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Lee County, AL

**LUNDY CHASE SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

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Lee County, AL

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 3rd day of April, 2008, by The Musselwhite Group, Inc., an Alabama corporation (the "Developer").

RECITALS:

Developer is the owner of the Property, as described in Section 1.23 below, and desires to own, develop, improve, lease, and sell the Property for residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements, and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has heretofore caused or shall cause the Association, as defined in Section 1.06 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.09 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.05 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, covenants, conditions, restrictions, charges, liens, and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any portion of the Property described in *Exhibit A* attached hereto and any of the Additional Property, as described in Section 1.01 below (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 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:

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Lee County, AL

1.01 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 Development) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

1.02 ARC. The term or letters "ARC" shall mean the architectural review committee appointed pursuant to Section 5.02 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.03 Architectural Standards. The term "Architectural Standards" shall mean the standards prepared, issued, and amended from time to time by the ARC pursuant to Section 5.04 below for the purpose of reviewing and approving all exterior improvements, landscaping, and any other Improvements which may be made to any Lot, Dwelling, or Common Area.

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

1.05 Assessment. The term "Assessment" shall mean the annual and special assessments and any other charges assessed against an Owner by the Association pursuant to Article VIII hereof.

1.06 Association. The term "Association" shall mean LUNDY CHASE SUBDIVISION HOMEOWNERS' ASSOCIATION, INC., an Alabama nonprofit corporation.

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

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

1.09 Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include recreational facilities and areas and any other areas or Improvements on or within the Development which are designated as Common Areas by Developer from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses, or benefits therein or to the use thereof.

1.10 Common Expenses. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the association, including, without limitation, those expenses described in Section 8.04(e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.11 Declaration. The term "Declaration" shall mean and refer to this LUNDY CHASE SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS and all amendments thereto.

1.12 Developer. The term "Developer" shall mean The Musselwhite Group, Inc., its successors and assigns.

1.13 Development. The term "Development," with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.02 hereof.

1.14 Dwelling. The term "Dwelling," with an initial capital letter, shall mean and refer to any improved Lot.

1.15 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.

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

1.17 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 holds a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Probate Office of Lee County, Alabama.

1.18 Lot. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall

collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by Developer pursuant to the provisions of Section 2.05 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

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

1.20 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.

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

1.22 Owner. The term "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.

1.23 Property. The term "Property," with an initial capital letter, shall mean and refer to that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof.

ARTICLE II

Property Subject to the Declaration

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

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2.02 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. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Lee County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama, where this Declaration is 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 in the Probate Office of Lee County, Alabama, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the 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 this 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 2.02 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

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

2.04 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Development, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Developer, 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 Dwellings owned by Developer or of the Common Areas,

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(iii) installation and maintenance of any water, sewer, and any other utility systems and facilities within the Common Areas, and (iv) installation of security and trash and refuse facilities.

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

ARTICLE III

Easements

3.01 Grant of Nonexclusive Easements to Owners. Subject to the terms and conditions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with Developer, their heirs and assigns, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot and Dwelling.

3.02 Reservation of Easements With Respect to Common Areas.

(a) *Easement Upon Common Areas.* Developer does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees, heirs, 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 Dwellings, (ii) installing, maintaining, repairing, and replacing any other 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 heirs 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.* Developer does hereby establish and reserve unto itself and its heirs and assigns the permanent right to change, modify, and realign the boundaries of any of the Common Areas, or 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.

3.03 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and the Association and their respective heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining, and operating master television and/or cable systems, security and similar systems, and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.03 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.03 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

3.04 Reservation of Maintenance Easement. Subject to the terms and provisions of Section 7.02(b) below, Developer does hereby establish and reserve for the Association and its agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of installing and maintaining landscaping at the entrance; mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance with the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.05 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the ARC, the Association, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion, or environmental rules,

regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.05 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

ARTICLE IV

Association

4.01 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 in the Development, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot shall designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner, and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separate and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.02.

4.03 Voting Rights. Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, the Owner of each Lot or Dwelling shall be entitled

to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

4.04 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity, or inconsistency between the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to, (i) 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, (ii) subject to the provisions of this Section 4.04, 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, (iii) subject to the provisions of this Section 4.04, 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 ARC, the Association, and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided in Section 9.03 below, 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 (vi) 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, in the Articles of Incorporation or in the Bylaws, 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.

4.05 Agreements. Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, 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 Development 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 such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation, or the Bylaws. Such manager may be an individual, 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 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, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

4.06 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 Development. 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 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

4.07 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), the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board and such other matters. Copies of 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 any Lot or Dwelling in the Development.

4.08 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 if 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 4.08 and the costs of such insurance shall constitute a Common Expense.

ARTICLE V

Architectural Review Committee Development and Architectural Standards

5.01 Committee Composition. The ARC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below. The members of the ARC may, but shall not be required to be, members of the Association or Owners of any Lot or Dwelling. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.02 below may be removed with or without cause in the manner provided in Section 5.02 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Dwelling, shall be deemed to ratify the provisions of Section 5.02 below.

5.02 Appointment and Removal of ARC Members.

(a) For so long as Developer is the Owner of any Lot or Dwelling within the Development,

Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as Developer is no longer the Owner of any Lot or Dwelling within the Development or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 5.02(a) above, then the members of the ARC shall be appointed by the Board of the Association.

(c) Any member of the ARC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 5.02(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.02(b) above are in effect. In the event of death or resignation of a member of the ARC, then Developer, in the event the provisions of Section 5.02(a) above are applicable, or the Board, in the event the provisions of Section 5.02(b) above are applicable, as the case may be, shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.03 Procedure and Meetings. The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-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 ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC 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 ARC, subject to the approval of such expenses by the Board of the Association. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings, and all other matters concerning the conduct of the business of the ARC.

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

5.05 Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE DEVELOPMENT, TO ESTABLISH AND

PRESERVE A HARMONIOUS DESIGN FOR THE DEVELOPMENT, 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 AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, 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, OR ANY OTHER OUTBUILDINGS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05 (b) BELOW.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property. Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, 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, and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling, the finished floor elevation and a grading plan.

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

(iv) Three (3) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below.

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

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

(d) The ARC shall have the right to disapprove any plans and specifications upon any ground which is inconsistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for 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 Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Development.

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

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

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

5.06 Landscaping Approval. In order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation, or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefor have been submitted to and approved by the ARC. The provisions of Section 5.05 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same, and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

5.07 Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot or Dwelling without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.13 below.

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

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

5.10 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer, or director thereof, shall have any liability of any nature whatsoever for any damage, loss, or prejudice suffered, claimed, paid, or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed, or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications, or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings, and specifications, (e) bodily injuries (including death) to any Owner, Occupant, or the respective family members, guests, employees, servants, agents, invitees, or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements, or the personal property of any Owner, Occupant, or the respective family members, guests, employees, servants, agents, invitees, or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in

any Dwellings or Improvements or the plans and specifications therefor 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, Dwelling, or any Improvements situated thereon.

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

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

5.13 Enforcement and Remedies. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the ARC and the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of nonconforming work, the completion of uncompleted work, or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

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

ARTICLE VI

Use and Development Restrictions

6.01 Use Restrictions. Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.0, 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; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, cooperatives, duplexes, zero-lot-line homes, and cluster or patio homes for residential dwelling purposes. 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, and (b) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine, including daily or weekly rentals. Notwithstanding anything provided in this Section 6.01 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 included 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, single-family residential purposes, or any of the residential uses authorized above for Additional Property, then such use must be approved in writing by the ARC.

6.02 ARC 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 ARC in the manner set forth in Article V above.

6.03 Underground Utilities. All utility lines, pipes, conduits, and wiring for utility services for any portion of the Property shall be installed and maintained below ground.

6.04 Building Setbacks.

(a) Subject to the provisions of Section 6.05 below, minimum building setback lines for all Dwellings shall be established either (i) by the ARC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), 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 Section 6.04(a) above. Steps, stoops and porches shall not be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.04.

6.05 Siting of Dwellings. Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.05 above. Notwithstanding anything provided in Section 6.04 above to the contrary, the ARC may require building setback requirements different from those described in Section 6.04, including building setbacks which are greater than those specified in Section 6.04.

6.06 Trees. Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner, other than Developer, shall cut, remove, or mutilate any tree, shrub, bush, or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the ARC nor shall the foregoing be deemed to release any Owner from the provisions of Sections 6.09 and 7.01 below.

6.07 Height Limitations. The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed three and one-half (3½) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

6.08 Minimum Living Space. Improvements constructed on each Lot shall comply with the following minimum living space requirements:

Lots 20-61	1,500 square feet
Lots 87-106	1,800 square feet
Lots 1-18, 62- 86, 110	2,400 square feet

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6.09 Landscaping.

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 5.06 above. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers, and natural environment, including natural drainage channels, which exist on such Lot.

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

(c) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC no later than thirty (30) days following the issuance of a certificate of occupancy for the Dwelling situated thereon.

(d) 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 Development. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive, and binding on all Owners.

(e) No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses, or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling, unless approved by the ARC.

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

(g) The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot or Dwelling, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot or Dwelling.

(h) 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.

(i) Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling as soon as such holiday passes.

6.10 Roofing.

(a) The ARC shall have the right to establish specific requirements for the pitch of any roof. All roofs shall be roofed with dimensional shingles or with roofing materials approved by the ARC.

(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, 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.

6.11 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 ARC.

6.12 Exterior Materials and Finishes.

(a) Approved exterior building material finishes for any Dwelling shall be brick or stone, along with, solid wood siding, hardboard siding, or siding as approved by the ARC. The ARC reserves the right to approve additional exterior building materials. All wood surfaces utilized on the exterior of any Dwelling shall be painted; stained wood shall not be permitted unless approved by the ARC; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors. Prohibited exterior finish materials shall include particle board, plywood, vertical siding, simulated brick, and any other materials as the ARC may from time to time determine. No vinyl siding shall be visible from the street, except for fascia and accents in gables.

(b) All brick, stonework, and mortar, as to type, size, color, and application, must be approved by the ARC. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g., dryvit), wood, trim, cornices, eaves, railings, doors, and shutters shall be subject to ARC approval.

(c) No wooden steps or stoops shall be allowed on the front or side of any Dwellings, unless approved by the ARC.

(d) 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 or stone).

6.13 Garages.

(a) Each Dwelling shall provide for parking for at least two (2) automobiles in garages equipped with garage doors. Carports shall not be permitted, unless specifically approved by the ARC. Garage doors shall be constructed of such materials as are approved by the ARC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC. Unless approved by the ARC, no garage shall be constructed so that its door(s) faces a street.

(b) 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. Off street parking may be available for temporary guest parking, only if allowed by the City of Auburn.

6.14 Fences. Fences shall be permitted as approved by the ARC. No fences shall be allowed in front yards. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC.

6.15 Windows, Window Treatments, and Doors.

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

(b) Aluminum or metal windows shall not be utilized in the construction of any Dwelling unless approved by the ARC. Cantilevered bay windows must be approved by the ARC (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. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed 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.

6.16 Mailboxes. Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design and color, and in the location as approved by the ARC. Mailboxes shall contain only the address of the Lot or Dwelling.

6.17 Utility Meters and HVAC Equipment. All electrical, gas, telephone, and cable television meters, to the extent practicable, 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 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 ARC. No window mounted heating or air conditioning units or window fans shall be permitted.

6.18 Satellite Dishes and Antennae. No satellite, radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Development unless the same is contained entirely within the interior of a building or other structure, is not visible from any street or adjacent Lot or Dwelling, or is approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Development.

6.19 Driveways and Sidewalks. All driveways and sidewalks for each Lot or Dwelling shall be constructed of concrete or asphalt; provided however that other materials, such as bricks or pavers, may be used, if approved by the ARC. The Owner agrees to have the portion of the common sidewalks lying on its Lot poured and connected to sidewalks on adjoining Lots prior to completion of construction.

6.20 Outdoor Furniture, Recreational Facilities, and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained, or located in or on the front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained, or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear or side of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots and Dwellings.

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

(d) Free-standing playhouses and tree houses shall be permitted but only after ARC approval of the same.

(e) Basketball backboards shall be located in a location approved by the ARC.

(f) 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.

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from the street.

(h) Bird feeders, wood carvings, plaques, and other types of homecrafts shall not be permitted in the front yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques, and other types of homecrafts shall be located so as to not be visible from any street.

6.21 Pets and Animals. No animals, livestock, birds, or poultry of any kind shall be kept, raised, or bred by any Owner upon any Lot, Dwelling, or other portion of the Development; provided, however, that not more than three (3) dogs or cats (or a combination thereof not to exceed three (3) in number) 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 ARC. 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 ARC, or otherwise under leash. 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.

6.22 Trash, Rubbish, and Nuisances.

(a) No trash, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots or Dwellings within the Development. 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 would cause disorderly, unsightly, or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any

portion of the Development 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 Development; provided, however, that the foregoing shall not apply to Developer or to the use of any of the foregoing devices within any recreational areas of the Common Areas. Any Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees, or contractors of such Owner or Occupation who dumps, places, or allows trash or debris to accumulate on his Lot, Dwelling, 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 and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers can be moved to the front or side yard of any Dwelling on trash collection days for such Lot or Dwelling.

(c) Except as otherwise provided in Section 6.27(a) below, no outdoor burning of trash, garbage, leaves, wood, shrubbery, or other materials shall be permitted on any Lot, Dwelling, or other portion of the Development.

6.23 Recreational Vehicles and Machinery and Equipment.

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be permitted stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored, and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ARC. 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 shall be parked only in driveways constructed in accordance with the provisions of Section 6.19 above or in garages constructed in accordance with the provisions of Section 6.13 above. 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 Development. No Owner or Occupant shall repair or restore any vehicle, machinery, or equipment of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for minor service work or 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, operation, use, or maintenance of mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motor homes, 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.

6.24 Signage. No 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 ARC. The approval of any signs and posters, 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 ARC. Notwithstanding the foregoing (a) the restrictions set forth in this Section 6.25 shall not be applicable to Developer or to any signs erected pursuant to Section 6.28(c) below and (b) 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 in Section 3.05 above.

6.25 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 for wells maintained solely for irrigation purposes. All such irrigation wells must be approved in writing by the ARC prior to the installation of the same.

6.26 Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, tree house, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board of the Association, (b) any detached garages or other structures which are approved in writing by the ARC, (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 or Dwellings, and (d) construction trailers and/or sales offices erected or placed on any part of the Property by Developer pursuant to Section 5.12 above.

6.27 Construction of Improvements.

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

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, material-men, and suppliers shall (i) utilize off-street parking only, and (ii) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.06 above, are to be preserved.

(c) Up to two (2) signs, in size and color approved by the ARC, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ARC approval. The location of such signage shall be established by the ARC but in no event shall any signage authorized by this Section 6.27 or which may be approved by the ARC be attached, nailed, or otherwise adhered to any tree or other plant life on a Lot.

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

6.28 Subdivision and Interval Ownership. No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.28 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval, or similar right-to-use programs.

6.29 Swimming Pools and Tennis Courts. Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, and tennis courts may be constructed, installed, and maintained on any Lot or Dwelling subject to the prior written approval of the plans for the same by the ARC and the restrictions contained herein. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities, and tennis courts within the Development. Owner acknowledges that rock is present in the subdivision and that Developer is not responsible for any problems or issues arising therefrom in connection with construction of any of the aforesaid amenities.

6.30 Compliance with Governmental Regulations. Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements, and code provisions of the Governmental Authorities.

6.31 Additional Regulations. In addition to the restrictions set forth in this Declaration, the (i) ARC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify, and amend the Architectural Standards in order to impose such other, further, or different requirements or restrictions which shall be binding on all Owners, Lots, and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling, and (ii) 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 interests of all Owners, which rules and regulations shall be binding on all Owners, Lots, and Dwellings.

6.32 Variances. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot or Dwelling. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC. The provisions of Section 5.03 above concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the ARC shall be binding upon the ARC in any matters regarding the granting of variances.

6.33 Enforcement and Remedies. In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives, and independent contractors enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

ARTICLE VII

Maintenance Responsibilities

7.01 Responsibilities of Owners.

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

(b) Each Lot or Dwelling, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ARC pursuant to Section 5.06 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner in a fully and well kept landscaped condition. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of any roadway abutting such Lot or Dwelling and shall be binding on the Owner of each Lot or Dwelling at all times, either prior, during, or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines, and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe, and attractive condition. Trees, shrubs, vines, plants, and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage, and waste materials shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Development.

(c) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the ARC as provided in Sections 5.05 and 5.06 above or (ii) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every case obtaining the prior written approval of the ARC.

7.02 Responsibilities of Association.

(a) Except as may be otherwise provided herein to the contrary and subject to the provisions of Section 4.08 above, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas, and the landscaping and signs at the entrance to the property. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, act of God, or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling, or (3) resulting from theft,

burglary, or other illegal entry into the Development, any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair, or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members; guests, servants, employees, invitees, or contractors, and the costs of such maintenance, cleaning, repair, or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.09 below.

ARTICLE VIII

Common Area Assessments

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8.01 Assessments and Creation of Lien. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) special Assessments, to be established and collected as provided in Section 8.05 below, and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 8.09(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Dwelling and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with

late charges and interest at the Applicable Rate, as specified in Section 8.09(a) below, court costs, and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution, or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Areas, or any other portion of the Development or any other cause or reason of any nature.

8.02 Purpose of Assessments. The annual and special Assessments provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto, and the entrance signs and landscaping at the entrance, all as may be more specifically authorized from time to time by the Board of the Association.

8.03 Annual Assessments.

(a) The Board of the Association shall determine and approve an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. In the event the budget for any year results in the Owners being liable for the payment of annual Assessments, the increase of which exceeds ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year, then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. The amount set forth in such budget approved by the Board (and the Association, where applicable) shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorata share, as determined by the relative size of his Lot/Dwelling. The annual Assessment for each Lot and Dwelling in the Development shall be as follows:

Lots 20-61	\$400 per annum
Lots 87-106	\$500 per annum
Lots 1-18, 62- 86, 110	\$600 per annum

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Annual Assessments shall be due and payable by January 15 of each year and shall be prorated at closing.

(b) The annual Assessments include a fee to be paid to the Conservation Green Space Impact Fund, LLC to help offset the expenses of preserving land subject to the Land Conservation Easement recorded in the Office of the Judge of Probate of Lee County, Alabama. Each Owner acknowledges and agrees that said fees are necessary for perpetual conservation of the green space within the Development, which is a benefit to each Lot, and payment thereof shall be a perpetual obligation of each Owner of a Lot.

(c) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.05 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

8.04 Common Expenses. The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

- (i) Salaries, fringe benefits, and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board, and any third party contractors;
- (ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;
- (iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Development, including, without limitation, trash collection and security services;
- (iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance, and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents, or representatives of the Association or for any of the members of the ARC;
- (v) The expenses of maintaining, operating, repairing, and replacing any portions of the Common Areas for which the Association is responsible, including, without limitation, roads comprising Common Areas within the Development, which maintenance and repair obligation shall include mowing, landscaping, seeding, cleaning, trash pick-up and removal, paving, repaving, striping, and patching all such roadways comprising Common Areas;
- (vi) Expenses of maintaining, operating, and repairing any other amenities and facilities serving the Development which the Board determines from time to time would be in the best interest of the Association to so maintain, operate, and/or repair;
- (vii) The expenses of the ARC which are not defrayed by plan review charges;
- (viii) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

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

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

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

8.05 Special Assessments. In addition to the annual Assessments authorized in Section 8.03 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a) (i) below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 9.01(b) and 9.03(a) (i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 8.07 below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the relative size of the Lot/Dwelling and as determined at the meeting approving said assessment.

8.06 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees, or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided for in this Section 8.06 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.06 shall apply, without limitation, to any individual Assessments levied pursuant to any other provision hereof.

8.07 Notice of Meetings and Quorum.

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third ($\frac{1}{3}$) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the

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Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 8.04(c) above.

(b) With respect to all other meetings of the members of the Association, including, specifically, meetings pursuant to which special Assessments are to be levied upon each Lot or Dwelling pursuant to Section 8.05 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

8.08 Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding special 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 and special assessments for Lots and 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 owns in the Development.

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

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. 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 said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments 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:

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(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.09(a) above, together with attorneys' fees, court costs; and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.01 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale; which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.09(a) above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any 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 Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

(i) The name of the delinquent Owner;

(ii) The legal description and street address of the Lot or Dwelling upon which the lien claim is made;

(iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs, and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those 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. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and/or its 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

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collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.10 **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 in the Development 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 recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such 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 by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot or Dwelling.

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

ARTICLE IX

Casualty, Condemnation, and Insurance

9.01 **Damage or Destruction to Common Areas.**

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

(b) Notwithstanding anything provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace, and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.05 and 8.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining

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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 Assessments shall be levied against each Owner equally as provided in Section 8.03 above. Further special 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 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 Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

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

9.03 Condemnation of Common Areas.

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board 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 replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.05 and 8.07 above; which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration, or reconstruction. Such special Assessments shall be levied against each Owner as provided in Section 8.03 above. Further special 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 insufficient to pay the costs of such repair or restoration.

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(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. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

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

9.05 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 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.

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(c) The Board shall have the right and authority to obtain workman'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 Common 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 the manager for the Development and 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 ARC, 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 X

Term and Amendments

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

10.02 **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 and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 10.04 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any

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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 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.02 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 Development 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 Dwellings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

10.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.02 above, shall be proposed and adopted by the Association in the following manner: (a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds ($\frac{2}{3}$) 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, (ii) during any period in which Developer owns a Lot or Dwelling in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 10.04 below, then the provisions of Section 10.04 below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.03(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds ($\frac{2}{3}$) 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 in the Probate Office of Lee County, Alabama.

10.04 Restrictions on Amendment. Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 2.02, 2.04, 2.05, 3.01 through 3.06, 5.02, 5.10, 5.12, 6.01, 6.24, 6.26, 8.03, 8.04, 10.02, 10.03, 10.04 and 12.01 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is

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consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE XI

Enforcement

11.01 Authority and Enforcement. In addition to the provisions of Sections 5.13, 6.21, 6.22(a), 6.33, 7.02(b), and 8.09 above, in the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) 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, (ii) suspend an Owner's right to vote in the Association, or (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests, and tenants) to use 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.

11.02 Procedure. In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors, or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

(i) The alleged violation;

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

(iii) A time period of not less than ten (10) 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 Standards, the Articles of Incorporation, the Bylaws, or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

11.03 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement, and procedural rights set forth in this Article XI 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 XII

Miscellaneous Provisions

12.01 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Development, 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.

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

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

12.04 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

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

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12.06 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 ARC, the Association, all of the Owners, and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

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

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

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

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

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

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

12.13 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.

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12.14 Standards for Review. Whenever in this Declaration, Developer, the Association, or the ARC 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 ARC, as the case may be.

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

12.16 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 have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Development. All notices to the Association or to the ARC shall be delivered or sent in care of Developer to the following address:

Post Office Box 301
Auburn, Alabama 36831-0301

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

12.17 Assignment. Subject to the provisions of Section 12.13 above, Developer and the ARC 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 ARC, respectively.

12.18 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 ARC for the purpose of or in connection with clarifying, amending, or otherwise consummating any of the transactions and matters herein.

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

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

The Musselwhite Group, Inc.

By:

Michael T. Musselwhite

Michael T. Musselwhite, President

STATE OF ALABAMA

COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael T. Musselwhite whose name as President is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he executed the same voluntarily and with full authority on the day the same bears date.

Given under my hand and official seal, this the 8th day of April, 2008.

SEAL

[Signature]

Notary Public

My commission expires:

MY COMMISSION EXPIRES SEPT. 13, 2011

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Exhibit A
Legal Description

Lundy Chase Subdivision - Phase 1, as shown on the plat thereof recorded in Plat Book 29 at Pages 67-68, as revised by Lundy Chase Subdivision - Phase 1 First Revision recorded in Plat Book 30 at Page 142 all in the Office of the Judge of Probate of Lee County, Alabama.

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Recorded in the Above
MISC Book & Page
04-09-2008 10:42:27 AM
Bill English - Probate Judge
Lee County, AL

**DECLARATION OF SINGLE FAMILY RESIDENTIAL PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR LUNDY WEST SUBDIVISION**

Sky is the Limit Homes, Inc., an Alabama corporation, AND Stone Martin Builders, LLC, an Alabama limited liability company (herein collectively referred to as "Developer") is the owner of all lots and land embraced within Lundy West Subdivision. Each lot in Lundy West Subdivision is declared to be a single-family residential lot ("Lot"). Developer does hereby impose the following single-family residential protective covenants, conditions, and restrictions on the Single Family Residential Lots within Lundy West Subdivision.

A. REFERENCE TO HOMEOWNERS ASSOCIATION AND BYLAWS:

The Single Family Residential Lots and ownership of the Single Family Residential Lots in Lundy West Subdivision are expressly made subject to all of the terms and provisions of the Articles of Incorporation ("Articles") of Lundy Chase Owners' Association, Inc., and the accompanying Bylaws of Lundy Chase Owners' Association, Inc. ("Bylaws"), which are recorded in the Office of the Judge of Probate of Lee County, Alabama, as the Articles and Bylaws may be amended or modified from time to time as permitted therein. Capitalized terms not otherwise defined in this Declaration shall have the meaning ascribed to them in the Bylaws. This Declaration of Single Family Residential Protective Covenants, Conditions, and Restrictions is a Declaration as defined in the Bylaws. Each person owning a Single Family Residential Lot in this Lundy West Subdivision shall be a Member of the Association and subject to all of the terms and provisions of the Articles, the Bylaws and other aspects of the Association. References in this Declaration to the word "homeowner" shall have the same meaning as a Member as defined in the Bylaws.

B. SINGLE FAMILY RESIDENTIAL COVENANTS AND RESTRICTIONS

Developer does hereby create, establish and impose the following covenants and restrictions upon each Lot embraced within Lundy West Subdivision.

1. USE OF PROPERTY:

Except as may be otherwise approved in writing by Developer, no Lot shall be used except for a single-family residential purpose.

2. BUILDING CRITERIA:

- (a) **HEIGHT RESTRICTIONS:** No building shall be erected, altered, places, or permitted to remain on an Lot other than one detached single family dwelling not to exceed two stories in height, in addition to below ground basement. This shall not be construed to prevent other buildings as may be hereinafter authorized and provided.
- (b) **BUILDING SETBACK REQUIREMENTS:** Setbacks shall be governed by the Auburn City Planning Commission. Zoning criteria in effect at the time of construction shall be the final determinate. (Any request for variance from zoning criteria must first be approved by the Architectural Review Committee and then the Auburn City Planning Commission) The setback lines as approved shall not be construed to permit the construction of improvements so as to encroach upon an easement. For the purpose of this covenant, eaves, steps, open porches and

ornamental planting boxes shall not be considered part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon any other lot, except for necessary roof and eave overhangs on zero lot line lots.

- (c) **COMMON AREAS:** The common area landscaping and any other architectural or landscaping features have been constructed by the Developer and will be owned and maintained through assessments by Lundy Chase Owners' Association, Inc. No changes and/or modifications are permitted unless approved by the Architectural Review Committee.
- (d) **PROHIBITION AGAINST ENCLOSED GARAGES:** No garage may be enclosed or otherwise converted to living area so that it cannot be used for off street parking for a minimum of two (2) vehicles.
- (e) **EXTERIOR SURFACES:** All exterior wall surfaces shall be painted wooden and Hardie Board lap siding. Brick, stucco, or natural stone may only be used as accent material and may only comprise up to thirty percent of any exterior wall, unless otherwise approved by the ARC. Exterior walls include that portion of the exterior walls, which are above lower roof levels. Vinyl shutters and soffits shall be allowed.
- (f) **COLOR:** The Architectural Review Committee shall first approve exterior color. Exterior painting will be in soft tones.
- (g) **ROOF:** All major roof structures must have a minimum 7/12 pitch. Shingles must be of a natural color architectural shingle.
- (h) **STACKS AND VENTS:** No plumbing stacks or vents shall protrude through the roof area facing the street and shall be connected in attic space to provide minimum roof penetration. If any flat area occurs, the stacks or vents shall be constructed so as to protrude through the flat area.
- (i) **GARAGES AND OUTBUILDINGS:** Garage doors must remain closed except when vehicles are entering and/or exiting the garage.
- (j) **WINDOWS:** All windows must be wood framed, vinyl, or vinyl clad.
- (k) **ZONING:** Zoning is controlled by the Auburn Planning Commission.

3. **ARC APPROVAL:**

- (a) **ARCHITECTURAL REVIEW COMMITTEE:** The architecture of any dwelling to be erected on any Single Family Residential Lot shall be generally in substantial harmony and conformity with the general prevailing filing type of architecture in the vicinity, with all construction and architectural plans being subject to prior review and approval of the Architectural Review Committee, as established hereafter by the Board of Directors of Lundy Chase Owners' Association, Inc. The Architectural Review Committee (hereinafter referred to as "ARC") will consist of three representatives, chosen jointly at the discretion of the Directors. To the extent permitted or authorized by the Bylaws or the Board, the ARC has established or will establish its own requirements, procedures, policies, and time frames, a copy of which requirements shall be available, on request, to Lot owners, their architects, or builders. The ARC may, to the extent permitted or authorized by the Bylaws or the Board, periodically modify or amend its requirements, but in no event shall its requirements be less restrictive than the other covenants and restrictions set out herein. To the extent permitted or authorized by, the Bylaws or the Board, the ARC may set site standards, building design and materials standards, building

construction standards, and other standards that it deems appropriate (all such standards so adopted from time to time by the ARC being sometimes referred to as "ARC Guidelines"). The Builder for home plans under consideration may sit in on the meeting. Said members shall serve at the pleasure of the Directors until the later of (i) January 1, 2015 or, (ii) the date Developer no longer owns any property in Lundy West Subdivision, its common areas or property contiguous to it or until such earlier date which Developer, in its sole discretion, may elect in writing to relinquish control over the ARC. After the Developer relinquishes control over the ARC, the members of the Committee shall be designated by the Board of Directors. The affirmative vote of a majority of the members of the Committee shall be required for any action by the Committee.

- (b) **WRITTEN APPROVAL REQUIRED:** No construction, which term shall include within its definition staking, clearing, excavation, grading, or other site work and no planting or removal of plants, trees, or shrubs shall take place except in strict compliance with these covenants and restrictions, until the requirements thereof have been fully met, and until the complete plans as outlined below above have been approved in all respects by the ARC. All approvals by the ARC must be in writing, dated, signed by an authorized representative of the ARC, and where plans and specifications are required said approval shall be reflected on the plans and specifications after approval is obtained from the ARC.
- (c) **SUBMISSION OF PLANS FOR APPROVAL:** Two (2) complete sets of building plans and specifications must be submitted to said Committee for written approval. Such plans and specifications shall be in such form, and shall contain such information as may be required by the Architectural Review Committee, and shall be deemed delivered when an Acknowledgment Form has been received by submittor.
- (d) **TIME FOR SUBMISSION AND APPROVAL OR DISAPPROVAL:** The ARC shall have seven (7) days from and after the day it receives the set of plans to review and respond to the Lot owners request with respect to the prospective construction or major improvement, provided that, if the ARC does not respond within such ten (10) days of the date of submission, the request shall be deemed approved. If not approved by operation of time, approvals by the ARC must be in writing; dated, signed by an authorized representative of the ARC, and where plans and specifications are required said approval should be reflected on the plans and specifications after approval is obtained by the ARC.
- (e) **NO WARRANTY OR LIABILITY FROM APPROVAL:** approval of any plans or the setting of any requirement for approval does not constitute, and shall not be construed as, any representation or guaranty of safety or architectural integrity by the ARC or any other governing body, which instead shall be the sole responsibility of each Lot owner. The scope of review by the ARC shall be limited to appearance only. Neither the Architectural Review Committee nor any member thereof shall be liable to Lundy West Subdivision or to any owner for any damage, loss of prejudice suffered or claimed on account of:

- (i) The approval or disapproval of any plans, drawings and specifications, whether or not defective
 - (ii) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or
 - (iii) The development of any Property within Lundy West Subdivision, provided that such member has acted in good faith on the basis of such information as may be possessed by him or her.
- (f) **REASONS FOR DISAPPROVAL:** The Committee shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons:
- (i) Failure of such plans and specifications to comply with the covenants and restrictions herein set forth;
 - (ii) failure to include in such plans and specifications information reasonably requested by the committee;
 - (iii) objection to the exterior design, appearance or materials of any proposed structure or improvement;
 - (iv) Incompatibility of any proposed structure or improvement or use thereof with existing structures used upon other lots.
 - (v) Objection to the color scheme, finish, proportions, style or architecture, height, bulk or appropriateness of any proposed structure or improvement;
 - (vi) Any other requirements of the City of Auburn or Lundy West Subdivision shall be considered part of the criteria, considered by the ARC
 - (vii) Any other matter that, in the judgment of the Committee, would render the proposed structure, improvement or use inharmonious with the general plan of improvement of the Lot or with structure, improvements or uses located upon other Lots.
- (g) **NOTIFICATION OF DISAPPROVAL:** If the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified condition, such disapproval or qualified approval shall be accompanied or followed, in case the seven (7) day period expires resulting in an automatic disapproval, by a statement of the grounds upon which such action was based. In any such case the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

4. **RESUBDIVISION OR PARTITION OF LOTS:**

Lot lines or building lines may be further modified without the prior written approval by the ARC.

5. **OUTBUILDINGS:**

No temporary structure such as trailer, tent, shack, barn, servant house, garage or other outbuilding shall be erected on any Lot either prior to completion of the dwelling house or at any time thereafter. All additional improvements, as permitted by this covenant, must first be approved in writing, by the ARC, and the type of materials, textures and color must be in keeping with the principle residence. Principle residences may be altered or renovated but only

with the prior written approval or the ARC. Colors may not be changed without prior written approval.

6. **TRANSMISSION EQUIPMENT, ANTENNAS AND DISCS:**

No ham radios or radio transmission equipment which is visible from the street or adjoining Lots; no television or radio antennas or television satellite dish over twenty-two (22) inches shall be permitted on any Lot. Location of satellite dishes must be approved by ARC and shall not be visible from the street.

7. **UTILITY LINES AND METERS:**

All meters, measuring devices and similar devices required by utility companies, must be located so as to be hidden from view of the street and adjacent Lots as approved by the ARC. All utility lines must be underground except where specifically authorized by the Committee.

8. **WALL AND WINDOW AIR CONDITIONING UNITS:**

Wall and window air conditioning units shall not be permitted except with the prior written consent of the Architectural Review Committee.

9. **STREETS, MEDIANS ETC:**

The maintenance and repair of all street medians, landscape maintenance, landscape irrigation and street lights which are not the responsibility of the City of Auburn, utility bills for street lights which are not the responsibility of the City of Auburn and landscaping plus other landscaping on easements for the beautification of Lundy West Subdivision residential area, are the responsibility of Lundy West Subdivision Homeowners Association. No changes and/or modifications are permitted unless approved by the Architectural Review Committee.

10. **DESIGN CRITERIA:**

The Architectural Review Committee is to assure proper blending of home designs. Design standards permit craftsman style homes.

11. **PRIVACY FENCING:**

Privacy fences are allowed, but must be approved in writing by the ARC on a case-by-case basis.

12. **MAILBOXES:**

All mailboxes must be of a common design selected for Lundy West Subdivision and approved by Architectural Review Committee, so long as these specifications comply with the requirements of the United States Postal Service. The ARC may establish a required location for all mailboxes and mailbox posts, so long as these specifications comply with the requirements of the United States Postal Service. The Lot owner shall purchase a standard mailbox and mailbox post from the Developer or the Association at a standard common charge to be applied uniformly, and shall install and maintain said mailbox in appropriate condition and repair, with original color scheme being maintained thereon, as required by the ARC. If mailboxes are required to be purchased by the ARC or Developer, any damage or destruction to mailboxes which cannot be adequately repaired will result in the Lot owner being required to purchase a replacement mailbox from the Association or Developer. The

builder shall install a mailbox at the completion of landscaping. Homeowner shall pay for, maintain and replace the mailbox as required.

13. **SIGNS:**

All signs shall be of uniform design and approved by the Architectural Review Committee. No sign or other advertising device of any nature shall be placed upon any part of the Property except as provided herein. The Architectural Review Committee may at its discretion, adopt and promulgate rules and regulations relating to signs, which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the Property, if approved by the Architectural Review Committee, as to color, location, nature, size and other characteristics of such signs or devices. Notwithstanding the foregoing, the Developer specifically reserves the right for itself, its successors, nominees and assigns, to place and maintain signs in connection with construction marketing, sales and rental of dwelling units and lots and identifying or informational signs anywhere on the Property. No sign may exceed six (6) square feet in size on any Lot. The Developer, the Association and the ARC shall have the right to enter upon any part of the Property and remove or correct any such violation, provided, however, that prior notice is given of such action. Notice maybe given verbally or written.

14. **ANIMALS:**

No animals, livestock, poultry, reptiles or insects of any kind shall be raised, bred or kept on any Single Family Residential Lot except that not more than two dogs or cats may be kept as domestic pets provided that they are not kept, bred or maintained for any commercial purposes. No doghouses shall be permitted unless the Architectural Review Committee approves location, size and design. The breed of dog known as "Pit Bull" will not be allowed.

15. **WINDOWS:**

Window treatments shall be limited to blinds or curtains. Under no circumstances shall sheets or reflective foil be allowed.

16. **GARBAGE AND REFUSE. OIL AND GAS TANKS, SWIMMING POOL EQUIPMENT:**

No lumber, metal or bulk materials shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction of any approved structure or improvement. No refuse or trash shall be kept, stored or allowed to accumulate except between scheduled pick-ups and in accordance with the provisions hereof. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse shall be placed in sanitary containers. Such sanitary containers may be placed in the open on any day that a pick-up is to be made, at such place on Lot as to provide access to the persons making such pick-up. At all other times such containers shall be stored in such manner so that they cannot be seen from adjacent and surrounding property. All oil tanks, bottled gas tanks, and swimming pool equipment and housing must be underground or placed in walled-in areas or landscaped areas so that they are not visible from any adjoining property. Adequate landscaping shall be installed and maintained by the owner. The ARC may, to the extent permitted or authorized by the Bylaws or the Board, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of

the same on the property. Furthermore, the Association, at its sole discretion, may require Lot owners or builders, at any time, to provide dumpsters on the property during construction.

17. **OUTSIDE BURNING:**

Burning of trash, refuse or other materials on any Lot shall be prohibited, except for during construction, and only for construction purposes.

18. **NUISANCE:**

No obnoxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done on any Lot that may become an annoyance or nuisance to the owners of the other Lots. Yard sales are not allowed.

19. **BOATS. TRAILERS AND RECREATIONAL VEHICLES:**

No boat, boat trailer, house trailer, horse trailer, trailer, camper, motor home, motorcycle, motor bike or any similar recreational item shall be stored on any Lot for a period in excess of twenty-four (24) hours unless parked in garage behind closed doors, or elsewhere on the lot so as to not be visible from the street or any adjacent lot. No recreational vehicles or items can be parked on streets.

20. **VEHICULAR PARKING:**

Vehicular parking on streets in front of residence shall be limited to temporary parking of guest vehicles. Vehicular parking shall be in garages and in driveways. Each dwelling shall have minimum off street parking for two (2) vehicles. Vehicle parking in non-paved areas shall not be permitted in any circumstances.

21. **COMMERCIAL VEHICLES:**

No commercial vehicle or equipment shall be permitted to be parked or to be stored at any place on the Lot. This covenant on parking shall not apply to temporary parking of trucks and commercial vehicles used for pick-up and delivery, or for any construction vehicles during construction.

22. **REMEDIES FOR COMMERCIAL AND RECREATIONAL VEHICLE VIOLATIONS:**

Any such Commercial vehicle or equipment or recreational vehicle or equipment parked in violation of these rules and regulations now or hereafter adopted by Lundy West Subdivision, may be towed by said Lundy West Subdivision at the sole expense of the owner of such commercial vehicle or equipment or recreational vehicle or equipment if it remains in violation for a period of twenty-four (24) hours. Lundy West Subdivision shall not be liable to the owner of such commercial vehicle or equipment for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing and neither its removal or failure of the owner to receive any notice of said violation shall be grounds for relief of any kind. Any such vehicle or recreational equipment parked in violation of the restrictions contained herein or in violation of the rules and regulations now or hereafter adopted by the Association or the ARC may be towed away at the direction of the Association or the ARC, at the sole expense of the owner of such vehicle or recreational equipment, if the violation of said restrictions remains for a period of more than twenty-four (24) hours and if the owner of such vehicle or recreational

equipment receives notice of the towing of such vehicle before the towing occurs. Neither the Association nor the ARC shall be liable to the owner of such vehicle or recreational equipment, nor to the respective Single Family Residential Lot owners, for trespass, conversion or otherwise, nor shall the Association or the ARC be guilty of any criminal or quasicriminal act by reason of such towing, and neither the removal nor the failure to remove any such vehicle or recreational equipment, nor the failure of the owner to receive any notice of said violation, shall be grounds for relief of any type. The foregoing remedy is in addition to any other remedy which may exist whether at law or in equity.

23. **VEHICLE MAINTENANCE AND REPAIR:**

No maintenance or repairs shall be performed on any vehicle on any portion of the Single Family Residential Lots except in an emergency situation. Notwithstanding the foregoing, all repairs to disabled vehicles within the Single Family Residential Lots must be completed within four (4) hours from the time of its immobilization or the vehicle must be removed. Vehicles parked on any Single Family Residential Lot must have a current tag. The Association shall be allowed to maintain and store its maintenance vehicles, if applicable, on specific areas of the Property as necessary for the operation and maintenance of the Association Property and Areas of Association Responsibility.

24. **UNDERGROUND UTILITIES AND SATELLITE DISHES:**

No Single Family Residential Lot owner shall erect or grant to any person, firm, or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, antennas, satellite dishes or overhead facilities of any kind for electrical, telephone, radio transmission or cable television service on any Single Family Residential Lot (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave that particular area). Nothing herein shall be construed to prohibit overhead street lighting fixtures, or ornamental yard lighting where such is serviced by underground wires or cables. Satellite dishes are allowed, but shall be placed in such manner as to not be visible from any street.

25. **PIPES AND CLOTHESLINES:**

No clothing or any other household fabrics shall be hung in the open on any Single Family Residential Lot. No water pipes, gas pipes, sewer pipes, drainage pipes or clotheslines may be installed or maintained on the Property so as to be visible from adjoining property or public view, except hoses and movable pipes used for temporary irrigation purposes.

26. **SOLAR COLLECTORS:**

Only those solar collectors approved by the ARC shall be permitted on any Single Family Residential Lot and shall be installed so that they shall not be visible from any street.

27. **MINING:**

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Single Family Residential Lot.

28. **MAINTENANCE OF HEDGES, PLANTS AND YARDS:**

Lundy Chase Owners' Association, Inc., shall have the right to enter upon any Single Family Residential Lot and trim or prune, at the expense of the owner, any hedge, grass in excess of five inches in height, or other planting which, in the opinion of said District or Association, by reason of its location upon the Single Family Residential Lot or the height of which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the owner shall be given twenty-four (24) hours prior written notice of said action.

29. **UTILITY EASEMENTS:**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of Lundy West Subdivision, as recorded in the Office of the Judge of Probate of Lee County Alabama in Plat Book 32, Page 97, and any subsequent revisions and amendments. Easements include the right of ingress and egress by employees of the utility company for the maintenance of the property included in the easement. The easement area shall be maintained continuously by the owners of the respective Single Family Residential Lots, except for those improvements for which a public authority or utility company is responsible.

30. **OUTSIDE USES:**

No rocks, rack gardens, bird baths, ponds or pools, lawn sculptures, artificial plantings, children's play equipment, basketball goals, lawn furnishings, or the like, shall be permitted without the written approval of the ARC. No vegetable, herb or similar gardens shall be planted or maintained so as to be visible from the street or readily visible by adjacent property owners. Basketball Goals: Basketball goals may not be attached to any structure. Portable basketball goals will be allowed, but may not be left in any visible location when not in use.

31. **SECURITY LIGHTS:**

Standards and fixtures must be approved by the ARC for placements, direction, appearance and coverage area.

32. **TENNIS COURT OR POOL LIGHTING:**

No lights may be installed in such a manner that they are directed toward neighboring property and shall not be of a height where lights bleed over property lines. Wiring must be underground.

33. **OVERHEAD FACILITIES:**

The owners of the Single Family Residential Lots within Lundy West Subdivision will not erect or grant to any person, firm, or corporation, the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any type of kind for electrical, electronic communication, or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave Lundy West Subdivision). Nothing herein shall be construed to prohibit overhead street lighting fixtures, or ornamental yard lighting where such is serviced by underground wires or cables.

34. **USE OF APPROVED STRUCTURE:**

No structure previously approved by the ARC shall be used for any purpose other than that for which it was originally designed and approved.

35. **BUSINESS ACTIVITY:**

No profession or home industry or other commercial venture shall be conducted in or on any part of the Property or in any improvements thereon. The Board of Directors of the Association (hereinafter "Board"), in its discretion, upon consideration of the circumstances in each case, and particularly upon consideration of the effect upon surrounding property and property owners, may permit the conduct of a profession or home industry within a residence located on the Property. Such commercial operation may be permitted only after the Board has determined that it is compatible with a high quality residential neighborhood and does not unreasonably interfere with the normal residential use or adversely impact the value of adjoining property or property in the area. This section may not be interpreted to authorize or permit any commercial activity which is in violation of local statutes or zoning regulations. Any such approval granted by the Board may be withdrawn if the Board determines, in its sole discretion, that such authorized or permitted activity is unreasonably interfering with the rights of the subdivision in general or any individual Single Family Residential Lot owner within said subdivision. In no event shall any part of the premises or any structure thereon be used as a school, child care center, kindergarten, learning center, musical instrument or voice training center, or other public building, including non-profit or charitable institutional use.

36. **REAL ESTATE OFFICE OR SUBDIVISION OFFICE:**

The Developer may, in Developer's sole discretion, use or permit the use of any Single Family Residential Lot within Lundy West Subdivision for the construction of and/or use of a building constructed thereon as a subdivision office, real estate office and/or model home, and as such the same shall not be subject to the terms, provisions and requirements of these covenants until such time as all other Single Family Residential Lots within Lundy West Subdivision have been sold and upon that occurrence said Single Family Residential Lot and building constructed thereon shall, as soon as reasonable possible and to the extent reasonably and economically practicable, be brought into compliance with these covenants.

37. **MACHINERY:**

No machinery shall be placed on or operated upon any portion of the subject Property except such machinery as is normal and usual in the maintenance of a private residence, or except such as is necessary during the original construction of a residence or a major renovation or improvement thereto.

38. **AUTHORIZED USE AND EXCEPTIONS:**

Notwithstanding other provisions herein, each residence located on a Single Family Residential Lot shall be used only as a single-family residence and shall be subject to all other requirements hereunder, but the ARC may authorize any Single Family Residential Lot owner, with respect to his or her residence, to temporarily use the same for more than one family, to temporarily maintain a sign other than as expressly permitted herein, to locate other temporary structures on the Property, and may make other exceptions to these covenants. In all such instances, approvals of, and exceptions granted by, the ARC must be in advance and in writing. With respect to such approvals or exceptions, each case and each request shall be reviewed on

its own merits, and the ARC shall have unrestricted discretion and neither the granting or refusing of similar requests for other Single Family Residential Lot owners nor the approval and consent or disapproval of adjoining Single Family Residential Lot owners shall in any way be a determinative or limiting influence on the decision of the ARC.

39. **PROHIBITED USES:**

No person shall, without the written approval of the Association or the ARC, as the case may be, do any of the following on any part of the subject Property or Association Property: (1) permit the running of animals except when on a leash; (2) fell any trees or injure or damage any landscaping within the Association Property; (3) interfere with any drainage, utility or access easement; (4) build or assemble any structures, recreational or common facilities, other than those approved by the ARC; (5) discharge any liquid or other material other than natural water drainage into any lake, pond or watercourse; (6) alter or obstruct any lakes, ponds or watercourses; (7) interfere with any water control structures or apparatus; (8) use motor boats on any lake, pond or stream; (9) boat or fish; (10) light any fires except in designated areas or (11) swim in any body of water other than a swimming pool. No Person shall violate any rules and regulations that may be established by the Association governing the use of the Association Property or the rules or requirements that may be established by the ARC.

40. **SECURITY:**

The Association may own and provide for the maintenance of an entrance gatehouse and, if manned, the salary for the same. The Association may also install and maintain electronic gates. This is not intended to obligate the Developer or the Association to provide any form of security or surveillance to the owners, their properties or the Association properties. Nothing herein shall constitute or be deemed to constitute a representation, warranty, assurance or promise that the Association, the ARC or Developer will either now or in the future provide any security force or device to provide protection for the owners of the Single Family Residential Lots or any other persons or Property located within Lundy West Subdivision. In no event shall the Association, the ARC or the Developer be obligated to or responsible for providing any security service or services, security devices, to provide protection for owners or any other persons or Property located within Lundy West Subdivision. The Association, the ARC and the Developer shall not be responsible or liable for any damages or losses caused by any failure to provide any security service or services within Lundy West Subdivision. Furthermore, the provision of a guard house or any other property which could be used for security purposes shall not constitute a promise or obligation on or of the Association or Developer to provide security services either now or in the future. In the event that any security service or device is provided by the Association, or the Developer, the Association or Developer shall be entitled to discontinue any such security service or services, or device or devices, at any time and from time to time, and neither the Association nor Developer is responsible for any losses or damages caused by such discontinuation of service. In no event shall either the Association or the Developer be responsible for any damages caused by any loss of property or injury caused to any person located within Lundy West Subdivision caused by theft, criminal activity or other activity which could or might have been prevented by a security service or device.

41. **NOTIFICATION TO UTILITY COMPANIES:**

In order to beautify said subdivision for the benefit of all Single Family Residential Lot owners and to permit the utility companies to install underground utility services to each house in said subdivision, no owner of any Single Family Residential Lot within such subdivision will commence construction of any house on any Single Family Residential Lot until such owner (1) notifies the utility companies that such construction is proposed, (2) grants in writing to said companies such rights and easements as they request in connection with their construction, operation, maintenance and removal of the underground service lateral on each Single Family Residential Lot and (3) provides at his, her or its own expense, and in accordance with specification to be furnished by the utilities, all excavating, trenching and backfilling which said utility company requests in connection with the installation of the underground service or service laterals on each Single Family Residential Lot. To the extent of the interest of the owner of each Single Family Residential Lot, such owner agrees to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by Developer.

42. **MEMBER OF ASSOCIATION; LIABILITY FOR ASSESSMENTS:**

Each owner of a fee simple interest in a Single Family Residential Lot in Lundy West Subdivision shall automatically become a Member of the Association and shall be fully and completely bound by all of the terms and conditions of the Articles and the Bylaws of the Association, as they may be modified and amended from time to time, including, without limitation, the obligation to pay any and all applicable Assessments levied from time to time by the Association on each Single Family Residential Lot and the right of the Association to enforce payment of the Assessment as provided in the Bylaws, except that Developer shall not be required to pay any Homeowners' Association assessments for lots which Developer owns. All of the terms and provisions of the Articles and the Bylaws applicable with respect to each such Single Family Residential Lot in Lundy West Subdivision and to the owner of such Single Family Residential Lot by virtue of being a Member of the Association are incorporated herein by reference as if set forth herein in their entirety. Each Single Family Residential Lot in Lundy West Subdivision is a Single Family Residential Lot, as defined in the Bylaws. Individual lot Assessments shall be determined on a yearly basis, by compiling the total amount of yearly expenses for the development, and dividing by the total number of lots located in the subdivision.

43. **LIEN FOR ASSOCIATION ASSESSMENTS:**

The Association is hereby granted a lien upon each Single Family Residential Lot and its appurtenances and each Member's interest in the Association to secure the payment to the Association of any and all Assessments assessed and levied against the Single Family Residential Lot and all charges, including interest and all reasonable attorneys' fees, including appellate attorneys' fees, court costs and other expenses, incurred by the Association in collecting or attempting to collect such Assessments. If any portion of an Assessment or charge hereunder remains unpaid for a period of sixty (60) days after the date such amounts were due, then the Association may, by written notice of default sent to the owner of the Single Family Residential Lot, demand payment of all delinquent amounts and charges. If the owner does not pay all amounts due within ten (10) days after receipt of the notice of default, the Association may file a notice of lien against the Single Family Residential Lot in the Office of the Judge of Probate of Lee County, Alabama. Each Single Family Residential Lot Owner

hereby expressly grants to the Association a power of sale for such Single Family Residential Lot along with its lien hereunder. The lien provided for herein may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, exchange, hold, lease, mortgage, convey and sell any such Single Family Residential Lot acquired.

Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Single Family Residential Lot is and shall be subordinate to: (1) all liens for taxes, bonds, prior assessments, and other levies which by law would be superior thereto and (2) the lien or charge of any first mortgage of record made in good faith and for value. No Single Family Residential Lot owner may escape or avoid responsibility for Assessments by waiver of the use of or enjoyment of any of the Association Property or by the abandonment or non-use of such owner's Single Family Residential Lot, or by any other means.

44. **INDEMNIFICATION:**

The Association has agreed to indemnify and hold harmless every officer, director and committee member of the Association, including, but not limited to, the members of the Board and the members of the ARC, from and against any and all costs and expenses, including trial and appellate attorney's fees and costs, reasonably incurred by or imposed upon any officer, director or committee member in connection with any action, suit or other proceedings to which he or she may be a party, by reason of being or having been an officer, director or committee member of the Association, the Board or the ARC. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, willful misconduct or bad faith, with regard to the business of the Association or the ARC. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, except to the extent that they may be a Member of the Association, and the Association shall indemnify and forever hold each of said officers, directors and committee members free and harmless against any and all liability to others on account of such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association may, as a part of the expenses of the Association, maintain adequate general liability insurance, and officers and directors liability insurance to fund this obligation, if such insurance is reasonable available and deemed to be appropriate for the Association by its Board.

45. **DEVELOPER DEFINED; DEVELOPER'S RIGHTS:**

Wherever the term "Developer" or "Declarant" is used herein it shall mean Sky is the Limit Homes, Inc. AND Stone Martin Builders, LLC, collectively. These covenants and restrictions touch and benefit all of the Single Family Residential Lots within Lundy West Subdivision and shall run with the land and shall be binding upon the Single Family Residential Lots within Lundy West Subdivision and all the owners of Single Family Residential Lots within Lundy West Subdivision, their heirs, successors and assigns, the utilities referenced herein either specifically or generally, and their successors and assigns. The Developer expressly reserves the sole and exclusive right and privilege, both for itself and its successors and assigns, to

change, alter, modify or amend any of the terms, covenants and provisions of the Declaration or to grant a variance to or from any of the terms, covenants and provisions of this Declaration, without the consent or approval of the owners of Single Family Residential Lots within Lundy West Subdivision until the later of the following events: (1) January 1, 2020, or, (2) the date Developer no longer owns any property in the Lundy West Subdivision, its common areas or property contiguous to it or until such earlier date which Developer, in its sole discretion, may elect in writing to relinquish its right and privilege to change, alter, modify or amend any of the terms, covenants and provisions of this Declaration.

46. **DURATION OF SINGLE FAMILY RESIDENTIAL PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS:**

Each Single Family Residential Lot in Lundy West Subdivision shall be subject to the single family residential protective covenants, conditions and restrictions hereof. These residential covenants and restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date of the recording of this Declaration and at the end of the twenty (20) year period, these residential covenants and restrictions, shall be automatically extended for successive periods of ten (10) years each; subject, however, to Developer's express and exclusive right and privilege to change, alter, modify or amend the same as provided in Paragraph 45 hereof and the process for amendment described below in Paragraph 47.

47. **MODIFICATION, AMENDMENT OR TERMINATION BY MEMBERSHIP:**

After the expiration of Developer's exclusive right and privilege to change, alter, modify or amend any of the residential terms, covenants and provisions of this Declaration, said covenants and restrictions may be modified, amended or terminated in whole or in part by a written instrument that (1) has been signed and acknowledged by three-fourths (3/4 ths) or more of the owners of Single Family Residential Lots within Lundy West Subdivision, (2) has been signed and acknowledged by the Association, and (3) has been recorded in the Office of the Judge of Probate of Lee County, Alabama.

C. **GENERAL PROVISIONS:**

1. **CONSTRUCTIVE NOTICE AND ACCEPTANCE:**

Every person, corporation, partnership, limited liability company, limited partnership, trust, association or other legal entity, who or which shall hereafter own or acquire any right, title, interest or estate in or to any Single Family Residential Lot, whether or not such interest is reflected in the Office of the Judge of Probate of Lee County, Alabama, shall be conclusively deemed to have consented and agreed to each and every covenant, condition, restriction, reservation and easement contained or by reference incorporated herein, including, but not limited to, the Articles and Bylaws, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such person, corporation, partnership, limited liability company, limited partnership, trust, association or other legal entity shall have acquired such right, title, interest or estate in the Single Family Residential Lot or any interest therein.

2. **ENFORCEMENT; ATTORNEY'S FEES:**

Enforcement of these protective covenants may be instituted by the Developer, the Association, the ARC and/or the owner of any Single Family Residential Lot in the manner prescribed herein or by a proceeding at law or in equity against the person, persons, or legal entities violating or attempting to violate any of these covenants. Any action may be either to restrain violation or to recover damages therefore. Notwithstanding anything herein contained to the contrary, in the event of litigation arising out of the interpretation or enforcement of the rights or obligations under this Declaration, the Developer, the Association and the ARC shall each be entitled to recover its costs and expenses in connection with such litigation, including, but not limited to, reasonable attorneys' fees, costs and expenses, which may be awarded by the court before whom such litigation is brought. Any individual or entity failing to obtain ARC approval for construction plans shall be liable to the Association in the amount of twenty-five thousand dollars (\$25,000.00) and shall likewise be responsible for remedying any ARC and covenant violations.

3. **PARAGRAPH HEADINGS:**

Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way define, limit or restrict the scope and intent of the particular sections or paragraphs in which they are contained or to which they refer.

4. **EFFECT OF INVALIDATION:**

If any particular provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

5. **ABSENCE OF COMMON SCHEME:**

Notwithstanding anything to the contrary provided herein, it is understood and agreed that the covenants and restriction imposed hereunder shall not be deemed to create a common scheme or to restrict any other property now or heretofore or hereafter owned by Developer other than the Single Family Residential Lots within Lundy West Subdivision which are made subject to this Declaration by the execution, acknowledgment and recordation of this Declaration.

6. **WAIVER:**

None of the terms or provisions of this Declaration can be waived, modified or amended except by a written instrument duly signed by the party against whom such waiver, modification or amendment is sought to be enforced.

7. **NO REVERTER:**

No provision of this Declaration is intended to create, or shall be construed as creating, a condition subsequent to or a possibility of reverter.

8. **GENDER:**

Throughout this Declaration the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa, unless otherwise clear from the context in which such term is used.

IN WITNESS WHEREOF, the undersigned, Sky is the Limit Homes, Inc., an Alabama corporation, AND Stone Martin Builders, LLC, an Alabama limited liability company, owners of all lots and land embraced within Lundy West Subdivision, hereby joins in, executes and signs the foregoing Declaration of Single Family Residential Protective Covenants, Conditions and Restrictions for Lundy West Subdivision on this, the 16th day of April, 2010.

Sky is the Limit Homes, Inc.
An Alabama corporation

BY: [Signature]
As President

Stone Martin Builders, LLC
An Alabama limited liability company

By: [Signature]
As Manager

STATE OF ALABAMA)
LEE COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Bryan Stone, whose name as Manager of Stone Martin Builders, LLC, and whose name as President of Sky is the Limit Homes, Inc. 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, as said Manager and President, and with full authority, executed the same voluntarily for and as the act of said limited liability company and said corporation.

Given under my hand and official seal this the 16th day of April, 2010.

[Signature]
Notary Public

My commission expires: 8/2/10

