 Record, Recording or Recorded.** "Record", "Recording", or "Recorded", refers to the record or recording in the Office of the Judge of Probate of Tuscaloosa County, Alabama.

## ARTICLE II INTRODUCTION

Developer is the Owner of all Lots and the other real property on the Plat, or otherwise comprising the Development, and desires to own, develop, improve and lease and/or sell the property comprising the Development as contemplated herein, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property subject to this Declaration and to have a flexible and reasonable method for the administration and maintenance of the Development, as and when completed.

As reflected on the Plat, Developer presently intends for the Development to be comprised of Lots containing single - family detached Dwellings.

Developer has heretofore caused the Association to be created its purposes being to manage and maintain the Common Areas, the Landscape Easement Areas and the Median Areas, to establish annual budgets for maintaining the Common Areas and to pay all costs and expenses incurred by the Association in connection therewith, to make Assessments in connection with the Common Areas, and to otherwise take all action and to perform such duties which the Association is authorized to undertake hereunder or under any of the Association Documents, as may be amended from time to time.

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NOW THEREFORE, Developer does hereby declare that the Property contained in the Development including, but not limited to, the Lots, the Dwellings and Common Areas situated therein, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property (including any right to utilize the Common Areas) and any Additional Property, (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**ARTICLE III**  
**PROPERTY SUBJECT TO DECLARATION**

**3.1 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, and any part thereof, and each Lot, Dwelling or Common Area thereon 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 all Lots and Common Areas 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.

**3.2 Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency 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 and shall be subject to this Declaration. 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, 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 the book and page number in the Probate Office of Tuscaloosa County, Alabama where this Declaration is to be Recorded; (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 the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is Recorded 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 (1) vote in the Association per Lot or Dwelling within the Development. 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 the Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, which in no event shall the Developer be required to grant; and (2) the rights reserved by Developer pursuant

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to this Section 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 and unreviewable discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section of this Declaration.

**3.3 Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, Developer may, by deed, declaration, contract or other instrument filed for Record, modify the provisions of this Declaration as the same apply to any such Lot; provided, however, that this Declaration may not be modified or amended to (a) increase or decrease the voting rights in the Association attributable to such Lot, or any Dwellings situated thereon or (b) exempt any Lot, or any Dwellings situated thereon from the payment of Assessments.

**3.4 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 servitude upon and in favor of each Lot and Dwelling comprising or on the Property and (b) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**3.5 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling, subject to the Declaration, to make improvements and changes to all Lots or Dwellings owned by Developer and all Common Areas, notwithstanding the fact that they may be owned by the Association, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwelling Areas owned by Developer or of the Common Areas; to (iii) convert a Common Area to a Lot, or vice versa. In the event a Common Area is converted to a Lot, the Association shall, if requested by the Developer, convey the said Lot to Developer, or its designees or assigns, by warranty deed, free and clear of all liens, claims and encumbrances. If Developer shall convert a Lot to a Common Area, Developer may, at its option, convey said Lot to the Association by quit claim deed and the Association shall accept and Record the said deed.

**3.6 Plat.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, by amendment to the Plat setting forth such information as Developer may deem necessary with regard to the Property or any other part of the Development, including, without limitation, the locations and dimensions of all Lots, Dwellings, Landscape Easement Areas, 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 amended Plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such amended 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 or other portions of the Property owned by Developer. Additionally, Developer may modify, amend, revise or otherwise change the Plat as may be required by any municipality, specifically including, but not limited to, the City of Northport, or any governmental or quasi-governmental authority, specifically including but not limited to, the Alabama Department of Environmental Management and the Environmental Protection Agency.

**ARTICLE IV**  
**EASEMENTS**

**4.1 Grant of Nonexclusive Easements.**

(a) **Recreational Facilities.** Subject to the terms and provisions of this Declaration, the Association Documents and any and all fees and charges from time to time established by the Board, each Owner and occupant shall have, subject to any existing restrictions, easements or rights of ways existing or reserved prior to the date hereof or which are created or reserved herein, the nonexclusive right, privilege and easement of access to and the use and enjoyment of the recreational areas, facilities and amenities now or hereafter located in the Common Areas, if and when any such recreational facilities are so installed. The easement and rights granted herein are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

(b) **Benefit of Easements.** The easements, rights and privileges granted herein in this Declaration shall, subject to any existing restrictions, easements, or rights of ways existing or reserved prior to the date hereof or which are created or reserved herein, pass with each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot.

(c) **Reservation of General Access Easement.** Developer does hereby establish and reserve for itself, the DACC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive 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: (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration; and (ii) the performance of the respective duties of Developer, the DACC and/or the Association hereunder, to be taken by Developer, the DACC 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 or perceived emergencies to be determined in the discretion of Developer or the Association, whichever is appropriate, the foregoing easement shall, except for any portion of a Lot consisting of a Landscape Easement Area which may be accessed at any time, be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot and/or Dwelling directly affected thereby.

**4.2 Reservation of Easements with Respect to Common Areas.**

(a) **Easement Upon Common Areas.** Developer does hereby establish and reserve, for itself, the DACC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots and/or Dwellings; (ii) installing, maintaining, landscaping, repairing and replacing the Common Areas and any Improvements to the Property or to the Common Areas; and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Dwelling within the Development, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege

to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) **Changes in Common Areas and Lots.** 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 or Dwellings 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. The Association shall accept delivery of said deed and shall Record the said deed.

**4.3 Reservation of Maintenance Easement.** Developer does hereby establish and reserve for itself and the Association and its agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot and/or Dwelling for the purpose of mowing, removing, fertilizing, clearing, removing or replacing plants, trees, grass, shrubs and other plant growth, growth cutting and pruning, stump removal, removing trash, repairing any irrigation or similar systems, or otherwise landscaping, maintaining, repairing and/or reconstructing any Landscape Easement Area and any Common Area and/or any Improvements situated thereon; provided however, that such easement shall not impose any duty or obligation upon Developer to perform any of the foregoing actions or otherwise maintaining the same as provided in this Declaration.

**4.4 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the DACC, 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 Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Guidelines or any watershed, soil erosion or environmental rules, regulations and procedures from time to time 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 Guidelines or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation to be determined in the discretion of the Developer or the DACC, or the Association, the exercise by Developer the DACC, or the Association of the rights reserved in this Section shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

**ARTICLE V**  
**ASSOCIATION**

**5.1 Membership.** The Owner of each Lot or Dwelling shall be a member of the Association. 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 subject to this Declaration, (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 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 and the Association Documents.

**5.2 Board.** The Board shall have the rights and duties set forth in the Association Documents. Notwithstanding any provision contained herein or in any Association Document to the contrary, 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 notifies the Association in writing that it no longer desires to possess such right or when Developer no longer is the Owner of any Lot or Dwelling within the Development and any additional Phases or additions thereto, whichever shall first occur. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in the Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section.

**5.3 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 in the Development, 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 as provided hereinbelow, 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. 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 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, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

**5.4 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 herein and in the Association Documents. 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 this Declaration, the Articles of Incorporation, the Bylaws, any Rules and Regulations, and the *Code of Alabama* 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. The power of the Association shall include, but shall not be limited to: (a) the power to purchase one or more Lots and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the Association and all owners and occupants, (b) the right to grant and accept easements, (c) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority. Except as otherwise provided in this Declaration insofar as any rights of Developer are concerned, the dedication or transfer of title to any of the Common Areas must be approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association called for such purpose and (d) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein or in any of the Association Documents, the powers and 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. Additionally, the Board of the Association is authorized and may, from time to time, issue such rules and regulations as it deems appropriate and not inconsistent with this document or the Code of Alabama.

**5.5 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 any part of the Property. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage any of its affairs, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Property, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Property or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of the such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration or the Association Documents. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Area Expense. 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 or any of the Association Documents.

**5.6 Management by Developer or its Affiliates.** Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Development, at such compensation and on such terms as would be usual, customary and obtainable in an arms length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Property subject to this Declaration. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

**5.7 Rules and Regulations.** The Board may establish and enforce reasonable Rules and Regulations governing the use of all Lots, Dwellings, and Common Areas. Without limiting the foregoing, the Board may adopt Rules and Regulations which shall govern the use of any of the Common Areas (including, specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), enforcement of all of the terms and provisions of this Declaration and any Rules and Regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Development. Any such Rules and Regulations shall be binding upon all Owners and Occupants until and unless such Rule or Regulation is specifically overruled, canceled or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled or modified unless such action is also approved by Developer for so long as Developer owns a Lot or Dwelling subject to this Declaration.

**5.8 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any such officer, agent, representative or member of the Board in connection with any action, suit or other proceedings (including the settlement of any suit or proceedings it 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 Board of the Association. The officers, agents, representatives and members of the Board of the Association 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, agents, representatives and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of 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 other rights to which any officer, agent, representative or member of the Board of the Association 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 and officers and directors liability insurance in order to fulfill its obligations under this Section and the costs of such insurance shall constitute a Common Area Expense.

**ARTICLE VI**  
**DEVELOPER'S ARCHITECTURAL CONTROL COMMITTEE AND ARCHITECTURAL**  
**GUIDELINES**

**6.1 Committee Composition.** The DACC shall consist of three (3) persons, each of whom shall be appointed or elected as provided below. The members of the DACC may, but shall not be required to be, members of the Association of Owners of any Lot or Dwelling. The regular term of office for each member of the DACC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected may be removed with or without cause in the manner provided 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 this Section. The initial DACC shall be composed of WILSON MOORE, STEVEN DEAL and CHRISTOPHER DAVIS.

**6.2 Appointment and Removal of DACC Members.**

(a) For so long as Developer is the Owner of any Lot or Dwelling subject to this Declaration, Developer shall have the sole and exclusive right to appoint and remove all of the members of the DACC.

(b) At such time as Developer is no longer the Owner of any Lot or Dwelling subject to this Declaration 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 DACC as provided above, then the members of the DACC shall be appointed by the Board of the Association.

(c) Any member of the DACC may be removed, with or without cause, by Developer, in its sole discretion, or the Board, if Developer no longer owns any Lot or Dwelling subject to this Declaration or if Developer has relinquished its rights under 2(b) above of this Section. In the event of death or resignation of a member of the DACC, then Developer, or the Board, if Developer no longer owns any Lot or Dwelling subject to this Declaration or if Developer has relinquished its rights under 2(b) above of this Section, shall appoint a substitute member of the DACC to fill the vacancy of such deceased, resigning or removed member for the remainder of the term of such former member.

**6.3 Procedure and Meetings.** The DACC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the DACC. The DACC shall meet on a regular basis as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the DACC shall constitute a quorum of the DACC 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 DACC shall constitute the action of the DACC on any matter which comes before it. The DACC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the DACC in performing its functions set forth herein. Each member of the DACC may be paid a stipend or honorarium as may from time to time be determined by the Board of the Association and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the DACC, subject to the approval of such expenses by the Board of the Association. The DACC 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 or meetings and all other matters concerning the conduct of the business of the DACC.

**6.4 Architectural Guidelines.** The DACC is hereby authorized to promulgate and amend or

modify from time to time written Architectural Guidelines governing policies, guidelines and minimum requirements to be satisfied with respect to matters which shall include, but shall not be limited 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 Improvements on a Lot are to be submitted to and approved by the DACC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Guidelines adopted by the DACC shall be in addition to the provisions and requirements set for in this Declaration and shall be binding upon and enforceable against all owners.

**6.5 Approval of Plans and Specifications.**

**(a) IN ORDER TO PRESERVE THE ARCHITECTURAL GUIDELINES, THE APPEARANCE AND THE NATURAL SETTING BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE DEVELOPMENT OF 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 (OTHER THAN DEVELOPER, WHICH SHALL NOT BE SUBJECT TO ANY DACC APPROVAL PROCEDURE PROVIDED HEREIN) WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE DACC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS SECTION BELOW. WITHOUT LIMITING THE FOREGOING, AND WITH THE EXCEPTION OF THE DEVELOPER WHICH IS NOT SUBJECT TO PRIOR DACC APPROVAL, 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'S 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 DACC IN ACCORDANCE WITH THE TERMS AND PROVISIONS SET FORTH BELOW.**

(b) The DACC 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 DACC plans and specifications and related data for all such Improvements, which shall include the following:

(i) Two (2) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios, outbuildings and any other

Improvement, and the relationship of the same to any set-back or other requirements applicable to the Lot or Dwelling as may be shown on the Plat or which are required herein.

(ii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Dwelling to be constructed on the Lot.

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

(iv) Two (2) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) Two (2) copies of a landscaping plan prepared and submitted.

(vi) Such other plans, specifications or other information or documentation as may be required by the Architectural Guidelines.

(c) The DACC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the DACC shall be retained in the records of the DACC and the other copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". The DACC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof, notwithstanding anything provided herein to the contrary, and Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance without the necessity or requirement that DACC approval or consent be obtained.

(d) The DACC, in its sole discretion, shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, or for purely aesthetic considerations including, but not limited to failure to comply with any of the provisions of this Declaration or the Architectural Guidelines, 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 the Development, 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 Improvements or any other matter which, in the sole judgment of the DACC, would render the proposed Improvement disharmonious with the general plan of development contemplated for the Development. The DACC 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 DACC for Improvements for one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the DACC to approve

similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling subject to this Declaration.

(e) In the event the DACC fails to approve in writing any such proposed plans and specifications within ten (10) business days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

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

(g) The DACC may, in its discretion, modify the submission and approval process and/or requirements so long as it is not inconsistent with the material intent herein.

(h) If construction of a Dwelling or an Improvement has not substantially commenced (e.g. by clearing and grading, pouring of footing and otherwise commencing trimming and other related construction work) within one (1) year of approval by the DACC of the plans and specifications for such Dwelling or other Improvement, 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 DACC for approval in the same manner specified above whereupon the DACC shall be under no obligation to approve the same.

#### **6.6 Landscaping Approval.**

(a) 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 till work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the DACC. The above provisions regarding the method that Plans and Specifications are to be submitted to the DACC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall also be applicable to such landscaping plans.

(b) The landscaping plan for each Lot or Dwelling subject to this Declaration shall be submitted to the DACC for approval. Each Owner is encouraged to the extent practicable, to 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 draining channels, which exist on such lot.

(c) All front and side yards of each Lot shall, unless approved by the DACC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(d) All landscaping for a Lot shall be completed in accordance with the landscaping plan and submitted for approval by the DACC no later than 180 days following the issuance of a certificate of occupancy for the Dwelling situated thereon.

(e) 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-lines for roadways within the Property.

(f) No rocks, rock wall or other substances shall be placed on any Lot or Dwelling as a front or side yard border or to prevent such Lot to otherwise impede or limit access to the same. No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishing, artificial plants, rock gardens, rock walls, birdhouses, or other fixtures and accessories shall be placed or installed within the front of any Lot or Dwelling, except with approval of the DACC.

(g) No Owner shall allow the grass on his Lot or Dwelling to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(h) Each Lot shall have a minimum number of trees, including the type, variety, size and location in the front yard as must be approved by the DACC. Each Lot must have an irrigation system in the front yard and such irrigations system must be approved by the DACC.

**6.7 Construction Without Approval.** If: (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without DACC approval of the plans and specifications for the same; or (b) the DACC 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 DACC shall have the right to exercise any of the rights and remedies set forth herein under "Enforcement and Remedies".

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

**6.9 Surface, Subsurface and Other Conditions.** The approval of plans and specifications by the DACC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the DACC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface, subsurface or other 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, subsurface and other conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

**6.10 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the DACC, 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; (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 provision of this Article; (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, sink-holes, 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 or Dwelling, or any Improvements situated thereon.

**6.11 Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling or other Improvement, 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.

**6.12 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 may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities 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. No "For Sale" or other advertising signs may be placed on any Common Areas, any public right of way, or any other space except Owner's Lot without the prior approval of the DACC, except this provision shall not apply to the Developer.

**6.13 Enforcement and Remedies.** In the event of the provisions of this Article are breached or are not otherwise being complied with in all respects by any Owner or occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Developer, the DACC and/or the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the DACC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the DACC or the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the DACC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner, shall constitute an individual Assessment to such Owner and, if the same is not paid when due, including any interest or penalties assessed

by the DACC if not paid within thirty (30) days from when notified in writing, shall be subject to the lien and be subject to foreclosure as provided for herein, notwithstanding anything provided herein to the contrary, the rights and remedies of the DACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the DACC or the Association may exercise.

**ARTICLE VII**  
**USE AND ARCHITECTURAL RESTRICTIONS**

**7.1 Use Restrictions.** Except as otherwise provided to the contrary in this Declaration, each Lot and Dwelling shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Dwelling. 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 twelve (12) months (unless otherwise approved by the Board) and (c) is otherwise in compliance with the Rules and Regulations promulgated and published from the time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwelling owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine. Notwithstanding anything provided in this Section to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas or single-family residential purposes, then such use must be approved in writing by the DACC.

**7.2 DACC Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling and/or Improvements have been approved by the DACC in the manner set forth in this Declaration.

**7.3 Underground Utilities.** All residential 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, subject, however, to existing easements and rights of way.

**7.4 Building Setbacks.**

(a) Subject to the provisions of this Section and the following Section below, minimum building setback lines for all Dwellings shall be established either (i) by the DACC, (ii) on the Recorded Plat for the phase of the Development of which such Lot is included (which may vary for each phase), or (iii) in the deed from Developer to the Owner of such Lot.

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in the Section above or below. All eaves, steps, stoops, porches, terraces, decks and patios shall not be deemed a part of the Dwelling for the purposes of determining building setback areas.

**7.5 Trees.** In no event shall any Owner cut, remove, or mutilate any tree, shrub, bush, or other

vegetation in any Landscape Easement Area without first obtaining prior written approval from the DACC. Unless located within ten (10) feet of a Dwelling or any driveway or, if first approved in writing by the DACC, a sidewalk, no Owner, other than Developer, shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of six (6) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the DACC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified in writing as such by the DACC.

**7.6 Height Limitations.** No Dwelling shall exceed two (2) stories in height.

**7.7 Minimum Living Space Requirements.** On the lots currently zoned R9, the total minimum Living Space of the main structure of a Dwelling shall be at least one thousand five hundred (1,500) gross square feet. On the lots currently zoned R11, the total minimum Living Space of the main structure of a Dwelling shall be at least one thousand eight hundred (1,700) gross square feet. On the lots currently zoned R12, the total minimum Living Space of the main structure of a Dwelling shall be at least two thousand one hundred (2,100) gross square feet.

**7.8 Roofing.**

(a) The DACC shall have the right to establish specific requirements for the pitch and color of any roof and the type of roofing materials which may be utilized for any Dwelling. Minimum pitch to be 10/12 pitch and shingles must be architectural grade, dimensional and must be high definition or Natural Shadow unless otherwise approved by the DACC. Colors of roof material must be within the family of colors selected and approved by the DACC.

(b) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling, including, without limitation, the roof of any Dwelling if the same would be visible from any street.

(c) No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and shall (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, shall not be visible from any street.

(d) No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

**7.9 Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by the DACC.

**7.10 Exterior Materials and Finishes.**

(a) Approved exterior building material finishes for any Dwelling shall include stone, brick (exposed or painted), and hardboard and such other materials as may be approved by the DACC. Prohibited exterior finish materials shall include particle board, plywood, or any other type of pressed, laminated or fabricated siding, simulated brick or stone and any other materials as the DACC may from time to time

determine. Vinyl siding shall not be used as an exterior finish. However, vinyl siding may be utilized as trim material on the eaves of a Dwelling with the prior written approval of the DACC.

(b) All brick, stonework and mortar, as to type, size, color and application, must be approved by the DACC. All exterior colors, including, without limitations, the color of all roof shingles, brick, stone, hardiboard, wood, trim, cornices, eaves, railings, doors and shutters shall be subject to DACC approval.

(c) 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.).

(d) Metal flashing valleys, vents, and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

**7.11 Chimneys.** The exterior of all chimneys shall be constructed of either brick, stone, stucco or synthetic plaster (e.g. dryvit). No cantilevered chimneys with siding shall be permitted. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowling or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted an appropriate color.

#### **7.12 Garages.**

(a) Each Dwelling shall provide for parking for at least two (2) automobiles in an enclosed garage. Each garage shall be equipped with garage doors which shall be maintained in good operating order and condition. No garage may be converted into living space.

(b) Garage doors or carport openings shall be constructed of such materials as are approved by the DACC. 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 DACC.

(c) All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein.

**7.13 Fences.** No chain link, or wire fences shall be permitted on the Property except with regard to maintenance areas within Common Areas, tennis courts approved by the DACC and those fenced erected by Developer. No fences shall be allowed in front yards. Electric fences shall not be permitted. All fencing shall be either wrought iron or stained wood and must be 6 feet tall. The type of materials utilized for (including the color thereof) and the location of all fences shall be subject to approval by the DACC. All lots bordering on Forest Glen Boulevard must have all fencing approved by the DACC before any fencing is erected. All fencing along Forest Glen Boulevard must be 20 feet from the curb and of uniform design with the flush side of the fencing facing Forest Glen Boulevard.

**7.14 Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflectivematerialsshall 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. Cantilevered bay windows must be approved by the DACC (which may require additional landscaping in front of such bay windows). Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front of any Dwelling.

(c) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

**7.15 Mailboxes.** Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Guidelines or as otherwise approved by the DACC. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by the DACC, but no further inscription, paintings, ornaments or artistry shall be allowed.

**7.16 Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall be located at the rear of all Dwellings. All exterior heating, ventilating and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear or on the side of a Dwelling and, if the same are visible from the street, such compressor units and equipment shall be screened from public view by either walls or landscaping to be approved by the DACC. No window mounted heating or air conditioning units or window fans shall be permitted.

**7.17 Satellite Dishes and Antennae.** Small satellite dishes of adiameter not to exceed twenty-four (24) inches will be allowed if placed in an inconspicuous location approved by the DACC in writing prior to installation. No radio antenna, radioreceiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling, or any other portion of the Property unless the same is contained entirely within the interior of a building or other structure, isnot visible from any street or adjacent Lot or Dwelling and is approved by the DACC. No radio or television signals or any other form of electromagneticradiation 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; provided, however, that Developer shall not be prohibited from installing and operating any equipment necessary for master antenna, cable television, security, mobile radio or similar systems within the Property.

**7.18 Driveways.** All driveways for each Lot or Dwelling shall be constructed of concrete. Other materials (e.g. brick) may be used for driveways but only if approved in writing by the DACC.

**7.19 Recreational Facilities and Clotheslines.**

(a) Children's toys, swing sets, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances shall beallowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street.

(b) Free-standing playhouses and treehouses shall be permitted but only after written DACC

approval of the same.

(c) 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 street 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.

**7.20 Pets and Animals.** No animals, livestock, reptiles, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or Dwelling or other portion of the Property; provided however, that dogs and/or cats 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. No structure or area for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas; all such structures or areas shall be located at the rear of a Dwelling, shall not be visible from any street and shall be constructed of materials and of a size approved by the DACC. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the DACC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street or any portion of the Common Areas 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 Development including the right to assess fines for violations of such Rules and Regulations.

**7.21 Trash, Rubbish and Nuisances.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate 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 subject to this Declaration. 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; provided, however, that the foregoing shall not apply to Developer or to the use of the foregoing devices within any recreational areas of the Common Areas. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot, or on any other portion of the Development 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 streets and adjacent Lots or Dwellings by appropriate landscaping or fencing approved by the DACC; provided, however, that trash cans and containers can be moved to the side yard of any Dwelling on trash collection days for such Lot.

(c) Except as otherwise provided below, no outdoor burning of trash, garbage, leaves, wood shrubbery or other materials shall be permitted on any Lot or Dwelling or other portion of the Property.

**7.22 Recreational Vehicles and Machinery and Equipment.**

(a) Mobile homes, motor homes, trails campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall: (i) not be parked on the street at any time and (ii) not be permitted stored or allowed to remain on any Lot, unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot. Any such enclosed structure must be approved by the DACC. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(b) Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Vehicles owned by inhabitants of a dwelling shall not be parked on the street. Vehicles shall be parked only in driveways constructed in accordance with those provisions or in garages. Vehicles shall not be parked on any landscaped or natural areas of a Lot or Dwelling.

(c) 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 Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Development.

(d) The Board shall have the right at any time and from time to time to adopt Rules and Regulations with respect to the keeping, storage, parking, operating, use or maintenance of, mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motorhomes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

**7.23 Signage.** No signs (specifically including "For Sale" signs) or advertising posters of any kind 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 DACC. The approval of any signs and poster, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the DACC. Notwithstanding the foregoing, the restrictions set forth in this Section shall not be applicable to Developer. Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established above.

**7.24 Above Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or Dwelling, or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwelling, except any that may be required by Developer.

**7.25 Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided; however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the Rules and Regulations of the Board of Association, (b) any detached garages or other structures which are approved in writing by the DACC, (c) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all streets and adjacent Lots, and (d) construction trailers and/or sales offices erected or placed on any part of the Property by Developer.

**7.26 Construction of Improvements.**

(a) During the construction of any Improvements: (i) all Lots 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 street, (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of daily in a dumpster which shall be maintained at each construction site until completion of construction, and (iv) each Lot must have erosion control runoff protection measures, including 10' depth of crushed stone on Lot frontage and silt fences in rear of disturbed area and any areas susceptible to runoff (alternative protection methods may be approved by DACC). Used construction materials may be burned onsite 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 Occupants 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 or Dwelling or any other portion of the Property. No Owner or Occupant shall allow dirt, mud, gravel or other substances to collect or remain on any street. Each Occupant and each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any street in the Development.

(b) During the construction of Dwellings and other Improvements, construction equipment and the vehicles of subcontractors, laborers, material men and suppliers shall utilize off-street parking only, (ii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling and (iii) not damage trees or other vegetation on such Lot.

(c) Up to two (2) signs, in size and color to be approved by the DACC, 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, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags or advertising poster and/or Realtor advertisements shall be allowed without obtaining DACC approval. In no event shall any signage be attached, nailed or otherwise adhered to any tree or other plant life on a Lot or any other portion of the Property.

(d) Other than construction trucks, equipment, machinery and trailers owned or controlled by Developer, no construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within the Property. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in

a clean and uncluttered condition.

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

(f) Upon commencement of construction, all Dwellings shall be completed in a diligent and timely manner and consistent with Section 6.11 hereof.

(g) The Board may develop and impose such fines, penalties and liens as it determines necessary to enforce the above provisions, including, but not limited to, such fines and penalties related to dirt, mud or debris in the streets or adjacent lots.

**7.27 Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided so as to create a smaller lot without the prior written approval of the DACC; provided, however that the provisions of this Section shall not be applicable to Developer. Not Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

**7.28 Swimming Pools and Tennis Courts.** Tennis Courts are not permitted on any Lot. Swimming pools, outdoor hot tubs, reflecting or fish ponds, saunas, whirlpools and lap pools may be constructed, subject to the prior written approval of the plans for the same by the DACC. Above-ground pools shall not be permitted. The DACC shall have the right to adopt further rules and regulations governing the construction of swimming pools and other outdoor water features or amenities within the Property.

**7.29 Vacant Lots.** Each Owner of a Lot upon which there shall be no completed Dwelling shall mow, groom and maintain such Lot and shall keep such Lot free from fallen trees, debris, rubbish and garbage.

**7.30 Additional Regulations.** In addition to the restrictions set forth in this Declaration, (i) the DACC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Guidelines in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling and (ii) the Board of the Association shall have the right from time to time and at any time to adopt, modify and amend such Rules and Regulations as the Board, in its sole discretion, determines to be in the best interest of all Owners, which Rules and Regulations shall be binding on all Owners.

**7.31 Variances.** The DACC, in its sole, absolute and unreviewable discretion, shall have the exclusive right to grant variances with respect to the provisions of Article VI above and this Article VII with respect to any Lot or Dwelling. Any variance request submitted to the DACC shall be in writing and, upon approval of the same by the DACC, shall be evidenced by a written variance executed by either the chairman

or vice chairman of the DACC. Any variance granted by any Municipality or other Governmental Authority shall not be binding upon the DACC.

**7.32 Enforcement and Remedies.** In the event any of the provisions of this Article are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Developer, the Association and/or the DACC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representative 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 Development, the DACC or the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planner and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Development, the DACC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article, shall constitute an individual Assessment to such Owner, and, if the same is not paid when due, shall be subject to the lien provided for and be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Development, the DACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Development, the DACC or the Association may exercise at law or in equity or any of the enforcement rights specified elsewhere in these documents.

**ARTICLE VIII**  
**MAINTENANCE RESPONSIBILITIES**

**8.1 Responsibilities of Owners.**

(a) Unless specifically identified herein as being the responsibility of the Association: (i) the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein shall be the responsibility of the Owner of such Lot or Dwelling; (ii) Each Owner shall have the duty and shall be responsible for maintaining, keeping and repairing his Lot and Dwelling, in a good state of repair and condition and 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 re-roofing or replacing roofing shingles when the same becomes worn or when it would be replaced by a prudent Owner. No substantive exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining written approval of the same from the DACC.

(b) No Owner shall (i) decorate, change or otherwise materially alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other Improvements within a Lot (including, without limitation, the Landscape Easement Areas) unless such decoration, change or alteration is first approved, in writing by the DACC, (ii) do any work which, in the opinion of the DACC, would jeopardize the soundness and safety of the Development, reduce the value thereof or impair any easement thereto, without in every such case obtaining the prior written approval, of the DACC.

## **8.2 Responsibilities of the Association.**

(a) Common Area Maintenance. The Association shall, to the extent it has received sufficient sums through Common Area Expense Assessments from the Owners, keep in good repair and condition all portions of the Common Areas, the Landscape Easement Areas and Median Areas, which responsibility shall include: (i) the maintenance, repair mowing, pruning, cleaning, watering, removing, replacing, resurfacing and upkeep, as appropriate of: (1) all walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, street and/or sidewalks not required to be maintained by a Governmental Authority (or in the case of Median Areas or Landscape Easement Areas, which are not maintained in accordance with standards determined by the Board from time to time), landscaped areas, recreational areas and other Improvements made by Developer or the Association within any of the Common Areas, the Median Areas, or within easements encumbering any Lots in favor of the Association (including, without limitation, Landscape Easement Areas; (2) such security systems, guardhouses, entrance gates and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment, furniture and fixtures and machinery which are a part of or located within the Common Areas, the Median Areas and the Landscape Easement Areas, and which, in the case of a Common Area, are not properly maintained by a Governmental Authority, public service district, public or private utility, or any other person (or in the case of Median Areas or Landscape Easement Areas, which are not maintained in accordance with standards determined by the Board from time to time); (3) all lawns, trees, shrubs, hedges, grass, other landscaping situated in or upon the Common Areas, the Median Areas and the Landscape Easement Areas; and (4) utility lines, pipes, plumbing, irrigation systems, wires, conduits and related systems, appurtenances, equipment and machinery used by the Association in connection with its maintenance responsibility as provided herein for the Landscape Easement Areas and the Median Areas, and which are not properly maintained, in the discretion of the Board, by a Governmental Authority, public authority, public service district, public or private utility, or any other person; and, (ii) any other matter relating to the responsibilities and other Improvements of the Association as specified in 2(a)(i) above (administrative, legal, accounting, management, staffing, etc.). 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 Areas onto a Lot or into a Dwelling, or (3) resulting from theft, burglary or other entry into the Property, or any Lot or Dwelling thereof. No 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 Governmental Authorities.

**8.3 Failure of Owner to Perform.** In the event that the Board determines that, in its sole, absolute and unreviewable discretion (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder or (ii) 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 actions are deemed necessary. Except in the event of emergency situation, such Owner shall have thirty (30) days within which to complete the same in good and workmanlike manner or, if the same is not capable of completion within such thirty (30) 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 of 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 the said cost shall be a personal obligation of such Owner and an individual Assessment against said Owner's Lot or Dwelling and shall be subject to lien and foreclosure rights granted in this Declaration. Additionally, the Board may develop and impose such reasonable penalties, fines, late charges or interest as the Board, in the Board's discretion, determines to be reasonable and necessary.

**ARTICLE IX**  
**ASSESSMENTS**

**9.1 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) all annual Assessments, as established and to be collected as provided herein; (b) all special Assessments, to be established and collection as provided herein, and (c) all 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 or other Assessments as may be levied or imposed against such Lot or Dwelling. All Assessments, together with late charges and interest at the rate determined by the Board, as specified 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 cost and charges were assessed are 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. 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, 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 or Dwelling, Common Area or any other portion of the Development or any other cause or reason of any nature.

**9.2 Purpose of Assessments.** The Annual and Special Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development.

**9.3 Rate of Assessments.**

(a) Both annual and special Assessments shall be assigned against each Lot equally.

(b) In the event any Additional Property is made subject to this Declaration, then the Lots and/or Dwellings within the Additional Property shall be subject to the same annual or special Assessments at the rate and as otherwise set forth in the document filed of Record which shall submit said Additional Property to this Declaration.

**9.4 Procedure for Determining Annual Assessments.**

**(a) Common Area Expense Assessments.**

**(i) Regular Common Area Expense Assessments.**

(A) Inasmuch as the Association, in accordance with the terms hereof and as the record Owner of the Common Areas, has various responsibilities associated with the Common Areas, as are more specifically detailed herein, the Association shall perform such functions and shall assess the Owners of the Lots and/or Dwellings for the expenses associated with performing such functions ("Regular Common Area Expenses") in accordance with the procedure and the contribution percentages provided herein. Therefore, the Board shall annually determine and approve an annual budget for the estimated Regular Common Area Expenses for the upcoming year, such budget to include a capital contribution reserve account if deemed necessary by the Board, in its sole discretion, for the capital needs of the Association. The amount set forth in such budget shall constitute the needs of the Association. The amount set forth in such budget shall constitute the amount of the Regular Common Area Expense Assessments for the year for which budget is being adopted. A copy of the budget setting forth the amount of annual Regular Common Area Expense Assessments to be levied by the Board for the said year shall be mailed to each Owner.

**(B) Composition of Regular Common Area Expense Assessments.**

(1) The Common Area Expenses for the year in question to be funded by the annual Regular Common Area Expense Assessment for said year may include, but shall not be limited to, the following:

(a) 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 in connection with activities associated with the Common Areas and any other activities of the Association ("Other Association Activities");

(b) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association in connection with the Common Areas and Other Association Activities;

(c) Utility charges for any utilities serving any of the Common Areas and charges for other services for the Development be paid by the Association in the discretion of the Board, including, without limitation, trash collection and security or other services at the entrance to the Development;

(d) The costs of any insurance policies purchased for the benefit of the Association in connection with the Common Areas or Other Association Activities 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 of the members of the DACC.

(e) The expenses of maintaining, operating, repairing and replacing any portions of the Common Areas, the Landscape Easement Areas and the Median Areas;

(f) Expenses of maintaining, operating and repairing any amenities, services and facilities serving the Development which the Board determines from time to time in its sole discretion would be in the best interest of the Lot Owners to so maintain, operate and/or repair;

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

(h) The costs and expenses for conducting recreational, cultural or other related programs for the benefit of the Owners and Occupants of the Development;

(i) 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 in connection with the Common Areas or Other Association Activities, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings and

(j) The establishment and maintenance of reasonable reserve fund or funds (x) for inspections, maintenance, repair and replacement of any portions of the Common Areas, Landscape Easement Areas and Median Areas, (y) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (z) 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.

(C) In the event the budget for any year results in the Owners being liable for the payment of annual Regular Common Area Expense Assessments which exceed ten percent (10%) of the annual Regular Common Area Expense Assessments payable for the entire immediately preceding calendar year, then the budget and the amount of the annual Regular Common Area Expense Assessments shall be presented for the approval of the Owners at the annual meeting of the Association, or a specially called meeting for that purpose, and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Regular Common Area Expense Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Regular Common Area Expense Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Regular Common Area Expense Assessments.

(D) If any budget or the amount of annual Regular Common Area Expense Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all Common Area Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Common Area Expense Assessments in accordance with the manner set forth below. If the actual amount of annual Regular Common Area Easement Assessments collected in any one year exceeds the actual costs incurred for Regular Common Area Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Regular Common Area Expenses.

(ii) **Special Common Area Expense Assessments.** In addition to the annual Regular Common Area Expense Assessments authorized above, the Board may levy in any year special assessments for the Common Area Expenses ("Special Common Area Expense Assessments") for any extraordinary cost incurred by the Association in connection with the Common Areas; provided, however, that any such Special Common Area Expense Assessments shall be approved by a majority of the votes of the Owners who cast votes in person or by proxy at the annual meeting of the Association or a meeting called for the purpose of adopting Special Common Area Expense Assessments. The Board may make such Special Common Area Expense Assessments payable in one lump sum or in installments payable over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Common Area Expense Assessments are levied and assessed. Special Common Area Expense Assessments shall be levied against and payable by each Owner in accordance in the same proportion as Regular Common Area Expense Assessments are payable in accordance with Section 3 hereof.

(b) **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, invitee or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments shall be levied by the Board in its sole discretion and the amount and due date of such Assessment shall be specified by the Board in a notice of such Owner.

**9.5 Date of Commencement of Assessments.** Liability of Owners for Assessments provided for herein shall commence on the day on which such Lot or Dwelling is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board. Annual Regular Common Area Assessments and any outstanding Special Common Area Assessments shall be adjusted for each Lot or Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is conveyed. Annual Regular Common Area and Special Common Area Assessments for Lots or Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the date on which such Lot or Dwelling is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of Annual or Special Assessments on any Lots or Dwellings which it or its affiliates own. Furthermore, for so long as Developer is the Owner of any Lot or Dwelling, Developer shall have the option to either pay Annual Assessments on Lots or Dwellings owned by the Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association. At such time as Developer no longer has any interest in any Lot or Dwelling, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to this Article.

**9.6 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 the Association all applicable Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time 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 Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to the defaulting party by applicable law (the "Applicable Rate") from and after the thirtieth (30) day from the due date thereof 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 such defaulting party such defaulting party 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 as provided herein, shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid and incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments or other amounts due to the Association 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 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 in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot or Dwelling in the case of a default by an Owner, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling in the case of a default by an Owner, all late charges and interest at the applicable rate assessed pursuant above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting the Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting party, which demand shall state the date and amount of delinquency. Each default shall continue 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 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 Association or any officer of the Association, shall contain the following information and shall be Recorded:

(i) The name of the delinquent Owner;

(ii) The legal description and street address of the Lot 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.

(d) The said lien provided herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than any Owners in default) 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 including, without limitation, in the following manner and under the following power:

(i) at any time during the period commencing upon the filing of such lien and continuing for so long as the entire amount claimed in said lien shall remain unpaid, the Association shall have the full power and authority to sell the Lot or Dwelling, or any part thereof, subject to said lien at public outcry at the front door of the Courthouse of Tuscaloosa County, Alabama for cash to the highest bidder, after first giving notice by publication once a week for three (3) successive weeks in some newspaper published in Tuscaloosa County, Alabama. Said notice of sale shall give the time, place and terms of said sale, together with a description of the Lot or Dwelling to be sold. Said sale may be made with or without, or before or after, the taking of possession of the Lot or Dwelling. The Association is authorized and empowered to bid for and become the purchaser of the said Lot or Dwelling subject to the lien or any portion thereof, whether said sale be made under the power contained herein, or under decree of some court of competent jurisdiction. The attorney for the Association, or the auctioneer making said sale shall be authorized, to execute a deed to the purchaser at any sale of the Lot or Dwelling subject to such sale thereby vesting in the purchaser all right, title and interest of the defaulting Owner in and to all of the said Lot or Dwelling, or any part thereof. The defaulting Owner shall be liable for reasonable attorneys fees to the Association for the foreclosure of the lien whether the same be foreclosed under the power contained herein or in some Court with competent jurisdiction. The proceeds of said sale shall be applied first to the payment of any prior liens such as taxes, assessments or other prior charges against the said Lot or Dwelling; second, to any reasonable attorneys fees and other legal expenses incurred in collecting or attempting to collect any of the amount claimed under the lien, whether by suit or otherwise, and in protecting the Association's lien and other rights hereunder and in foreclosing the lien; third, to the payment of all other expenses of foreclosing the lien including, but not limited to, the costs of advertising, the cost of executing and Recording deeds to the purchaser, and auctioneer's fees, if any; fourth, any balance remaining to the payment of the unpaid amount claimed under the Lien; and, fifth, any balance shall be paid to the defaulting Owner.

(e) 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 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 its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner; (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein; and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

**9.7 Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling subject to this Declaration is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is duly and properly Recorded prior to the filing of a claim of lien by the Association. When an Institutional Mortgagee exercises its

foreclosure rights procured in its Mortgage and acquires title to or sells to a third party its interest on any Lot or Dwelling then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title or foreclosure so long as the Mortgage held by such Institutional Mortgagee was duly and properly Recorded prior to the filing of a claim of lien by the Association, 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 an Institutional Mortgagee on such Owner's Lot or Dwelling.

**9.8 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 such Owner a certificate in writing setting forth whether the Assessment for which said 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 X**  
**CASUALTY, CONDEMNATION AND INSURANCE**

**10.1 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, the Association shall promptly repair, replace and restore the damaged portions to the condition to which they existed immediately prior to such fire or other casualty.

(b) 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 Common Area Assessment, without the necessity of a vote of the Owners approving or disapproving the same as would otherwise be required in the cause of a Special Common Area Assessment as provided above, which such Special Common Area 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. Such Special Common Area Expense Assessments shall be levied against the Owners in the same proportions as provided for Special Common Area Expense Assessments approved by the Owners under Section 4(a)(ii) above. Further of such Special Common Area Expense Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration of the Common Areas if funds are still insufficient to cover the costs of such repair or restoration. 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 Common Area Expense 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 damage to or destruction of any portion of the Common Areas.

**10.2 Damage or Destruction of 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 then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within ninety (90) days following the occurrence of such fire or other casualty and shall diligently proceed towards completion thereafter.

**10.3 Condemnation of Common Areas.**

(a) In the event of the taking of all 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 of the Association is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, 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 replacements and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Associations may levy a Special Common Area Expense Assessment against all Owners without the necessity of a vote of the Owners approving or disapproving the same which would otherwise be required, which such Special Common Area Expense Assessment shall be in amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such Special Common Area Expense Assessment shall be levied against each Owner in the same manner and proportion as the Special Common Area Expense Assessment are made in Section 4(a)(ii) hereof. Further Special Common Area Expense Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is still insufficient to pay the costs of such repair or restoration.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Development cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board of the Association 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. 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 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 Owner of any Lot or Dwelling which is subject to any such taking and the Board of Association may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

**10.4 Condemnation of Dwellings.** In the event that all or any portion of any 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 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 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 Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

**10.5 Insurance.**

(a) The Board of the Association shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate for the benefit of the Association insuring all insurable Improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability and director's insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association, its Board and all members, officers, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workmen's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Regular Common Area Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the Association, the members of the Board and all officers, agents and employees of the Association, including any manager for the Development and/or the Association, the Owners and the family members, servants, agents, tenants, and guests of the Owners and shall also name Developer as an additional insured.

(e) 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 and Dwelling. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot or Dwelling, does hereby waive and release Developer, the DACC, The Association, any manager of the Development and the Association and their respective agents, employees, representatives, partners, shareholders, members, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

**ARTICLE XI**  
**TERM AND AMENDMENTS**

**11.1 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 period 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 subject to this Declaration agreeing to terminate, amend or modify this Declaration has been recorded in the Probate Office of Tuscaloosa County, Alabama.

**11.2 Amendment by Developer.** For so long as Developer owns any Lot or Dwelling within the Development, Developer may amend this Declaration by a written instrument filed of Record, without obtaining the approval of any Owner or Mortgagee; provided, however, that (a) in the event any amendment proposed by a 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 Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section shall be certified by Developer and shall be effective upon Recording of the same. Each Owner, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section, and, further, agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this declaration or any other instrument relating to the Property if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwelling; (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling; (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings subject to this Declaration; or (v) necessary to correct any mistakes, clerical or typographical errors.

**11.3 Amendments by Association.** Amendments to this Declaration 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 Institutional Mortgagee must be approved by such Institutional Mortgagee, and (ii) during any period in which Developer owns a Lot or Dwelling subject to this Declaration, then Developer must approve such proposed amendment which approval Developer may deny with or without reason.

(b) Any and all amendments which have been approved shall be executed by all parties who consent to the same, 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 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.

**11.4 Restrictions on Amendments.** Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment or any other provision of this Declaration which requires Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sold, absolute and unreviewable discretion of Developer, with or without any reason.

## **ARTICLE XII ENFORCEMENT**

**12.1 Authority and Enforcement.** In the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Guidelines, or Association Documents, the Board shall have the power 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 or (c) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to sue any of the recreational facilities located in or upon the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

**12.2 Procedure.** In the event any of the terms of provisions of this Declaration, the Architectural Guidelines or the Association Documents are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a find, suspend voting rights or infringe upon or suspend any other rights above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

(a) The alleged violation;

(b) The action required to abate such violation; and

(c) A time period of not less than fifteen (15) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Guidelines or the Association Documents may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in the Section above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

**12.3 Nonexclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

**ARTICLE XIII**  
**MISCELLANEOUS PROVISIONS**

**13.1 CONTROL BY DEVELOPER. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ASSOCIATION DOCUMENTS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, FOR AND DURING THE PERIOD THAT DEVELOPER SHALL OWN ANY LOT OR DWELLINGS SUBJECT TO THIS DECLARATION, 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.** At such time as Developer no longer owns any interest in any Lot or Dwelling subject to this Declaration or at such earlier time that the Developer shall notify the Association in writing that it desires to relinquish such control, 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 and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

**13.2 Expenses.** In the event either the DACC, its agents or representatives, or the Board, its agents and representatives (collectively "Enforcement Parties"), 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. Additionally, any of the Enforcement Parties may establish and charge reasonable fees in addition to routine management fees to be charged for enforcement related issues such as phone calls to management, opening/closing gates, violations of covenants such as parking in streets or yard, etc. and such enforcement fees may be charged directly to the violating party. The DACC, 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 DACC or the Association to cure such violation or breach.

**13.3 Severability.** If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, 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.

**13.4 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 Declarations.

**13.5 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.

**13.6 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 DACC, the Association, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**13.7 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.

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

**13.9 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.

**13.10 Rights of Third Parties.** This Declaration shall be Recorded for the benefit of Developer, the Association, the Owners and the 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.

**13.11 No Trespass.** Whenever the Association, Developer, the DACC 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.

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

**13.13 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.

**13.14 Standards for Review.** Whenever in this Declaration Developer, the Association or the DACC 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 Association or the DACC, as the case may be.

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

**13.16 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 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. Such notice shall be deemed delivered when delivered by hand or placed in the United States Mail (as evidenced by the postmark on the envelope containing the notice) and addressed to the Owner at the address provided herein. During the Developer Control Period, all notices to the Association or to the DACC shall be delivered or sent in care of Developer to the following address:

Mitt Lary Partners, L.L.C.  
1120 Queen City Avenue  
Tuscaloosa, Alabama 35401

or to such other address as the Association or DACC may from specify in a notice to the Owners upon the expiration of the Developer Control Period. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

**13.17 Assignment.** Developer and the DACC shall each 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 DACC, respectively.

**13.18 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 Association or the DACC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

2015 5630  
Recorded in the Above  
DEED Book & Page  
04-02-2015 10:37:16 AM

**13.19 No Waiver.** All rights, remedies and privileges granted to Developer, the Association and the DACC 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.

**13.20 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 the Honorable Fob James, Governor of the Great State of Alabama.

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

**DEVELOPER:**

**Mitt Lary Partners, L.L.C., an Alabama  
limited liability company**



By: Wilson Moore  
Its: **MANAGER**

STATE OF ALABAMA  
COUNTY OF TUSCALOOSA

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Wilson Moore, as MANAGER of MITT LARY PARTNERS, L.L.C., whose name 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 the instrument, he executed the same voluntarily and with full authority on the day the same bears date for and as an act for said entity.

Given under my hand and official seal this, the 1<sup>st</sup> day of April, 20  .

Stephanie A. Penally  
NOTARY PUBLIC  
My Commission Expires: 08/12/2017

**EXHIBIT "A"**

All lots of Bristol Park Phase I Subdivision as indicated on the recorded Plat recorded in Plat Book 2015, at Page 42 in the Probate Office of Tuscaloosa County, Alabama. This shall extend to any additional or further phases of this same Subdivision or additional adjacent property owned by Developer which may be developed and annexed into the Subdivision.

**2015 5631**

Recorded in the Above

DEED Book & Page

04-02-2015 10:37:16 AM

Source Of Title: DEED 2013 / 180

W. Hardy McCollum - Probate Judge

Tuscaloosa County, Alabama

Book/Pg: 2015/5589

Term/Cashier: SCAN2 / reneea

Tran: 12895.777278.982431

Recorded: 04-02-2015 10:43:14

PJF Probate Judge Fee

2.00

REC Recording Fee

108.50

SOT Source of Title

1.00

Total Fees: \$ 111.50