

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
MARTYN WOODS AT BON SECOUR, A SUBDIVISION**

State of Alabama, Baldwin County  
I certify this instrument was filed  
and taxes collected on:  
1999 December -20 2: 52PM  
Instrument Number 525191 Pages 38  
Recording 95.00 Mortgage  
Deed Min Tax  
Index JP 1.00  
Archive  
Adrian T. Johns, Judge of Probate

525191

STATE OF ALABAMA :

COUNTY OF BALDWIN :

This **DECLARATION** is made to be effective as of the **EFFECTIVE DATE** (as defined in this **DECLARATION**) by **MARTYN WOODS, L.L.C.**, an Alabama Limited Liability Company ("**DECLARANT**").

**RECITALS:**

A. **DECLARANT** is the owner of that certain real property which is known as **MARTYN WOODS AT BON SECOUR, A SUBDIVISION, PHASE I** as per plat ("**PLAT**") recorded in the **OFFICE OF THE JUDGE OF PROBATE OF BALDWIN COUNTY, ALABAMA** in Slide **1958-B** together with all improvements and appurtenances. (Sometimes referred to in this **DECLARATION** as the "**SUBDIVISION**". See Section 1.24 of this **DECLARATION** for a more specific description of the **SUBDIVISION**.) **1959-A, 1959-B, 1960-A**

B. **DECLARANT** intends by this **DECLARATION** to impose upon the **SUBDIVISION** mutually beneficial restrictions under a general plan of improvement for the benefit of all **OWNERS** of the **SUBDIVISION** and to provide a method whereby **ADDITIONAL PROPERTY** may become part of the **SUBDIVISION** subject to this **DECLARATION** by the recording of a **SUBSEQUENT AMENDMENT** to this **DECLARATION**.

C. **DECLARANT** has caused the **MARTYN WOODS AT BON SECOUR PROPERTY OWNER'S ASSOCIATION, INC.** ("**ASSOCIATION**") to be formed for the purpose of providing an Alabama non-profit corporation to serve as representative of the **DECLARANT** and **OWNERS** of the **SUBDIVISION**.

D. The **ASSOCIATION** and the **SUBDIVISION** shall be subject to the terms and conditions of this **DECLARATION**.

**NOW, THEREFORE, DECLARANT** declares that the **SUBDIVISION** and any **ADDITIONAL PROPERTY** as may by **SUBSEQUENT AMENDMENT** be added to and subjected to this **DECLARATION** is and shall be held, transferred, sold, conveyed, given, purchased, encumbered, rented, used, occupied and improved, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the **SUBDIVISION** property subject to this **DECLARATION** and which shall be binding on all parties having any right, title or interest in the **SUBDIVISION** property, their heirs, successors and assigns, and shall inure to the benefit of each **OWNER**.

**ARTICLE I  
DEFINITIONS**

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

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

**Section 1.2** "**ARTICLES OF INCORPORATION**" or "**ARTICLES**" shall mean and refer to the **ARTICLES OF INCORPORATION** of the **ASSOCIATION**. This is the **DECLARATION** to which the **ARTICLES OF INCORPORATION** and **BY-LAWS** of the **ASSOCIATION** make reference.

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

**Section 1.4** "**ASSOCIATION**" shall mean and refer to **MARTYN WOODS AT BON SECOUR PROPERTY OWNER'S ASSOCIATION, INC., a Non-profit Corporation**, its successors and assigns.

**Section 1.5** "**BOARD OF DIRECTORS**" or "**BOARD**" shall mean and refer to the **BOARD OF DIRECTORS** of the **ASSOCIATION**. "**DIRECTOR(S)**" shall mean and refer to individual member(s) of the **BOARD OF DIRECTORS**.

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

**Section 1.7** "**CENTRAL FACILITY OUTPARCEL**" shall mean and refer to the **CENTRAL FACILITY OUTPARCEL** shown on the **PLAT** and as described in **Section 4.9** of this **DECLARATION**.

**Section 1.8** "**COMMON AREA**" or "**COMMON PROPERTY**" shall mean and refer to all real property so designated on the **PLAT** or on any recorded subdivision plat of the **SUBDIVISION** or any property, building, fixtures, facilities or other personal property now owned or otherwise acquired by the **ASSOCIATION** by purchase, gift, lease or otherwise to be devoted to the common use and enjoyment of the **OWNERS** of the **SUBDIVISION**. The **COMMON AREA** to be owned by the **ASSOCIATION** is as described on the recorded **PLAT** of the **SUBDIVISION**.

**Section 1.9** "**COMMON EXPENSES**" shall mean and include the actual and estimated expenses of operating the **ASSOCIATION**, including any reasonable reserve, as may be found to be necessary and appropriate by the **BOARD** pursuant to this **DECLARATION**, the **ARTICLES OF INCORPORATION** of the **ASSOCIATION** and the **BY-LAWS** of the **ASSOCIATION**.

**Section 1.10** "**DECLARANT**" shall mean and refer to **MARTYN WOODS, L.L.C., an Alabama Limited Liability Company**, and the successors and assigns of **DECLARANT**, if such successors and assigns should receive by assignment from **DECLARANT** all, or a portion of the

rights of the **DECLARANT** under this **DECLARATION** as the **DECLARANT**, by an instrument expressly assigning such rights of the **DECLARANT** to such assignee.

**Section 1.11 "DECLARATION"** shall mean and refer to this **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**, which shall be recorded in the **Probate Records of Baldwin County, Alabama**, as the same may from time to time be supplemented or amended in the manner described in this **DECLARATION**.

**Section 1.12 "DEED"** shall mean and refer to any **DEED**, assignment, lease or other instrument conveying fee simple title or a leasehold interest in any part of the **SUBDIVISION**.

**Section 1.13 "DWELLING"** shall mean and refer to that portion of any improved **LOT** intended for use, or being used, as a single-family residential **DWELLING**.

**Section 1.14 "EFFECTIVE DATE"** shall mean and refer to the date of the recording of this **DECLARATION** in the **OFFICE OF THE JUDGE OF PROBATE OF BALDWIN COUNTY, ALABAMA** which shall be deemed the **EFFECTIVE DATE** of this **DECLARATION**.

**Section 1.15 "EXISTING PROPERTY"** shall mean and refer to the **SUBDIVISION**.

**Section 1.16 "LOT"** shall mean and refer to any improved or unimproved plot, parcel or portion of land shown upon the **PLAT** and on any recorded subdivision plat of the **SUBDIVISION** any recorded final subdivision plat of the **SUBDIVISION**, with the exception of the **COMMON PROPERTY** and shall include, where the context may indicate, any improvement or fixture located on the **LOT**.

**Section 1.17 "MAJORITY"** shall mean and refer to those eligible votes, **OWNERS** or other groups as the context may indicate totaling more than **fifty percent (50%)** of the total eligible number.

**Section 1.18 "MEMBER" or "MEMBERS"** shall mean and refer to every **PERSON** or entity who holds membership in the **ASSOCIATION**, as provided in this **DECLARATION**.

**Section 1.19 "MORTGAGE"** shall mean and refer to any **MORTGAGE, DEED** with vendor's lien reserved and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

**Section 1.20 "OWNER" or "OWNERS"** shall mean and refer to the holder of record of fee simple title to any **LOT**. Notwithstanding any applicable theory of any **MORTGAGE, OWNER** shall not mean and refer to the mortgagee, or the successors or assigns or heirs of mortgagee, unless such mortgagee has acquired title pursuant to foreclosure or a proceeding or **DEED** in lieu of foreclosure; nor shall the term **OWNER** mean or refer to any lessee of any **OWNER**, nor shall the term **OWNER** mean or refer to any **PERSON** holding title merely as security for the payment of a debt. In the event there is of record a **DEED** granting **one (1)** or more parties a life estate in any **LOT**, the **OWNER** of said **LOT** shall be deemed to be the holder or holders of a life estate, regardless of who owns a fee interest.

Section 1.21 "PLAT" shall mean and refer to the PLAT of MARTYN WOODS AT BON SECOUR, A SUBDIVISION, PHASE I, described in Paragraph A, in the RECITALS on Page 1 of this DECLARATION.

Section 1.22 "PERSON" shall mean and refer to a natural person, corporation, partnership, trustee or other legal entity.

Section 1.23 "RULES AND REGULATIONS" shall mean and refer to the RULES AND REGULATIONS adopted by the ASSOCIATION or adopted by the ARCHITECTURAL COMMITTEE as provided for in this DECLARATION.

Section 1.24 "SUBDIVISION" shall mean and refer to that certain real property described in Paragraph A, in the RECITALS on Page 1 of this DECLARATION and such additions to the SUBDIVISION as may hereafter be brought within the jurisdiction of the ASSOCIATION and this DECLARATION. The CENTRAL FACILITY OUTPARCEL is not part of the SUBDIVISION.

Section 1.25 "SUBSEQUENT AMENDMENT" shall mean and refer to an amendment or supplement to this DECLARATION which subjects ADDITIONAL PROPERTY to this DECLARATION. Such SUBSEQUENT AMENDMENT may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by the SUBSEQUENT AMENDMENT.

**ARTICLE II**  
**MUTUALITY OF BENEFIT AND OBLIGATION**

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

**ARTICLE III**  
**ADDITIONAL PROPERTY**

Lands in addition to the EXISTING PROPERTY may hereafter become subject to this DECLARATION in the following manner:

A. ADDITIONS. DECLARANT, and the successors and assigns of DECLARANT, shall have the right, in the sole discretion of DECLARANT and without the further consent of the ASSOCIATION, to bring within the scheme and operation of this DECLARATION ADDITIONAL PROPERTY; PROVIDED, HOWEVER, that such addition or additions shall be limited to lands which are contiguous to the SUBDIVISION, and which ADDITIONAL PROPERTY is to be developed as part of the SUBDIVISION, subject to the covenants and restrictions set forth in this DECLARATION. The ADDITIONAL PROPERTY shall be deemed to be "Contiguous" even though separated from the EXISTING PROPERTY by streets, roads, highways, rivers, streams, rights-of-way, railroads, utilities or other intervening physical features or property interests not inconsistent with the general contiguity of the lands in question.

The addition or additions authorized under this **ARTICLE III** shall be made by filing of record in the **OFFICE OF THE JUDGE OF PROBATE OF BALDWIN COUNTY, ALABAMA**, a **SUBSEQUENT AMENDMENT** with respect to the **ADDITIONAL PROPERTY** which shall extend the operation and effect of this **DECLARATION** to such **ADDITIONAL PROPERTY**.

The **SUBSEQUENT AMENDMENT** may contain such complementary additions and modifications of this **DECLARATION** as may be necessary or convenient, in the sole judgment of **DECLARANT**, to reflect and adapt to any difference in character of the **ADDITIONAL PROPERTY**. The **DECLARANT** shall not be obligated to develop **ADDITIONAL PROPERTY** as provided for in this **DECLARATION**. The discretion to develop future lands shall be solely with the **DECLARANT**.

**B. OTHER ADDITIONS.** Upon approval in writing of the **ASSOCIATION**, pursuant to authorization of **two-thirds (2/3)** of the vote of all of its **MEMBERS**, voting as provided for in this **DECLARATION** the owner of any property who desires to add such property to the scheme of this **DECLARATION** and subject such property to the jurisdiction of the **ASSOCIATION** may file of record a **SUBSEQUENT AMENDMENT** as described in this **DECLARATION**. **PROVIDED, HOWEVER**, so long as **DECLARANT** owns any **LOT** in the **SUBDIVISION**, the **DECLARANT** may subject other property to the jurisdiction of the **ASSOCIATION** by the filing of a **SUBSEQUENT AMENDMENT** which **SUBSEQUENT AMENDMENT** need not be approved by **two-thirds (2/3)** of the total votes entitled to be cast by **MEMBERS** of the **ASSOCIATION**.

**C. MERGERS, COMBINATIONS OR CONSOLIDATIONS.** Upon merger, combination or consolidation of the **ASSOCIATION** with another association, the properties rights and obligations of the **ASSOCIATION** may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the **PROPERTIES** of the **ASSOCIATION** as a surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated associated may administer the covenants and restrictions established by this **DECLARATION** within the existing properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger, combination or consolidation, however, shall effect any revocation or change of or addition to the covenants and restrictions established by this **DECLARATION** within the **EXISTING PROPERTY**, except as provided in this **DECLARATION**.

#### **ARTICLE IV** **SUBDIVISION RIGHTS AND EASEMENTS**

**Section 4.1 OWNER'S EASEMENT OF ENJOYMENT.** Every **OWNER** shall have and is hereby granted a nonexclusive right and easement of ingress, egress, use and enjoyment in and to the **COMMON AREA** necessary for access to his or her **LOT** and such rights shall be appurtenant to and shall pass with the title to every **LOT**, subject to the following provisions:

**A.** The right of the **ASSOCIATION** to charge reasonable admission and other fees for the use and maintenance of the **COMMON AREA** and to impose reasonable limits on the number of guests who may use the **COMMON PROPERTY**.

B. The right of the **ASSOCIATION**, in addition to the other rights of the **ASSOCIATION** as set forth in this **DECLARATION**, to suspend the voting rights of an **OWNER** and the right to use any of the **COMMON AREA** for any period during which any **ASSESSMENT** against that **OWNER'S LOT** remains unpaid, and for any infraction by an **OWNER** of the published **RULES AND REGULATIONS** of the **ASSOCIATION** after hearing by the **BOARD OF DIRECTORS** of the **ASSOCIATION** for the duration of the infraction and for an additional period thereafter not to exceed **thirty (30) days**.

C. The right of the **DECLARANT**, with regard to any property which may be owned by **DECLARANT** for the purpose of development, to grant easements in and to the **COMMON AREA** to any public agency, authority or utility for such purposes as benefit any part or all of the **SUBDIVISION** and the **OWNERS**.

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

E. The right of the **ASSOCIATION** to dedicate or transfer all or any part of the **COMMON AREA** to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the **MEMBERS**. Except as provided in this **DECLARATION**, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least **two-thirds (2/3)** of the total votes entitled to be cast by **MEMBERS** of the **ASSOCIATION** who are present or represented by proxy at a meeting duly called for such purpose. **PROVIDED, HOWEVER**, so long as the **DECLARANT** owns any **LOT**, no dedication or transfer need be approved by **two-thirds (2/3)** of the total votes entitled to be cast by **MEMBERS** of the **ASSOCIATION**.

F. The parking of automobiles in the designated area within the **COMMON AREA** is restricted to **OWNERS** and guests, invitees and tenants of **OWNERS** and shall not interfere with the rights of ingress and egress of the **OWNER** of any particular **LOT**.

G. The right of the **ASSOCIATION** to adopt and promulgate reasonable **RULES AND REGULATIONS** pertaining to the use of the **SUBDIVISION**, which, in the discretion of the **ASSOCIATION**, shall serve to promote the best interests of the **OWNERS** and residents in the **SUBDIVISION**.

H. The right of the **DECLARANT** to add **ADDITIONAL PROPERTY** pursuant to **ARTICLE III** of this **DECLARATION**.

I. The right of other parties to ingress and egress to the **CENTRAL FACILITY OUTPARCEL** over and across the **SUBDIVISION** as more specifically described in **Section 4.9** of this **DECLARATION**.

**Section 4.2 DELEGATION OF USE.** Any **OWNER** may delegate, in accordance with the **BY-LAWS** and subject to reasonable rules, regulations and limitations as may be adopted in accordance herewith, his or her right of enjoyment of the **COMMON AREA** and facilities to the **MEMBERS** of his or her family, tenants and social guests or contract purchasers who reside in the **SUBDIVISION**.

**Section 4.3 COMMON AREA.** The **COMMON AREA** designated and shown on the **PLAT** is **NOT DONATED, DEDICATED NOR GRANTED TO THE PUBLIC**; but shall be conveyed by the **DECLARANT** to the **ASSOCIATION** for use as **COMMON PROPERTY**, subject to any and all applicable restrictions, reservations, encumbrances and limitations of record and to all additional restrictions set forth in the **DEED** of conveyance. **DECLARANT** may, at the sole discretion of **DECLARANT**, convey to the **ASSOCIATION** additional **COMMON PROPERTY** which may be located within or without the **SUBDIVISION**.

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

**Section 4.4 DRAINAGE EASEMENTS.** Except with prior written permission from **DECLARANT**, or (when so designated by **DECLARANT**) from the **ARCHITECTURAL COMMITTEE**, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated in this **DECLARATION** or as may appear after the **EFFECTIVE DATE** of the **PLAT**. **DECLARANT** may cut drainways for surface water wherever and whenever such action may appear to **DECLARANT** to be necessary in order to maintain reasonable standards of health, safety and appearance; **PROVIDED, HOWEVER**, that the right of **DECLARANT** to cut drainways on the property of an **OWNER** shall terminate when the principal structure and approved landscaping on such property have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installment and to maintain reasonable standards of health and appearance. The provisions of this **Section 4.4** shall not be construed to impose any obligation upon **DECLARANT** to cut such drainways.

**Section 4.5 GRADING.** **DECLARANT** may at any time make such cuts and fills upon any **LOT** or other part of the **SUBDIVISION** and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the **SUBDIVISION** and to drain surface waters therefrom; and may assign such rights to the appropriate governmental authority; **PROVIDED, HOWEVER**, after plans for the principal structure upon a **LOT** shall have been approved by the **ARCHITECTURAL COMMITTEE** as provided in this **DECLARATION**, the rights of **DECLARANT** under this **Section 4.5** shall terminate with respect to all parts of such **LOT** other than the easement area, except that **DECLARANT** or any such municipal or public authority shall thereafter have the right to maintain existing roads, drainage structures or other easements.

**Section 4.6 EASEMENTS FOR UTILITY.** There is hereby reserved to the **ASSOCIATION** blanket easements upon, across, above and under all property within the **SUBDIVISION** for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving all or any part of the **SUBDIVISION** including, but not limited to, gas, water, sanitary sewer, telephone, cable television and electricity, as well as storm drainage and any other service which the **ASSOCIATION** might decide to install to serve the **SUBDIVISION**. It shall be expressly permissible for the **ASSOCIATION** or the designee of the **ASSOCIATION**, as the case may be, to install, repair, replace and maintain or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment relating to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the **BOARD** shall have the right to grant such easement.

**Section 4.7 EASEMENT FOR GOVERNMENTAL, HEALTH, SANITATION AND EMERGENCY SERVICES.** There is hereby granted to the appropriate governmental authorities and to the appropriate private organizations supplying health, sanitation, utilities, police services and any emergency services such as fire, ambulance and rescue services, a nonexclusive easement, for purposes of ingress and egress over the **COMMON AREA**.

**Section 4.8 RESERVED EASEMENT FOR DECLARANT.** Notwithstanding any provisions contained in this **DECLARATION** to the contrary, **DECLARANT** hereby expressly reserves unto **DECLARANT** and the successors and assigns, contractors, licensees and agents of **DECLARANT** a nonexclusive, perpetual right, privilege and easement with respect to the **SUBDIVISION** for the benefit of the **DECLARANT**, the successors and assigns of **DECLARANT**, over, under, in and/or on the **SUBDIVISION**, including, but not limited to, any **LOT**, **COMMON AREA** or roadway, without further obligation and without charge to the **DECLARANT**, for the purposes of construction, installation, relocation, development, sale, maintenance, replacement, use and enjoyment and/or otherwise dealing with the **SUBDIVISION**. The reserved easement shall constitute a burden on the title to the **SUBDIVISION** and specifically includes, but is not limited to:

**A.** The right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the **SUBDIVISION**; and the right to tie into any portion of the **SUBDIVISION** with driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, telephone poles, wires, cables, conduits, natural gas, water, sewer, wells, pumping stations, tanks, water mains, drainage lines, drainage ways or other public conveniences or utilities and facilities constructed or installed in, on, under and/or over the **SUBDIVISION**; and

**B.** The right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of **DECLARANT**, may be required, convenient or incidental to the construction and sale by **DECLARANT** of the improvements in the **SUBDIVISION** or in any portion of the **ADDITIONAL PROPERTY**; and



C. No rights, privileges and easements granted or reserved in this DECLARATION shall be merged into the title of any property, including, without limitation, the SUBDIVISION, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim DEED from DECLARANT releasing such right, privilege or easement by express reference to said release.

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

**Section 4.9 CENTRAL FACILITY OUTPARCEL.** The CENTRAL FACILITY OUTPARCEL is not part of the SUBDIVISION. Neither membership in the ASSOCIATION nor ownership or occupancy of a LOT shall confer any ownership interest in or right to use or enter upon the CENTRAL FACILITY OUTPARCEL. Rights to use the CENTRAL FACILITY OUTPARCEL will be granted only to such PERSONS and on such terms and conditions, as may be determined from time to time by the owner of the CENTRAL FACILITY OUTPARCEL or any owner of any rights to use the CENTRAL FACILITY OUTPARCEL. The owner of the CENTRAL FACILITY OUTPARCEL shall have the right, from time to time, in the sole and absolute discretion of said owner and without notice, to amend or waive the terms and conditions of use of the CENTRAL FACILITY OUTPARCEL.

No representations or warranties have been or are made by the DECLARANT or any other PERSON with regard to the continuing ownership or operation of the CENTRAL FACILITY OUTPARCEL and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this DECLARATION executed or joined into by the DECLARANT.

The owner of the CENTRAL FACILITY OUTPARCEL or the owner of any rights to use the CENTRAL FACILITY OUTPARCEL shall at all times have a right and nonexclusive easement of access and use over all roadways located within the SUBDIVISION necessary for ingress and egress to and from the CENTRAL FACILITY OUTPARCEL and, further over any LOT or other portions of the SUBDIVISION (whether COMMON AREA or otherwise). The CENTRAL FACILITY OUTPARCEL is as of the EFFECTIVE DATE of this DECLARATION currently used as a pumping and gathering facility for the exploration of oil, gas and other minerals.

No amendment to this DECLARATION which affects the CENTRAL FACILITY OUTPARCEL may be made without the written approval of the DECLARANT.

**ARTICLE V**  
**ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL**

**Section 5.1 ARCHITECTURAL COMMITTEE.** The Architectural Committee ("ARCHITECTURAL COMMITTEE") shall be composed of at least three (3) (but not more than five (5)) individuals designated and re-designated from time to time (i) by DECLARANT until control of the ARCHITECTURAL COMMITTEE is specifically delegated by the DECLARANT to the ASSOCIATION, and (ii) by the ASSOCIATION after delegation of such control. Delegation of control of the ARCHITECTURAL COMMITTEE from the DECLARANT to the ASSOCIATION shall be evidenced by an instrument signed by the DECLARANT and filed for record in the Probate

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

**Section 5.2 APPROVAL REQUIRED.** No structure shall be commenced, erected, placed, moved on to or permitted to remain on any **LOT**, nor shall any existing structure upon any **LOT** be altered in any way which materially changes the exterior appearance, nor shall any new use be commenced on any **LOT**, unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the **ARCHITECTURAL COMMITTEE**. Such plans and specifications shall be in such form and shall contain such information as may be required by the **ARCHITECTURAL COMMITTEE**, including: (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all structures proposed for the **LOT**; (ii) a site plan of the **LOT** showing the location with respect to the particular **LOT** (including proposed front, rear and side setbacks and free spaces, if any are proposed) of all structures, the location with reference to structures on adjoining portions of the **SUBDIVISION**, and the number and location of all parking spaces and driveways on the **LOT**; (iii) a grading plan for the particular **LOT**; (iv) a drainage plan; (v) a plan for landscaping; (vi) **Corps of Engineers** or other appropriate governmental permit. All of the plans shall address the matters set forth in **ARTICLE VI**, as applicable. **PROVIDED, HOWEVER**, anything else contained in this **DECLARATION** to the contrary, the **OWNER** of **LOT 3** shall not be obligated to alter the existing **DWELLING** located on **LOT 3** in order to satisfy any requirement contained in **ARTICLE V** of this **DECLARATION**. **PROVIDED, FURTHER**, any material change in the existing **DWELLING** located on **LOT 3** must comply with the requirements of **ARTICLE V** of this **DECLARATION**.

**Section 5.3 BASIS FOR DISAPPROVAL OF PLANS.** The **ARCHITECTURAL COMMITTEE** shall have the right to disapprove any plans and specifications submitted under this **DECLARATION** because of any of the following:

- A. failure of such plans or specifications to comply with this **DECLARATION**;
- B. failure to include information in such plans and specifications as may have been reasonably requested;
- C. objection to the exterior design, appearance or materials of any proposed structure;
- D. incompatibility of any proposed structure or use with existing structures or uses upon other **LOTS** in the vicinity;
- E. objections to the location of any proposed structure upon any **LOT** or with reference to other **LOTS** in the vicinity;
- F. objection to the site plan, grading plan, drainage plan or landscaping plan for any **LOT**;
- G. objection to the color scheme, finish, proportions, style of architecture, materials, height, bulk or appropriateness of any proposed structure;
- H. objection to parking areas proposed for any **LOT** on the grounds of (i) incompatibility to proposed uses and structures on such **LOT** or (ii) the insufficiency of the size of parking areas in relation to the proposed use of the **LOT**;

- I. failure of plans to take into consideration the particular topography, vegetative characteristics, natural environment and storm water runoff of the **LOT**; or
- J. any other matter which, in the judgment of the **ARCHITECTURAL COMMITTEE**, would render the proposed structure, structures or uses inharmonious with the general plan of improvement of the **SUBDIVISION** or with structures or uses located upon other **LOTS** in the vicinity.

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

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

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

**Section 5.4 RETENTION OF COPY OF PLANS.** Upon approval by the **ARCHITECTURAL COMMITTEE** of any plans and specifications submitted under this **DECLARATION**, a copy of such plans and specifications, as approved, shall be deposited for record with the **ARCHITECTURAL COMMITTEE**, and shall be retained for a period of no more than **six (6) months** after completion of the improvement, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

**Section 5.5 RULES OF ARCHITECTURAL COMMITTEE; EFFECT OF APPROVAL AND DISAPPROVAL; TIME FOR APPROVAL.** The **ARCHITECTURAL COMMITTEE** may promulgate Rules governing the form and content of plans to be submitted for approval or requiring specific improvements on **LOTS**, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such Rules and such statements of policy may be amended or revoked by the **ARCHITECTURAL COMMITTEE** at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the **ARCHITECTURAL COMMITTEE** to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the discretion of the **ARCHITECTURAL COMMITTEE** as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any **LOT** of any plans or specifications shall not be deemed a waiver of the right of the **ARCHITECTURAL COMMITTEE**, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other **LOT** or **LOTS**. Approval of any such plans and specifications relating to any **LOT**, however, shall be

final as to that LOT and such approval may not be revoked or rescinded thereafter, provided, (i) that the structure or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this **DECLARATION**, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all structures on and uses of the LOT in question.

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

**Section 5.6 CERTIFICATE OF COMPLIANCE.** Upon completion of the construction or alteration of any structure in accordance with plans and specification or alteration of any structure in accordance with plans and specifications approved by the **ARCHITECTURAL COMMITTEE**, the **ARCHITECTURAL COMMITTEE** shall, upon written request of the **OWNER**, issue a certificate of compliance in form suitable for recording, identifying such structure and the LOT on which such structure is placed, and stating that the plans and specifications, the location of such structure and the use or uses to be conducted on said LOT have been approved and that such structure complies with the requirements of the **ARCHITECTURAL COMMITTEE**. Preparation and recording of such certificate shall be at the expense of such **OWNER**. Any certificate of compliance issued in accordance with the provisions of this **Section 5.6** shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that, as of the date of the certificate, all structures on the LOT, and the use or uses described therein comply with all the requirements of this **ARTICLE V**, and with all other requirements of this **DECLARATION** as to which the **ARCHITECTURAL COMMITTEE** exercises any discretionary or interpretive powers.

**Section 5.7 INSPECTION AND TESTING RIGHTS.** Any agent of **DECLARANT, ASSOCIATION** or the **ARCHITECTURAL COMMITTEE** may at any reasonable time or times enter upon and inspect any LOT and any improvements on said LOT for the purpose of ascertaining whether the maintenance of such LOT and the maintenance, construction, or alteration of the structures on said LOT are in compliance with the provisions of this **DECLARATION**; and neither **DECLARANT, ASSOCIATION** nor the **ARCHITECTURAL COMMITTEE** nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Without limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines, each **OWNER** agrees to notify the **ARCHITECTURAL COMMITTEE** prior to its installation of the sanitary sewer service lines and to permit such inspection and testing by the **ARCHITECTURAL COMMITTEE** both before and after backfill as is required by the **ARCHITECTURAL COMMITTEE**. Any such inspection shall be for the sole purpose of determining compliance with this **DECLARATION**, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the **OWNER** of a LOT or any third **PERSONS** or entities for any purpose whatsoever; nor shall any such inspection obligate the **DECLARANT, the ASSOCIATION** or the **ARCHITECTURAL COMMITTEE** to take any particular action based on the inspection.

**Section 5.8 WAIVER OF LIABILITY.** Neither the **ARCHITECTURAL COMMITTEE** nor any architect nor agent of the **ARCHITECTURAL COMMITTEE**, nor the **ASSOCIATION**, nor the

**DECLARANT**, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of structures to comply with requirements of this **DECLARATION**, although a certificate of compliance has been issued, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all **PERSONS** relying thereon or benefitting therefrom agree not to sue or claim against the entities and **PERSONS** referred to in this **Section 5.8** for any cause arising out of the matters referred to in this **Section 5.8** and further agree to and do hereby release said entities and **PERSONS** for any and every such cause.

**ARTICLE VI**  
**ZONING AND SPECIFIC RESTRICTIONS**

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

**ARTICLE VII**  
**SITE DEVELOPMENT**

**Section 7.1 SITE TO BE STAKED PRIOR TO TREE CUTTING.** After the plan for the structure is approved, the site of the structure must be staked out and such site approved by the **ARCHITECTURAL COMMITTEE** before tree cutting is done. Existing vegetation shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "**corded off**" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the **ARCHITECTURAL COMMITTEE**. Removal of "**underbrush**" from the corded areas is expressly prohibited except on **ARCHITECTURAL COMMITTEE** approval. No tree may be cut or removed without consent of the **ARCHITECTURAL COMMITTEE** until the building plans, site plans and site staking are approved by the **ARCHITECTURAL COMMITTEE**.

**Section 7.2 EROSION CONTROL.** Erosion control measures shall be taken by the **OWNER** of a **LOT**, or contractors of **OWNER**, to protect adjacent property during construction on such **LOT** and thereafter until the soil is stabilized on the **LOT**. This may be accomplished by the use of temporary retention ponds, silt fencing, or other protective measures intended to intercept and filter the excess storm water runoff from the **LOT**. All erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the **ARCHITECTURAL COMMITTEE** prior to commencement of grading activities.

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

If any portion of the **SUBDIVISION** has been identified as "**wetlands**" pursuant to Federal or state law and regulation, such wetlands area shall not be utilized or otherwise developed and improved upon unless and in accordance with all Federal, state and local laws and regulations.

If any portion of the **SUBDIVISION** is located within an area designated as "flood prone" pursuant to Federal law and regulations, all improvements constructed in said flood prone area must be constructed in accordance with all Federal, state and local laws and regulations pertaining to flood prone areas.

**Section 7.3 UTILITY LINES AND APPURTENANCES.** All gas, water, sewer, telephone, television cable and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the **ARCHITECTURAL COMMITTEE**. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the **ARCHITECTURAL COMMITTEE**; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals or other utility hardware. To the extent of the interest of the **OWNER** of a **LOT**, the **OWNER** of a **LOT** will not erect or grant to any **PERSON**, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, television cable or telephone service in the **SUBDIVISION** (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the **ARCHITECTURAL COMMITTEE**. Nothing contained in this **DECLARATION** shall be construed to prohibit overhead road lighting or ornamental yard lighting, where serviced by underground wires or cables. Where underground electric service is to be installed, in order to permit installation of underground electric service to each **LOT** for the mutual benefit of all **OWNERS** therein, no **OWNER** of any such **LOT** will commence construction of any improvement on any such **LOT** until such **OWNER** (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral on such **LOT**, and (3) otherwise complies with the rules and regulations for **Underground Residential Distribution** on file with and approved by the **Alabama Public Service Commission**.

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

**Section 7.4 CONNECTION POINTS FOR UTILITY SERVICE LINES.** To the extent of the interests of the **OWNER** of each **LOT**, each **OWNER** agrees to connect utility service lines (including, but not limited to, gas, water, sewer, telephone, television cable and electricity) at points designated by the **ARCHITECTURAL COMMITTEE**.

**Section 7.5 SANITARY SEWER SERVICE LINES.** The material for sanitary sewer service lines must be approved by the **ARCHITECTURAL COMMITTEE**.

**Section 7.6 LANDSCAPING.** The landscape plan must be approved by the **ARCHITECTURAL COMMITTEE** prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the **LOT**. The

**OWNER** must faithfully execute the landscape plan as submitted to and approved by the **ARCHITECTURAL COMMITTEE**. If the **OWNER** should fail to faithfully execute the landscape plan, the **ASSOCIATION** shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost shall be a binding, personal obligation of the **OWNER** when billed by the **ASSOCIATION** as well as a lien upon the **LOT** in question. The lien provided in this **Section 7.6** shall have the same enforceability and priority as the lien provided for in **ARTICLE XI** of this **DECLARATION**.

**Section 7.7 COLORS; ARCHITECTURAL STYLES.** All exterior building materials and colors must be approved by the **ARCHITECTURAL COMMITTEE**. Excessively bright colors or objectionable noticeable colors are prohibited. All architecture must be compatible with the "Southern" atmosphere of this **SUBDIVISION** and must be compatible with surrounding buildings within the **SUBDIVISION**.

**Section 7.8 EXTERIOR LIGHTING.** Exterior lighting plans must be set forth on the architectural or landscape plans for a **LOT**, and must be approved by the **ARCHITECTURAL COMMITTEE**. Exterior lighting shall be "low-key" and shall be compatible with lighting used on other residential structures in the development.

#### **ARTICLE VIII COVENANTS FOR MAINTENANCE**

**Section 8.1 RESPONSIBILITY OF ASSOCIATION.** The **ASSOCIATION** shall maintain and keep in good repair the **COMMON PROPERTY**, such maintenance to be funded as provided in this **DECLARATION**.

**Section 8.2 RESPONSIBILITY OF OWNER.** Each **OWNER** shall keep all **LOTS** owned by him or her, and all improvements, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the **ASSOCIATION**, any **OWNER** fails to perform the duties imposed by the preceding sentence after **fifteen (15) days'** written notice from the **ASSOCIATION** to the **OWNER** to remedy the condition in question, the **ASSOCIATION** shall have the right, through its agents and employees, to enter upon the **LOT** in question and to repair, maintain, repaint and restore the **LOT** or such improvements and the cost shall be a binding, personal obligation of such **OWNER** when billed by the **ASSOCIATION** as well as a lien upon the **LOT** in question. The lien provided in this **Section 8.2** shall have the same enforceability and priority as the lien provided for in **ARTICLE XI** of this **DECLARATION**.

#### **ARTICLE IX GENERAL COVENANTS AND RESTRICTIONS**

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

**Section 9.1 LOTS LIMITED TO RESIDENTIAL USE.** All LOTS shall be used exclusively for single-family residential purposes. Except as specifically provided in this DECLARATION, no building or structure shall be erected, altered, placed or permitted to remain on any LOT other than those structures and improvements approved for use and occupancy by the ARCHITECTURAL COMMITTEE, as provided for in this DECLARATION, and used as single-family DWELLING.

**Section 9.2 BUILDING HEIGHT.** No DWELLING shall be constructed on a LOT which has a height exceeding two and one-half (2½) habitable stories and thirty-five (35) feet in height, except that an attic or a basement floor under the ground floor shall not be considered a story for this purpose. The height of any structure, including all DWELLINGS within the SUBDIVISION, shall be subject to prior review and approval in writing by the ARCHITECTURAL COMMITTEE. All DWELLINGS shall include a private enclosed garage for not less than two (2) automobiles nor more than four (4) automobiles.

The ground floor elevation of the bottom floor of any building or structure may not be less than two (2) feet above the ground elevation. The ground floor elevation of the bottom floor of any building or structure may not exceed five (5) feet above the elevation required by Federal, State or local laws or regulations pertaining to flood prone areas. No foundation or footing may be constructed of exposed wooden pilings, poles or concrete block.

The ceiling height in any DWELLING measured from the horizontal plane of the unfinished upper interior surface of the first floor to the horizontal plane of the unfinished lower interior surface of the first floor ceiling shall not be less than nine (9) feet.

PROVIDED, HOWEVER, anything else contained in this Section 9.2 to the contrary, the existing DWELLING located on LOT 3 is exempted from the requirements of this Section 9.2 as follows that: (i) the existing DWELLING may not be less than two (2) feet above the ground level, (ii) the ceiling height of the existing DWELLING shall not be less than nine (9) feet, (iii) the existing DWELLING shall include a private enclosed garage for not less than two (2) automobiles no more than four (4) automobiles and permit the existing carport to remain on LOT 3.

**Section 9.3 BUILDING SIZE.** All DWELLINGS shall comply with all applicable guidelines and approvals of the ARCHITECTURAL COMMITTEE. PROVIDED, HOWEVER, anything else contained in this DECLARATION to the contrary, the existing DWELLING located on LOT 3 shall not be obligated to comply with the provisions of this DECLARATION to the extent that the existing DWELLING is currently in conflict with the provisions of this DECLARATION. PROVIDED, FURTHER, any material change in the existing DWELLING located on LOT 3 must comply with the requirements of this DECLARATION.

**Section 9.4 BUSINESS USE.** Except as provided in this DECLARATION, no trade or business may be conducted in or from any LOT. Notwithstanding the above, the leasing of a LOT for residential purposes shall not be considered a trade or business within the meaning of this Section. This Section 9.4 shall not apply to any activity conducted by the DECLARANT with respect to the use of any LOTS by DECLARANT which DECLARANT owns within the SUBDIVISION or the property owned by the DECLARANT which is adjoining the SUBDIVISION nor to the property designated by the DECLARANT as the sales office or model home of



**DECLARANT.****Section 9.5 MINIMUM DWELLING AREA.**

A. The following applies to **LOT 1** through **LOT 49**. Except as provided in this **DECLARATION**, the ground floor livable area (heated and cooled area) of the main building or structure in a **one (1)** habitable story building or structure, exclusive of open porches and garages, shall contain not less than **two thousand (2,000) square feet**; in the case of a building or structure exceeding **one (1)** habitable story, the ground floor livable area (heated and cooled) shall contain a minimum square footage of **one thousand two hundred (1,200) square feet** with the total square footage of said main building or structure containing not less than **two thousand (2,000) square feet**; unless otherwise approved in writing by the **ARCHITECTURAL COMMITTEE**.

B. The following applies to **LOT 50** through **LOT 70**. Except as provided in this **DECLARATION**, the ground floor livable area (heated and cooled area) of the main building or structure in a **one (1)** habitable story building or structure, exclusive of open porches and garages, shall contain not less than **one thousand eight hundred (1,800) square feet**; in the case of a building or structure exceeding **one (1)** habitable story, the ground floor livable area (heated and cooled) shall contain a minimum square footage of **one thousand two hundred (1,200) square feet** with the total square footage of said main building or structure containing not less than **one thousand eight hundred (1,800) square feet**; unless otherwise approved in writing by the **ARCHITECTURAL COMMITTEE**.

C. For the purpose of this **Section 9.5**, a basement floor or other area beneath the ground surface and/or an attic shall not be included in computing the designated minimum square footage. No building, structure or residence shall be erected, altered, remodeled, reconstructed or added to without the prior written approval of the **ARCHITECTURAL COMMITTEE**. **PROVIDED, HOWEVER**, anything else contained in this **DECLARATION** to the contrary, the existing **DWELLING** located on **LOT 3** shall not be obligated to comply with the provisions of this **Section 9.5** to the extent said existing **DWELLING** conflicts with the provisions of this **DECLARATION**. **PROVIDED, FURTHER**, any material change in the existing **DWELLING** located on **LOT 3** must comply with the requirements of this **DECLARATION**.

**Section 9.6 MINIMUM BUILDING SETBACK LINES.** No building, structure or residence located on any of the **LOTS** shall be erected, altered, remodeled, constructed or added to so as to be located any nearer to any **SUBDIVISION** boundary line than the setback lines shown on the **PLAT** of the **SUBDIVISION**, but the **ARCHITECTURAL COMMITTEE**, in its sole discretion, shall have the power to grant exceptions. **PROVIDED HOWEVER**, anything else contained in this **DECLARATION** to the contrary, the existing **DWELLING** located on **LOT 3** shall not be obligated to comply with the provisions of this **Section 9.6**. **PROVIDED, FURTHER**, any material change in the existing **DWELLING** located on **LOT 3** must comply with the requirements of this **DECLARATION**.

**Section 9.7 SUBDIVISION OF LOT AND TIME SHARING.** No **LOT** shall be split, divided or subdivided or its boundary lines changed except with the prior written approval of the **ARCHITECTURAL COMMITTEE**. The **ARCHITECTURAL COMMITTEE** may permit a division in ownership of any **LOT** intended for a single-family detached residence as shown on the **PLAT**, but solely for the purpose of increasing the size of the adjacent **LOTS**. In the event of a division of any **LOT**, the **OWNERS** among whom the ownership is divided shall be treated as co-owners of the

divided LOT for purposes of voting and shall be jointly and severally liable for all **ASSESSMENTS** against the LOT. **DECLARANT** hereby expressly reserves the right to replat any LOT or LOTS owned by **DECLARANT**. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

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

**Section 9.8 ADJOINING LOT OWNERSHIP.** For the purposes of this instrument, any **OWNER** having **two (2)** or more adjoining LOTS may treat, use and build on them as though they were **one (1)** after making written application and receiving written approval by the **ARCHITECTURAL COMMITTEE**. Said approval shall be recorded and operate as an amendment to this instrument.

**Section 9.9 PARKING.** An **OWNER** of a LOT shall provide space for the parking of at least **two (2)** automobiles, unless modified by the **ARCHITECTURAL COMMITTEE**, per LOT off public streets. Parking must be confined to the interior of the LOT and not on the public right of way.

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

No commercial vehicles or campers, mobile homes, motor homes, house trailers or trailers of any type, recreational vehicles, motorcycles, mopeds, boats or vans shall be permitted to be parked or to be stored at any place within the **SUBDIVISION**, except in spaces for some or all of the above specifically designated by the **DECLARANT** or **ARCHITECTURAL CONTROL COMMITTEE**. No **OWNER** shall keep any vehicle on the **COMMON AREA** which is deemed a nuisance by the **BOARD**. For purposes of this **Section**, "commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive of whether it is a commercial vehicle. The prohibitions on parking contained in this **Section** shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services nor to any vehicles of the **DECLARANT**. No overnight on-street parking or parking on lawns shall be permitted.

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

affidavit of the **PERSON** posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

**Section 9.10 USE OF COMMON AREA.** The **ASSOCIATION** shall have full control over the **COMMON AREA** and may establish such **RULES AND REGULATIONS** and conditions for the use of the **COMMON AREA** as the **ASSOCIATION** may deem adequate or necessary and the **ASSOCIATION** shall have full power and authority to suspend or revoke the privilege and license of any such **OWNER**, and any **MEMBER** of the household of an **OWNER** or any of the guests, tenants or invitees of an **OWNER**, from using the **COMMON AREA**, should any such party, while in said area, conduct himself in such a manner as to warrant such action in the sole discretion of the **MAJORITY** of the **ASSOCIATION**. **PROVIDED, HOWEVER**, nothing contained in this **DECLARATION** shall be construed to allow the **ASSOCIATION** to prohibit any **LOT OWNER** from ingress and egress to and from the **LOT** owned by **OWNER**.

**Section 9.11 DRIVEWAYS.** Each **PURCHASER** of a **LOT** from **DECLARANT** shall be responsible for building, at the sole expense of **PURCHASER**, an asphalt, concrete or brick driveway. Each driveway must be completed on or prior to the completion of the **DWELLING**. All driveways must connect with the adjoining road and the parking area on the **LOT**. The location, design and construction of all driveways must be approved in writing by the **ARCHITECTURAL COMMITTEE** prior to construction.

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

**Section 9.12 PRESERVATION OF TREES.** No tree having a diameter of **six (6) inches** or more (measured from a point **two (2) feet** above ground level) shall be removed from any **LOT** without the express written authorization of the **ARCHITECTURAL COMMITTEE**. The **ARCHITECTURAL COMMITTEE**, in its discretion, may adopt and promulgate **RULES AND REGULATIONS** regarding the preservation of trees and other natural resources and wildlife upon the **SUBDIVISION**. If the **ARCHITECTURAL COMMITTEE** shall deem appropriate, the **ARCHITECTURAL COMMITTEE** may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this **Section 9.12**, the **DECLARANT**, the **ASSOCIATION** and the **ARCHITECTURAL COMMITTEE** and the respective agents of each may come upon any **LOT** during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any **RULES AND REGULATIONS** adopted and promulgated pursuant to the provisions of this **DECLARATION**. Neither the **ASSOCIATION**, nor the **ARCHITECTURAL COMMITTEE**, nor **DECLARANT**, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

**Section 9.13 ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS.** No artificial vegetation shall be permitted in the **SUBDIVISION** or on the exterior of any portion of any improvement in the **SUBDIVISION**. Exterior sculpture, fountains, flags and similar items must be approved by the **ARCHITECTURAL COMMITTEE**; **PROVIDED, HOWEVER**, nothing contained in this **DECLARATION** shall prohibit the appropriate display of the **American Flag**.

**Section 9.14 PERMITTED ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred, harbored or kept on any **LOT** except that the **OWNER** may keep **two (2)** domesticated household pets. No such pets shall be kept for any commercial purpose, and any

such pets may be kept only so long as they or any of them do not become an annoyance or nuisance to the neighborhood. All pets shall be kept under the close supervision and control of their **OWNERS**, and shall, at the written request of the **ARCHITECTURAL COMMITTEE**, be kept behind a fence (see fence requirement).

**Section 9.15 SIGNS.** Except as provided in this **DECLARATION**, no sign, billboard, advertising or other advertising device of any nature shall be placed upon any **LOT**. The **ARCHITECTURAL COMMITTEE** may, in its discretion, adopt and promulgate **RULES AND REGULATIONS** relating to signs which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the **SUBDIVISION**, if approved by the **ARCHITECTURAL COMMITTEE**, as to color, location, nature, size and other characteristics of such signs or devices. **PROVIDED, HOWEVER**, this **Section 9.15** shall not apply to the **DECLARANT**.

\* **Section 9.16 TEMPORARY STRUCTURES.** No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a residence or temporary housing or the like on any **LOT**. If approved by the **ARCHITECTURAL COMMITTEE**, such a structure may be used as a security station during construction or other special purpose.

**Section 9.17 PIPES.** To the extent of the interest of the **OWNERS** of a **LOT**, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any **LOT** above the surface of the ground.

**Section 9.18 WALL AND WINDOW AIR CONDITIONING UNITS.** Wall and window air conditioning units shall not be permitted.

**Section 9.19 CHIMNEY FLUES.** Chimney flues shall be enclosed.

**Section 9.20 CARPORTS AND GARAGES.** Carports must be attached to a **DWELLING** or garage. No carport shall be permitted on any **LOT** that is not attached to a **DWELLING** or garage. No garage or carport shall open toward a public road unless approved by the **ARCHITECTURAL COMMITTEE**. All garage doors must remain closed unless open for the purpose of ingress or egress to and from the garage.

**Section 9.21 PLAY EQUIPMENT, STROLLERS, ETC.** All bicycles, tricycles, scooters, skateboards and other play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from roads or property adjacent to the **LOT**. No such items shall be allowed to remain on the **COMMON AREA** or on **LOTS** so as to be visible from adjacent property or the road when not in use. Notwithstanding the above, the **BOARD** may, but shall not be obligated to, permit swing sets and similar permanent playground equipment to be erected on **LOTS** provided approval is obtained from the **ARCHITECTURAL COMMITTEE**. No baseball cages or similar recreational facilities shall be permitted without approval of the **ARCHITECTURAL COMMITTEE**.

**Section 9.22 ENERGY CONSERVATION EQUIPMENT.** No solar energy collector panels or attendant hardware or energy conservation equipment shall be constructed or installed on any LOT unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARCHITECTURAL COMMITTEE. Under no circumstances shall solar panels be installed that will be visible from any road or COMMON AREA in the SUBDIVISION.

**Section 9.23 OIL OR GAS TANKS, POOLS, SWIMMING POOL EQUIPMENT.** All swimming pool equipment and housing must be placed in walled-in or screened areas or landscaped area so that they are not visible from any COMMON AREA, road or adjoining property. No oil tanks or bottled gas tanks shall be allowed on any LOT or on the COMMON AREA, PROVIDED, HOWEVER, two (2) bottled propane gas tanks no larger than five (5) gallons in size may be kept on a LOT for the purpose of cooking with a gas grill and so long as said natural gas tank is placed in a screened area and so that they are not visible from any COMMON AREA, road or adjoining property.

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

- A. Composition to be of material thoroughly tested and accepted by the industry for such construction;
- B. Pool screening may not be visible from the street in front of the LOT; and
- C. All screening material shall be of a color in harmony with the LOT. No raw aluminum color screen will be allowed.

**Section 9.24 OUTSIDE INSTALLATIONS.** Except as provided in this DECLARATION, no exterior antennas, aerials, satellite dishes, towers or other apparatus, or support, for the reception or transmission of television, radio or other signals of any kind shall be erected, installed, placed, allowed or maintained upon any portion of the SUBDIVISION. PROVIDED, HOWEVER, the OWNER of a LOT shall be allowed to place one (1) eighteen inch (18") diameter satellite dish, or smaller, on a building located on a LOT so long as said satellite dish is not visible from any roadway and is approved by the ARCHITECTURAL COMMITTEE. DECLARANT and/or the ASSOCIATION shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna or cable system for the benefit of all or a portion of the SUBDIVISION, should master system or systems to be used by the ASSOCIATION require any such exterior apparatus. No radio transmissions of any kind shall be made from any building, LOT or COMMON AREA, except for communication equipment used by the ASSOCIATION. No machinery shall be placed or operated upon any LOT except such machinery as is usual in maintenance of a private residence. No roof penetrations, such as vents and pipes, shall be placed on any roof so as to be visible from any road or COMMON AREA.

**Section 9.25 IRRIGATION.** No sprinkler or irrigation system of any type that draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the SUBDIVISION shall be installed, constructed or operated within the SUBDIVISION by any PERSON, other than the ASSOCIATION or the DECLARANT, or to be

utilized by any group of **LOTS**, unless prior written approval has been received from the **ARCHITECTURAL COMMITTEE**. All sprinkler and irrigation systems must be installed underground and shall be subject to approval of the **ARCHITECTURAL COMMITTEE**. This **Section** shall not apply to **DECLARANT**.

**Section 9.26 WELLS AND DRAINAGE.** Except as may be constructed by the **ASSOCIATION** or the **DECLARANT**, no private water system shall be constructed on any **LOT** except private irrigation wells not to exceed **three inches (3")** in diameter approved by the **ARCHITECTURAL COMMITTEE**. Any such private irrigation well must be screened from public view and is subject to the approval of the **ARCHITECTURAL COMMITTEE**. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No community wells or community water systems shall be allowed except the water system provided by any governmental entity, **DECLARANT** or the **ASSOCIATION**.

**Section 9.27 STORM PRECAUTIONS.** No hurricane or storm shutters shall be permanently installed on any structure on a **LOT** unless first approved by the **ARCHITECTURAL COMMITTEE**. Hurricane or storm shutters may be installed temporarily, and other storm precautions may be taken to protect structures on a **LOT**, while the threat of a hurricane or similar storm is imminent; provided, all such shutters and other exterior alterations or additions made as a storm precaution shall be promptly removed once the storm or imminent threat of the storm has passed.

**Section 9.28 WINDOW COVERINGS, ETC.** Reflective window coverings are prohibited. No awnings, canopies, shutters, patio cover, building or storage unit of any kind shall be erected, placed or permanently installed on any **LOT** unless first approved by the **ARCHITECTURAL COMMITTEE**.

**Section 9.29 FIREARMS.** The discharge of firearms within the **SUBDIVISION** is prohibited except with the prior approval of the **BOARD OF DIRECTORS**. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, notwithstanding anything to the contrary contained in this **DECLARATION** or in the **BY-LAWS**. The **ASSOCIATION** shall not be obligated to take action to enforce this **Section**.

**Section 9.30 INSURANCE RATES.** Nothing shall be done or kept on any **LOT** or in any improvement or the **COMMON AREA** which will increase the rate of insurance on any property insured by the **ASSOCIATION** without the approval of the **BOARD** nor shall anything be done or kept on any **LOT** which would result in the cancellation of insurance on any property insured by the **ASSOCIATION** or which would be in violation of any law.

**Section 9.31 COMPLETION OF CONSTRUCTION.** All homes and other structures, landscaping and other improvements must be completed within **twelve (12) months** after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the **OWNER** or builder due to strikes, fires, national emergencies or natural calamities. **DWELLINGS** may not be temporarily or permanently occupied until the exteriors have been completed. During the continuation of construction, the **OWNER** shall require the contractor to maintain the **LOT** in a reasonably clean and uncluttered condition. Upon completion of construction, the **OWNER** shall cause the contractor to immediately remove all equipment, tools, construction material and debris from the **LOT**. Any damage to roads, paths, **COMMON**

PROPERTY or any other property owned by any PERSON or entity caused by the OWNER or the agent, contractor or other party providing labor or services to the OWNER shall be repaired by the OWNER.

**Section 9.32 OCCUPANTS BOUND.** All provisions of the DECLARATION and BY-LAWS and of any RULES AND REGULATIONS or use restrictions promulgated pursuant to this DECLARATION that govern the conduct of OWNERS and that provide for sanctions against OWNERS shall also apply to all occupants, guests and invitees of any LOT. Every OWNER shall cause all occupants of the OWNER'S LOT to comply with the DECLARATION and BY-LAWS and the RULES AND REGULATIONS adopted pursuant to this DECLARATION, and shall be responsible for all violations and losses to the SUBDIVISION caused by those occupants, notwithstanding the fact that those occupants of a LOT are fully liable and may be sanctioned for any violation of the DECLARATION and BY-LAWS and RULES AND REGULATIONS adopted pursuant to this DECLARATION.

**Section 9.33 ACCUMULATION OF REFUSE.** No lumber, metals or bulk materials (except lumber, metals and bulk materials as is usual in the maintenance of a private residence and which must be stored in such a manner so that it cannot be seen from adjacent and surrounding property), refuse or trash shall be kept, stored or allowed to accumulate on any LOT, except building materials during the course of construction of any approved structure. No harmful or noxious materials shall be stored, either inside any structure, or outside any structure, if said materials pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such structures. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open only in areas designated by the ARCHITECTURAL COMMITTEE. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the ARCHITECTURAL COMMITTEE. All trash and garbage containers shall be kept in a clean and sanitary condition. The ARCHITECTURAL COMMITTEE, in its discretion, may adopt and promulgate reasonable RULES AND REGULATIONS relating to the size, shape, color and type of containers permitted and the manner of storage and screening of the same in the SUBDIVISION.

**Section 9.34 MINERAL OPERATIONS PROHIBITED.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind whatsoever shall be permitted upon any LOT, nor shall oil wells, derricks, tanks, tunnels, mineral excavations or shafts be erected or permitted to remain on any LOT. PROVIDED, HOWEVER, it is understood that this prohibition does not affect the rights of mineral owners or owners of any interest in minerals that may have been previously reserved or conveyed to others and does not affect the CENTRAL FACILITY OUTPARCEL.

**Section 9.35 NO FENCES, WALLS, ORNAMENTAL STRUCTURES, GAZEBOS OR HEDGE.** No fence, walls, ornamental structures, gazebos or hedge shall be located nearer the LOT line of any LOT in the front of the DWELLING on such LOT without the written approval of the ARCHITECTURAL COMMITTEE. The front of the DWELLING shall be the side of the DWELLING facing the public road. No fence, wall, ornamental structure or gazebo, shall be constructed without the prior written approval of the ARCHITECTURAL COMMITTEE. No chain link, wire or metal fence may be constructed on any LOT unless approved by the ARCHITECTURAL COMMITTEE. The ASSOCIATION shall have the right to enter upon any LOT

and trim or prune, at the expense of the **OWNER**, any hedge or other planting which in the opinion of the **ASSOCIATION**, by reason of its location upon the **LOT** or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of road traffic or is unattractive in appearance. **PROVIDED, HOWEVER**, that the **OWNER** shall be given **fifteen (15) days** prior written notice of such action.

**Section 9.36 CLOTHES LINES.** No clothing or any other household fabric shall be hung in the open on any **LOT** and no clothes lines or clothes hanging devices shall be kept or maintained on any **LOT**.

**Section 9.37 MAIL OR NEWSPAPER BOXES.** The design of all mailboxes and newspaper boxes must be approved by the **ARCHITECTURAL COMMITTEE** and free-standing mail boxes and newspaper boxes equipped with lighting may be required in some or all sections of the **SUBDIVISION**.

**Section 9.38 NUISANCE.** No obnoxious, offensive or illegal activities shall be carried on upon any **LOT** nor shall anything be done on any **LOT** which may be or may become an annoyance or nuisance to the neighborhood.

**Section 9.39 NO DISCRIMINATION.** No action shall at any time be taken by the **ASSOCIATION** or its **BOARD OF DIRECTORS** which in any manner would discriminate against any **OWNER** or **OWNERS** in favor of the other **OWNERS**.

**Section 9.40 PROVISIO.** Anything else contained in this **DECLARATION** to the contrary, no provision of this **ARTICLE IX** nor any other part of this **DECLARATION** shall apply to the **CENTRAL FACILITY OUTPARCEL**. In addition, the owner of the **CENTRAL FACILITY OUTPARCEL** and the owner of any rights to use the **CENTRAL FACILITY OUTPARCEL** shall have the unrestricted right of ingress and egress over and across the **SUBDIVISION** for access to and from the **CENTRAL FACILITY OUTPARCEL** in accordance with the provisions of other documents on record.

**ARTICLE X**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 10.1 THE ASSOCIATION.** The operation and administration of the **SUBDIVISION** shall be by the **ASSOCIATION** of **LOT OWNERS**. The **ASSOCIATION** shall be a not-for-profit **Alabama Corporation** incorporated by **ARTICLES OF INCORPORATION** recorded in the **OFFICE OF THE JUDGE OF PROBATE OF BALDWIN COUNTY, ALABAMA**. The **ASSOCIATION** shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. The **ASSOCIATION** shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of **LOT OWNERS** of the **SUBDIVISION** with reference to the **COMMON ELEMENTS** and with reference to any and all other matters in which all of the **LOT OWNERS** have a common interest. The **ASSOCIATION** shall have all the powers and duties granted to or imposed on the **ASSOCIATION** under the **ARTICLES OF INCORPORATION** and **BY-LAWS** of the **ASSOCIATION** and under this **DECLARATION** as they may be amended from time to time. The **ASSOCIATION** is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by



some other **PERSON** or **PERSONS**. The **ASSOCIATION** shall have the right to grant permits, licenses and easements over the **COMMON AREAS** for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the **SUBDIVISION**. The **BOARD** shall have the authority and duty to levy and enforce the collection of general and specific **ASSESSMENTS** for **COMMON EXPENSES** and is further authorized to provide adequate remedies for failure to pay such **ASSESSMENTS**.

**Section 10.2 MEMBERSHIP.** Each **LOT OWNER** shall be a **MEMBER** of the **ASSOCIATION** so long as he is a **LOT OWNER**. The membership of a **LOT OWNER** shall immediately terminate when the **LOT OWNER** ceases to be a **LOT OWNER**. The membership of a **LOT OWNER** cannot be assigned or transferred in any manner except as an appurtenance to his **LOT**.

**Section 10.3 VOTING.** Each **LOT** shall be entitled to **one (1)** vote, which vote is not divisible. The vote shall be cast by the **LOT OWNER** in the manner provided for in this **DECLARATION** and in the **BY-LAWS**. **PROVIDED, HOWEVER**, that until the **DECLARANT** has completed and sold all of the **LOTS** in all phases of the **SUBDIVISION** or until **DECLARANT** elects to terminate the control of **DECLARANT** of the **SUBDIVISION**, whichever shall first occur, the **BY-LAWS** and rules adopted by the **DECLARANT** shall govern and there shall be no meeting of the **MEMBERS** of the **ASSOCIATION**, unless a meeting is called by the **BOARD OF DIRECTORS** of the **ASSOCIATION**, and neither the **LOT OWNERS** nor the **ASSOCIATION**, nor the use of the **SUBDIVISION** by **LOT** occupants shall interfere with the completion of the contemplated improvements and the sale of the **LOTS**. The **DECLARANT** may make such use of the unsold **LOTS** and of the **COMMON AREAS** and facilities as may facilitate such completion and sale, including, but not limited to, showing of the **SUBDIVISION** and the display of signs.

**Section 10.4 RULES AND REGULATIONS.** The **ASSOCIATION**, through its **BOARD OF DIRECTORS**, may make and enforce reasonable **RULES AND REGULATIONS** governing the use of the **SUBDIVISION**, which **RULES AND REGULATIONS** shall be consistent with the rights and duties established by this **DECLARATION**. Copies of such **RULES AND REGULATIONS** and amendments shall be furnished by the **ASSOCIATION** to all **OWNERS**. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the **COMMON AREA**. The **BOARD** shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the **BY-LAWS** of the **ASSOCIATION**. In addition, the **ASSOCIATION**, through the **BOARD**, may, by contract or other agreement, enforce local ordinances in the **SUBDIVISION** for the benefit of the **ASSOCIATION** and its **MEMBERS**.

**Section 10.5 IMPLIED RIGHTS.** The **ASSOCIATION** may exercise any other right or privilege given to the **ASSOCIATION** expressly by this **DECLARATION** or the **BY-LAWS**, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the **ASSOCIATION** in this **DECLARATION** or reasonably necessary to effectuate any such right or privilege.

**Section 10.6 SELF-HELP.** In addition to any other remedies provided for in this **DECLARATION**, the **ASSOCIATION** or its duly authorized agent shall have power to enter upon a **LOT** or any portion of the **COMMON PROPERTY** to abate or remove, using such force as may be reasonably necessary, anything or condition which violates this **DECLARATION**, the **BY-LAWS**,

the **RULES AND REGULATIONS**, or the use restrictions. Unless an emergency situation exists, the **BOARD** shall give the violating **LOT OWNER ten (10) days** written notice of its intent to exercise self-help. All cost of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating **LOT OWNER** and shall be collected as provided for in this **DECLARATION** for the collection of **ASSESSMENTS**.

**Section 10.7 RIGHT OF ENTRY.** The **ASSOCIATION** shall have the right, in addition to and not in limitation of the rights the **ASSOCIATION** may have, to enter into **LOTS** for emergency, security or safety purposes, which right may be exercised by the **BOARD**, its officers, agents, employees, managers and all police officers, fire fighters, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be during reasonable hours and after reasonable notice to the **OWNER** or occupant of the **LOT**.

**Section 10.8 CONTRACTS.** The **ASSOCIATION** shall not be bound, either directly or indirectly, to any professional management contracts or leases entered into prior to passage of control unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, with not more than **ninety (90) days** notice to the other party.

**Section 10.9 ASSIGNMENT.** The share of a **MEMBER** in the funds and assets of the **ASSOCIATION** cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his **LOT**.

**Section 10.10 BOARD OF DIRECTORS.** The affairs of the **ASSOCIATION** shall be conducted by a **BOARD OF DIRECTORS** which shall consist of such number not less than **three (3)** nor more than **five (5)** as shall, from time to time, be determined and fixed by a **MAJORITY** of the voting rights present at any annual meeting of the **MEMBERS**.

**Section 10.11 BY-LAWS.** The **ASSOCIATION** and its **MEMBERS** shall be governed by the **BY-LAWS** which shall be adopted by the **MEMBERS**.

**Section 10.12 AVAILABILITY OF RECORDS.** The **ASSOCIATION** shall make available to **LOT OWNERS**, prospective purchasers, first mortgagees and insurers of first mortgagees of any **LOT**, current copies of this **DECLARATION, BY-LAWS, RULES AND REGULATIONS** and other financial books, financial records, financial statements and the most recent annual audited or unaudited financial statement of the **ASSOCIATION**, if such audited or unaudited financial statement is prepared. "**Available**" shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

**Section 10.13 RESERVE FUND.** The **ASSOCIATION** shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the **COMMON AREAS**. The fund shall be maintained out of regular **ASSESSMENTS** for **COMMON EXPENSES**.

**ARTICLE XI**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

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**Section 11.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** Except as provided in this **DECLARATION**, the **DECLARANT**, for each **LOT** owned within the **SUBDIVISION**, hereby covenants, and each **OWNER** of any **LOT** by acceptance of a **DEED** therefor, whether or not it shall be so expressed in such **DEED**, is deemed to covenant and agree to pay to the **ASSOCIATION**: (i) annual and special **ASSESSMENTS** or charges, and (ii) special **ASSESSMENTS** for capital improvements to the **COMMON AREA**, such **ASSESSMENTS** to be established and collected as provided in this **DECLARATION**. The annual and special **ASSESSMENTS**, together with interest, costs and reasonable attorney's fees, shall be a charge on the **LOT** and shall be a continuing lien upon the property against which each such **ASSESSMENT** is made. Each such **ASSESSMENT**, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the **OWNER** of such property at the time when the **ASSESSMENT** fell due. The personal obligation for delinquent **ASSESSMENTS** shall pass to successors in title. **PROVIDED, HOWEVER**, the **DECLARANT** shall not be obligated to pay the **ASSESSMENTS** provided for in this **DECLARATION** on any **LOT** owned by the **DECLARANT**.

**Section 11.2 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS UPON COMMON AREA.** Except as provided in this **DECLARATION**, in addition to the annual and special **ASSESSMENTS** authorized in this **DECLARATION**, the **ASSOCIATION** may levy, in any **ASSESSMENT** year, a special **ASSESSMENT** applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the **COMMON AREA**, including fixtures and personal property related to the **COMMON AREA**, provided that any such **ASSESSMENT** shall have the assent of three-fourths (3/4) of the votes of **MEMBERS** who are voting in **PERSON** or by proxy at a meeting duly called for this purpose. **PROVIDED, HOWEVER**, the **DECLARANT** shall not be obligated to pay the **ASSESSMENTS** provided for in this **DECLARATION** on any **LOT** owned by the **DECLARANT**.

**Section 11.3 UNIFORM RATE OF ASSESSMENT.** The **ASSESSMENTS** described in this **DECLARATION** shall be fixed at a uniform rate for all **LOTS**.

**Section 11.4 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.** Except as provided for in this **DECLARATION**, the annual **ASSESSMENTS** provided for in this **DECLARATION** shall commence as to all **LOTS** on the first day of the month following the date of this **DECLARATION**. The first annual **ASSESSMENT** shall be adjusted according to the number of months remaining in the calendar year. The **BOARD** shall fix the amount of the annual **ASSESSMENT** against each **LOT** at least thirty (30) days in advance of each annual **ASSESSMENT** period. Written notice of the annual **ASSESSMENT** shall be sent to every **OWNER** subject to the **ASSESSMENT**. The due date of any **ASSESSMENT** shall be fixed by the **BOARD** in the resolution authorizing such **ASSESSMENT**, and any such **ASSESSMENT** shall be payable in advance in monthly, quarterly, semiannually or annual installments as determined by the **BOARD**. The **ASSOCIATION** shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the **ASSOCIATION**, setting forth whether the **ASSESSMENTS** on a specified **LOT** have been paid. A properly executed certificate of the **ASSOCIATION** as to

the status of **ASSESSMENTS** on a **LOT** is binding upon the **ASSOCIATION** as of the date of its issuance. **PROVIDED, HOWEVER**, the **DECLARANT** shall not be obligated to pay any **ASSESSMENTS** on any **LOT** owned by the **DECLARANT**.

**Section 11.5 EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.** Any **ASSESSMENT** not paid within **thirty (30) days** after the due date shall bear interest thereon at a rate to be set by the **BOARD OF DIRECTORS** of the **ASSOCIATION**, but in no event greater than the maximum percentage rate as may then be permitted under the Laws of the **STATE OF ALABAMA**. The **ASSOCIATION** may bring an action at law or in equity against the **OWNER** personally obligated to pay the same, foreclose a lien against the property or seek injunctive relief, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such **ASSESSMENT**. Each such **OWNER**, by his acceptance of a **DEED** to a **LOT**, hereby expressly vests in the **ASSOCIATION** the right and power to bring all actions against such **OWNER** personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the **ASSOCIATION** in a like manner as a **MORTGAGE** lien on real property, and such **OWNER** hereby expressly grants to the **ASSOCIATION** a power of sale in connection with said lien. The lien provided for in this **Section 11.5** shall be in favor of the **ASSOCIATION** and shall be for the benefit of all **LOT OWNERS**. The **ASSOCIATION**, acting on behalf of the **LOT OWNERS**, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, **MORTGAGE** and convey the same. Except as provided in **Section 11.1** of this **DECLARATION**, no **OWNER** may waive or otherwise escape liability for the **ASSESSMENTS** provided for in this **DECLARATION** by non-use of the **COMMON AREA** or abandonment of his **LOT**.

**Section 11.6 SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the **ASSESSMENTS** provided for in this **DECLARATION** shall be subordinate to the lien of any first **MORTGAGE** or vendor's lien. Sale or transfer of any **LOT** shall not affect the **ASSESSMENT** lien. However, the sale or transfer of any **LOT** pursuant to **MORTGAGE** or vendor's lien foreclosure or any proceeding in lieu of foreclosure shall extinguish the lien of such **ASSESSMENTS** as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such **LOT** from liability for any **ASSESSMENTS** thereafter becoming due or from the lien of the **ASSESSMENTS** or relieve the prior **OWNER** from any personal liability for any unpaid **ASSESSMENTS** occurring prior to said sale or transfer.

**Section 11.7 CAPITALIZATION OF ASSOCIATION.** Upon acquisition of record title to a **LOT** from **DECLARANT**, each **OWNER** shall contribute to the capital of the **ASSOCIATION** an amount equal to **one-sixth (1/6th)** of the amount of the annual **ASSESSMENT** for that **LOT** as determined by the **BOARD**. This amount shall be deposited by the buyer into the purchase and sales escrow and disbursed therefrom to the **ASSOCIATION**.

**Section 11.8 EFFECT ON DECLARANT.** Notwithstanding any provision that may be contained to the contrary in this **DECLARATION**, for so long as **DECLARANT** (or any of the affiliates of **DECLARANT**) is the **OWNER** of any **LOT**, the **DECLARANT** shall have the option, at the sole discretion of **DECLARANT**, to (a) pay **ASSESSMENTS** on the **LOTS** owned by **DECLARANT**, or (b) not pay **ASSESSMENTS** on any **LOTS** and in lieu of paying said **ASSESSMENTS** fund any resulting deficit in the operating expense of the **ASSOCIATION** not produced by **ASSESSMENTS** receivable from **OWNERS** other than **DECLARANT**. The deficit to

be paid under option (b), above, shall be the difference between (i) actual operating expenses of the ASSOCIATION (exclusive of capital improvement costs, reserves and management fees), and (ii) the sum of all monies receivable by the ASSOCIATION (including, without limitation, ASSESSMENTS, interest, late charges, fines and incidental income and any surplus carried forward from the preceding year(s)). The DECLARANT may from time to time change the option stated above under which the DECLARANT is making payments to the ASSOCIATION by written notice to such effect to the ASSOCIATION. When all LOTS within the SUBDIVISION are sold and conveyed to purchasers, neither the DECLARANT, nor the affiliates of DECLARANT, shall have further liability of any kind to the ASSOCIATION for the payment of ASSESSMENTS, deficits or contributions. In no event shall DECLARANT ever be obligated to pay a Special ASSESSMENT.

## **ARTICLE XII INSURANCE AND CASUALTY LOSS**

**Section 12.1 THE ASSOCIATION.** The ASSOCIATION is hereby authorized to purchase and maintain insurance on the COMMON AREA in such forms and such amounts, with such deductibles, and with such companies as the BOARD OF DIRECTORS shall deem appropriate.

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

**B. PUBLIC LIABILITY INSURANCE.** The ASSOCIATION may obtain comprehensive public liability insurance with limits and provisions as the ASSOCIATION deems desirable.

**C. WORKERS' COMPENSATION INSURANCE.** The ASSOCIATION shall obtain worker's compensation insurance to meet the requirements of Alabama Law.

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

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

### **Section 12.2 The OWNER.**

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

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

**C. MISCELLANEOUS.** All insurance policies provided for in this **Section 12.2** shall include, however, provisions waiving (i) any right of the insured to subrogation claims against the **ASSOCIATION** and against individual **OWNERS**, as well as their agents, servants, employees and guests; and (ii) any right of the insurer to contribution or proration because of a master hazard policy.

**Section 12.3 RECONSTRUCTION OR REPAIR AFTER CASUALTY.**

**A. LOT.** In the event of the damage or destruction of all or part of the improvements on a **LOT**, the **LOT OWNER** shall be responsible for the prompt reconstruction and repair of the improvements after such casualty; provided that should the **LOT OWNER** fail to repair or replace the improvements within a reasonable period, the **ASSOCIATION** may do so for the account of said **LOT OWNER** and the cost shall be a binding, personal obligation of said **LOT OWNER** when billed by the **ASSOCIATION** as well as a lien upon the **LOT** in question and, thereafter, be subrogated to any insurance proceeds. The lien provided in this **Section 12.3A**, shall have the same enforceability and priority as the lien provided for in **ARTICLE XI** of this **DECLARATION**.

**B. COMMON AREA.** In the event of the damage or destruction of all or part of the improvements on the **COMMON AREA**, the **ASSOCIATION** shall be responsible for the prompt reconstruction and repair of the improvements after such casualty. Reconstruction or repair shall be mandatory unless seventy-five percent (75%) or more of the votes of the **ASSOCIATION**, and the **DECLARANT** so long as **DECLARANT** owns any property in the **SUBDIVISION**, elect not to repair or reconstruct. Any reconstruction or repair must follow substantially the original plans and specifications of the improvements unless seventy-five percent (75%) or more of the votes of the **ASSOCIATION**, and the **DECLARANT** so long as **DECLARANT** owns any property in the **SUBDIVISION**, vote to adopt different plans and specifications.

**ARTICLE XIII  
AMENDMENT**

This **DECLARATION** may be amended in the following manner:

**Section 13.1 NOTICE.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the **ASSOCIATION** at which a proposed amendment is to be considered.

**Section 13.2 RESOLUTION.** An amendment may be proposed by either a **MAJORITY** of the **BOARD** or by **MEMBERS** holding **one-third (1/3)** of the votes of the **ASSOCIATION**. A resolution adopting a proposed amendment must be adopted by an affirmative vote of not less than a **MAJORITY** of the **BOARD** and the consent of the **OWNERS** of the **LOTS** to which **sixty-seven percent (67%)** of the votes in the **ASSOCIATION** are allocated and the approval of **fifty-one percent (51%)** of the holders of first **MORTGAGES** on **LOTS**. **PROVIDED, HOWEVER**, that until the **DECLARANT** has completed and sold all of the **LOTS** in the **SUBDIVISION** or until the **DECLARANT** elects to terminate the control of **DECLARATION** of the **ASSOCIATION**, whichever shall first occur, no amendment may be made unless **DECLARANT** shall join in the execution of such amendment, nor shall any amendment make any change that would in any way affect the rights, privileges or powers of the **DECLARANT** unless the **DECLARANT** shall join in the execution of such amendment.

**Section 13.3 RECORDING.** A copy of each amendment shall be certified by the **President** and **Secretary** of the **ASSOCIATION** as having been duly adopted and shall be effective when recorded in the **OFFICE OF THE JUDGE OF PROBATE OF BALDWIN COUNTY, ALABAMA**.

**Section 13.4 AGREEMENT.** In the alternative, an amendment may be made by an agreement signed and acknowledged by all record **OWNERS**, including all first mortgagees of **LOTS** in the **SUBDIVISION** in the manner required for the execution of a **DEED**, and such amendment shall be effective when recorded in the **OFFICE OF THE JUDGE OF PROBATE OF BALDWIN COUNTY, ALABAMA**.

#### **ARTICLE XIV MORTGAGEE PROVISIONS**

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

**Section 14.1 NOTICES OF ACTION.** An institutional holder, insurer or guarantor of a first **MORTGAGE** who provides written request to the **ASSOCIATION** (such request to state the name and address of such holder, insurer or guarantor and the **LOT** number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- A. any condemnation loss or any casualty loss which affects a material portion of the **PROPERTIES** or which affects any **LOT** on which there is a first **MORTGAGE** held, insured or guaranteed by such eligible holder;
- B. any delinquency in the payment of **ASSESSMENTS** or charges owed by an **OWNER** of a **LOT** subject to the **MORTGAGE** of such eligible holder, where such delinquency has continued for a period of **sixty (60) days**; **PROVIDED, HOWEVER**, notwithstanding this provision, any holder of a first **MORTGAGE**, upon request, is entitled to written notice from the

**ASSOCIATION** of any default in the performance by an **OWNER** of a **LOT** of any obligation under the **DECLARATION** or **BY-LAWS** of the **ASSOCIATION** which is not cured within **sixty (60) days**;

- C. any lapse, cancellation or material modification of any insurance policy maintained by the **ASSOCIATION**; or
- D. any proposed action which would require the consent of a specified percentage of eligible holders.

**Section 14.2 NO PRIORITY.** No provision of this **DECLARATION** or the **BY-LAWS** gives or shall be construed as giving any **OWNER** or other party priority over any rights of the first mortgagee of any **LOT** in the case of distribution to such **OWNER** of insurance proceeds or condemnation awards for losses to or a taking of the **COMMON AREA**.

**Section 14.3 NOTICE TO ASSOCIATION.** Upon request, each **OWNER** shall be obligated to furnish to the **ASSOCIATION** the name and address of the holder of any **MORTGAGE** encumbering the **LOT** of a **OWNER**.

**Section 14.4 APPLICABILITY OF ARTICLE XIV.** Nothing contained in this **ARTICLE XIV** shall be construed to reduce the percentage vote that must otherwise be obtained under the **DECLARATION, BY-LAWS** or **Alabama Corporate Law** for any of the acts set out in this **ARTICLE XIV**.

**Section 14.5 FAILURE OF MORTGAGEE TO RESPOND.** Any mortgagee who receives a written request from the **BOARD** to respond to or consent to any action shall be deemed to have approved such action if the **ASSOCIATION** does not receive a written response from the mortgagee within **thirty (30) days** of the date of the request by the **ASSOCIATION**.

#### **ARTICLE XV MISCELLANEOUS**

**Section 15.1 UNRESTRICTIVE RIGHT OF TRANSFER.** The right of a **LOT OWNER** to sell, transfer or otherwise convey his **LOT** shall not be subject to any right of first refusal or a similar restriction.

**Section 15.2 LEASING.** **LOTS** may be leased by the **LOT OWNERS**; **PROVIDED, HOWEVER**, that such lease and the rights of any tenants are made expressly subject to the power of the **ASSOCIATION** to prescribe reasonable **RULES AND REGULATIONS** relating to the lease and rental of **LOTS** and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the **BOARD** deems appropriate, including eviction.

**Section 15.3 NO RESTRICTIONS ON MORTGAGING.** Anything construed in any of the **SUBDIVISION** documents to the contrary, there shall be no restrictions on a **LOT OWNER'S** right to **MORTGAGE** his **LOT**.

**Section 15.4 ACCEPTANCE BY GRANTEE.** The grantee of any **LOT** subject to the coverage of this **DECLARATION**, by acceptance of the **DEED** or other instrument conveying an interest in or title to, or the execution of a contract for the purchase of said **LOT**, whether from **DECLARANT** or a subsequent **OWNER** of such **LOT**, shall accept such **DEED** or other contract



upon and subject to each and all of the terms and conditions set out in this **DECLARATION**.

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

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

**Section 15.7 RIGHT OF DECLARANT TO MODIFY RESTRICTIONS WITH RESPECT TO UNSOLD LOTS.** With respect to any unsold **LOT**, **DECLARANT** may include in any contract or **DEED** made after the **EFFECTIVE DATE** of this **DECLARATION** or entered into such modifications and/or additions to this **DECLARATION** as **DECLARANT** in the discretion of **DECLARANT** desires. **PROVIDED, HOWEVER**, that this **DECLARATION** may not be modified in any contract or **DEED** to except a **LOT** from the **ASSESSMENT** provisions of **ARTICLE XI** of this **DECLARATION** or to lessen or extend the voting rights as provided in this **DECLARATION** or in the **ARTICLES OF INCORPORATION** and **BY-LAWS** of the **ASSOCIATION**.

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

**Section 15.9 EFFECT OF VIOLATION ON MORTGAGE LIEN.** No violation of any of the terms and conditions of this **DECLARATION** shall defeat or render invalid the lien of any **MORTGAGE** or vendor's lien made or reserved in good faith and for value upon any portion of the **SUBDIVISION**; **PROVIDED, HOWEVER**, that any mortgagee or vendor in actual possession, or any purchaser at any mortgagee's or vendor's lien foreclosure sale shall be bound by and subject to this **DECLARATION** as fully as any other **OWNER** of any portion of the **SUBDIVISION**.

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

**Section 15.11 DURATION AND AMENDMENT.** The covenants and restrictions of this **DECLARATION** shall run with and bind the **SUBDIVISION**, and shall inure to the benefit of and shall be enforceable by the **ASSOCIATION** or the **OWNER** of any property subject to this **DECLARATION**, their respective legal representatives, heirs, successors and assigns, for a term of **ninety-nine (99) years** from the date this **DECLARATION** is recorded, after which time they shall be automatically extended for successive periods of **ten (10) years**, unless an instrument in

writing, signed by a **MAJORITY** of the then **OWNERS**, has been recorded within the year preceding the beginning of each successive period of **ten (10) years**, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this **DECLARATION** shall be modified or terminated as specified therein.

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

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

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

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

**Section 15.14 INTERPRETATION BY ASSOCIATION.** The **ASSOCIATION** shall have the right to construe and interpret the provisions of this **DECLARATION**, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all **PERSONS** or property benefitted or bound by the provisions of this **DECLARATION**.

**Section 15.15 ASSIGNMENT BY ASSOCIATION.** The **ASSOCIATION** shall be empowered to assign its rights under this **DECLARATION** to any successor nonprofit membership corporation (referred to in this **DECLARATION** as the "**SUCCESSOR CORPORATION**") and, upon such assignment the **SUCCESSOR CORPORATION** shall have all the rights and be subject to all the duties of the **ASSOCIATION** under this **DECLARATION**.


**Section 15.16 NO WAIVER.** The failure of any party entitled to enforce this **DECLARATION** to do so shall in no event be considered a waiver of the right to do so thereafter,

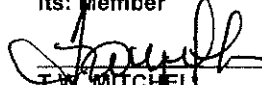
as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto. **PROVIDED, HOWEVER**, that approval of plans pursuant to **ARTICLE V** of this **DECLARATION** shall be binding on any and all parties as a conclusive determination that such plans are in conformity with this **DECLARATION**.

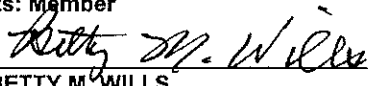
**IN WITNESS WHEREOF**, **DECLARANT** has executed this **DECLARATION** to be effective as of the **EFFECTIVE DATE**.

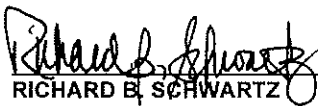
**DECLARANT:**

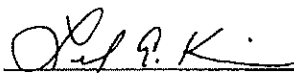
**MARTYN WOODS, L.L.C., an  
Alabama Limited Liability Company**

By:   
T.E. MITCHELL  
Its: Member

By:   
T.W. MITCHELL  
Its: Member

By:   
BETTY M. WILLS  
Its: Member

By:   
RICHARD B. SCHWARTZ  
Its: Member

By:   
LEONARD A. KAISER  
Its: Member

STATE OF ALABAMA :

COUNTY OF BALDWIN :

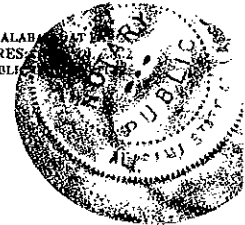
I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that, T.E. MITCHELL, whose name as Member of MARTYN WOODS, L.L.C., an Alabama Limited Liability Company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Member and with full authority executed the same voluntarily for and on behalf of said Company.

Given under my hand and seal this 20th day of December, 1999.

*Marcia W. Poppe*

NOTARY PUBLIC  
My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA  
MY COMMISSION EXPIRES  
BONDED THRU NOTARY PUBLIC



STATE OF ALABAMA :

COUNTY OF BALDWIN :

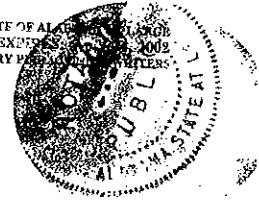
I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that, T.W. MITCHELL, whose name as Member of MARTYN WOODS, L.L.C., an Alabama Limited Liability Company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Member and with full authority executed the same voluntarily for and on behalf of said Company.

Given under my hand and seal this 20th day of December, 1999.

*Marcia W. Poppe*

NOTARY PUBLIC  
My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA  
MY COMMISSION EXPIRES  
BONDED THRU NOTARY PUBLIC



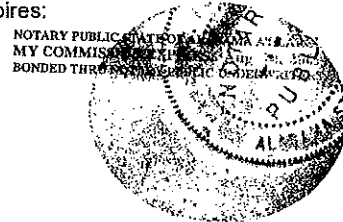
STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that, **BETTY M. WILLS** whose name as **Member** of **MARTYN WOODS, L.L.C., an Alabama Limited Liability Company**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such **Member** and with full authority executed the same voluntarily for and on behalf of said **Company**.

Given under my hand and seal this 20<sup>th</sup> day of **December, 1999**.

Marcia W. Pepperman  
**NOTARY PUBLIC**  
My Commission Expires:



Instrument 525191 Page 37 of 38

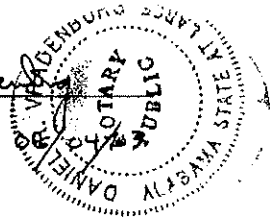
STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that, **RICHARD B. SCHWARTZ** whose name as **Member** of **MARTYN WOODS, L.L.C., an Alabama Limited Liability Company**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such **Member** and with full authority executed the same voluntarily for and on behalf of said **Company**.

Given under my hand and seal this 17<sup>th</sup> day of **December, 1999**.

Daniel W. ...  
**NOTARY PUBLIC**  
My Commission Expires:




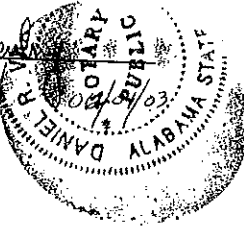
STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that, **LEONARD A. KAISER** whose name as **Member of MARTYN WOODS, L.L.C., an Alabama Limited Liability Company**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such **Member** and with full authority executed the same voluntarily for and on behalf of said **Company**.

Given under my hand and seal this 17<sup>th</sup> day of **December, 1999**.

  
NOTARY PUBLIC  
My Commission Expires 02/24/03



**THIS INSTRUMENT PREPARED BY:**  
Sam W. Irby  
Irby & Heard, P.C.  
Attorneys at Law  
317 Magnolia Avenue  
Post Office Box 1031  
Fairhope, Alabama 36533  
(334)928-4555

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