

BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, JR. PROBATE JUDGE
Filed/cert. 5/ 6/2019 1:31 PM
TOTAL \$ 91.00
27 Pages

1758168



Declaration of Protective Covenants

for

West Side Cottages Subdivision

This Instrument Prepared By:
Daniel H. Craven, Esq.
Daniel H. Craven, P.C.
P.O. Drawer 4489
Gulf Shores, AL 36547
Voice: 251-968-8170
Fax: 251-968-4837
danielhcraven@gmail.com

STATE OF ALABAMA)
COUNTY OF BALDWIN)

DECLARATION OF PROTECTIVE COVENANTS
FOR
WEST SIDE COTTAGES SUBDIVISION

TABLE OF CONTENTS

- I. DEFINITIONS**
- II. GENERAL APPLICABILITY OF DECLARATION**
 - 2.01 General Applicability
 - 2.02 Annexation of Additional Property
- III. IMPROVEMENTS**
 - 3.01 Land Use and Building Type
 - 3.02 Dwelling Quality, Size and Design
 - 3.03 Building Location
 - 3.04 Exterior Finishes
 - 3.05 Driveways
 - 3.06 Manufactured Housing
 - 3.07 Detached Buildings
 - 3.08 Traffic Hazards
 - 3.09 Restrictions of Easements
 - 3.10 Drainage
 - 3.11 Beach Access
- IV. GENERAL LAND USE AND OTHER RESTRICTIONS**
 - 4.01 Nuisances
 - 4.02 Temporary Structures
 - 4.03 Signs
 - 4.04 Livestock and Poultry
 - 4.05 Garbage and Refuse Disposal
 - 4.06 Maintenance of Property
 - 4.07 Utilities and Antennas
 - 4.08 Mailboxes and Property Identification Markers
 - 4.09 Vehicles
 - 4.10 Boat and Boat Trailers
 - 4.11 Recreational Vehicles and Other Trailers
 - 4.12 Clotheslines
 - 4.13 Fences
 - 4.14 Grills and Propane Tanks

- 4.15 Exterior Color Schemes
- 4.16 Miscellaneous
- 4.17 Subdividing of Property
- 4.18 Speed Limit
- 4.19 Zoning Regulations
- 4.20 No Cut/No Fill Area

V. ARCHITECTURAL CONTROL

- 5.01 Membership of the Architectural Review Committee
- 5.02 Approval of Architectural and Landscape Plans
- 5.03 Landscape
- 5.04 Variances
- 5.05 Enforcement

VI. PROPERTY OWNERS ASSOCIATION

- 6.01 Powers and Duties
- 6.02 Membership
- 6.03 Voting Rights
- 6.04 Governance
- 6.05 Election to the Board of Directors
- 6.06 Indemnification
- 6.07 Limitation of Liability
- 6.08 By-Laws
- 6.09 Quorum Required for any Action Authorized at Regular or Special Meetings
- 6.10 Proxies
- 6.11 Ballots by Mail
- 6.12 Proviso
- 6.13 Availability of Records
- 6.14 Reserves for Replacements

VII. MEMBERS' RIGHTS IN THE COMMON AREAS

- 7.01 Members' Easements of Enjoyment in Common Areas
- 7.02 Title to Common Areas
- 7.03 Extent of Members' Easements

VIII. COVENANTS FOR ASSESSMENTS

- 8.01 Creation of the Lien and Personal Obligations for Assessments
- 8.02 Purpose of the Assessments
- 8.03 Annual (Regular) Assessments
- 8.04 Special Assessments
- 8.05 Date of Commencement of Assessments
- 8.06 Individual Assessments
- 8.07 Effect of Nonpayment of Assessments; Liens; and Remedies of the Association
- 8.08 Lien Rights under the HOA Act
- 8.09 Election of Remedies

- 8.10 Subordination of the Lien to Mortgages
- 8.11 Estoppel Letter

IX. FUNCTIONS OF ASSOCIATION

- 9.01 Ownership and Maintenance of Common Areas
- 9.02 Services
- 9.03 Reduction of Services
- 9.04 Obligations of the Association
- 9.05 Mortgage and Pledge
- 9.06 Transfer of Authority

X. AMENDMENT

- 10.01 Plans
- 10.02 Declaration by the Declarant
- 10.03 Declaration by the Association
- 10.04 Prohibited Amendments

XI. MISCELLANEOUS

- 11.01 Covenants, Conditions and Restrictions
- 11.02 Severability
- 11.03 Notice
- 11.04 Governing Law
- 11.05 Waiver
- 11.06 Ratification
- 11.07 Captions
- 11.08 Enforcement
- 11.09 Costs and Attorney's Fees
- 11.10 Conflicting Provisions

DECLARATION OF PROTECTIVE COVENANTS
FOR
WEST SIDE COTTAGES SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS, made and published this 3rd day of May, 2019, by West Side, LLC, an Alabama Limited Liability Company, having its principal office at 956 Commerce Loop, Suite A, Gulf Shores, AL 36542, hereinafter referred to as "Declarant," under the laws of the State of Alabama.

W I T N E S S E T H :

THAT, WHEREAS, the said Declarant is the owner of West Side Cottages Subdivision located in Gulf Shores, Baldwin County, Alabama, as shown on the plat thereof recorded in the records of the Judge of Probate of Baldwin County, Alabama, at Instrument No. 1754814 (Slide 2677-A) on the 18th day of April, 2019; and,

WHEREAS, it is for the interest, benefit and advantage of the Declarant and the future owner(s) of each Lot hereafter purchased and lying in the Subdivision that certain protective covenants governing and regulating the use and occupancy of the same be established, set forth and declared to be covenants running with the land.

NOW, THEREFORE, for and in consideration of the premises and of the benefits to be derived by the Declarant, these Protective Covenants are hereby established and promulgated and shall apply to all of the Lots and to any owners of property located in the Subdivision. These protective covenants shall become effective immediately upon the sale of Lots by the Declarant and shall run with the land and shall be binding on all persons claiming under or through the Declarant.

ARTICLE I
DEFINITIONS

1.01 "ARCHITECTURAL REVIEW COMMITTEE" or "A.R.C." means that certain committee originally appointed by the Declarant which will be elected by the Members once the Association is turned over to the Members that has the right and authority to approve any and all architectural and landscaping plans prior to any Lot Owner constructing a Dwelling or any other structure on a Lot and further prior to any Lot Owner installing any landscaping on a Lot.

1.02 "ARTICLES" means the Certificate of Formation of the Association, recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

1.03 "ASSESSMENT" means proportionate share (or share derived by formula) of the funds required for the maintenance of the Common Areas which from time to time may be levied against each Lot Owner.

1.04 "ASSOCIATION" means West Side Cottages Property Owners Association, Inc., an Alabama not for profit corporation, and its successors, which is organized under §10A-3-1.01, et seq. CODE OF ALABAMA 1975.

1.05 "BOARD" means the Board of Directors of the Association.

1.06 "BY-LAWS" means the duly adopted By-Laws of the Association as recorded in the records in the Office of the Judge of Probate of Baldwin County, Alabama.

1.07 "COMMON AREAS" means all portions of the Subdivision other than the Lots and are owned by the Association.

1.08 "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.09 "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Areas over the amount of the Common Expenses.

1.10 "DECLARATION" means this Declaration of Protective Covenants and any amendments thereto which may be made from time to time.

1.11 "DEVELOPER" or "DECLARANT" means West Side, LLC, and its successors and assigns.

1.12 "DEVELOPMENT" shall mean West Side Cottages Subdivision created by recording the plat therefore in the Office of the Judge of Probate of Baldwin County, Alabama.

1.13 "DWELLING" means any house or residence constructed on a Lot in the Subdivision.

1.14 "LOT" means any individual parcel of real property that has been created by recording the plat for West Side Cottages Subdivision in the Office of the Judge of Probate of Baldwin County, Alabama; provided, however, that the definition of Lot does not include those areas labeled as "Common Areas."

1.15 "LOT OWNER" means any individual who owns a Lot in the Subdivision.

1.16 "MEMBER" means a member of the Association.

1.17 "PERSON" means a natural person, a corporation, a limited liability company, a partnership, a limited partnership, the Association, a Trust or other legal entity.

1.18 "PLANS" mean the design and layout of the Lots, Common Areas and other portions of the Property and shall include the Plat for West Side Cottages Subdivision.

1.19 "REAL PROPERTY" means the Real Property which has been subdivided by recording the plat for West Side Cottages Subdivision in the Office of the Judge of Probate of Baldwin County, Alabama.

1.20 "SUBDIVISION" means that certain parcel of real property that has been or will be subdivided into smaller parcels or Lots by the recording of the Plat for West Side Cottages Subdivision in the Office of the Judge of Probate of Baldwin County, Alabama, for such Lots to be sold to third parties by the Declarant, and the Common Areas of which are to be owned by the Association.

1.21 "SUBDIVISION DOCUMENTS" mean collectively the Declaration, Articles and By-Laws.

1.22 "UTILITY SERVICES" shall include but not be limited to electrical power, cable, internet, telephone, gas, garbage and sewage disposal.

When the context permits, use of the plural shall include the singular, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

ARTICLE II **GENERAL APPLICABILITY OF DECLARATION**

2.01 *General Applicability.* This Declaration shall apply to all Lots, Common Areas, streets and easements shown upon the plat for West Side Cottages Subdivision recorded in the Office of the Judge of Probate of Baldwin County, Alabama, at Slide 2677-A and as Instrument No. 1754814, and shall apply to any future addition to, extension of or phase of the Subdivision by proper amendment to this Declaration, if such addition or extension shall be made by the Declarant, its successors and/or assigns. This Declaration is further subject to such plat. Under no circumstances shall this Declaration be deemed or construed to apply to any other adjacent portions of property which are and shall remain the separate property of the Declarant. The imposition of these restrictions shall in no way be construed as a representation that the Subdivision may be expanded or additional subdivisions or extensions thereto be made. Each of the restrictions, covenants, limitations, conditions, reservations, and easements made and set forth herein shall apply as if this Declaration were set forth in its entirety in each deed from the Declarant to any Person, firm or Limited Liability Company conveying or affecting any of the Lots, areas or streets and by the acceptance of any deed to said property. Any purchaser or grantee agrees and binds itself to make all deeds of land in the Subdivision and all contracts of sale or contracts for deeds conveying land in the Subdivision, subject to this Declaration.

2.02 *Annexation of Additional Property.* The Declarant shall have the right to incorporate additional property into the Subdivision in phases by recording a plat of the property to be so incorporated in the records of the Office of the Judge of Probate of Baldwin County, Alabama and by further recording an amendment to this Declaration providing that such additional property shall be governed by this Declaration, the Articles and the By-Laws.

ARTICLE III
IMPROVEMENTS

3.01 Land Use and Building Type. Except for a sales office and display models by the Declarant, no Lot shall be used except for residential purposes. No Dwelling shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family Dwelling.

3.02 Dwelling Quality, Size and Design. All Dwellings shall be constructed using quality workmanship and materials. The main structure shall be not less than fourteen hundred (1,400) square feet nor more than eighteen hundred (1,800) square feet of heated and air conditioned space and shall be not more than two (2) stories in height. The garage, if any, shall house a minimum of one (1) and a maximum of three (3) vehicles. All building plans shall be approved by the Architectural Review Committee created hereby.

3.03 Building Location. No Dwelling shall be located on any Lot nearer to any Lot line than the setback lines noted or shown on the recorded Subdivision plat, except for any Lots subject to a variance granted by the City of Gulf Shores Zoning Board of Adjustment. Non-habitable accessory structures need to only be placed within side setback lines, except that no such structure may be placed in the front yard of any Lot. If no such setback line is noted or shown on the plat, then all minimum set backs shall be in conformity with all relevant Zoning Ordinances as they pertain to this subdivision.

3.04 Exterior Finishes. Exterior finish materials shall be Hardi Plank or a similar material. Window frames, window shutters and soffits may be constructed out of vinyl siding, and exterior doors may be constructed out of wood or fiberglass or be wood clad.

3.05 Driveways. All driveways shall be paved with brick.

3.06 Manufactured Housing. No manufactured housing units or mobile homes may be used on the premises. No metal-clad or vinyl siding, asphalt, asbestos or roll siding will be permitted on the exterior of any Dwelling, unless express written permission is granted by the Architectural Review Committee.

3.07 Detached Buildings. No detached buildings shall be installed on any Lot.

3.08 Traffic Hazards. No fence, wall hedge, shrub, bush, tree or other thing, natural or artificial, shall be placed, maintained, or permitted to remain on any Lot.

3.09 Restrictions of Easements. No title to land in any street is intended to be conveyed, or shall be conveyed to the grantee under any deed, or the purchaser under any contract of purchase, unless expressly so provided in such deed or contract or purchase. Easements for installation and maintenance of utilities and drainage facilities are reserved as noted or shown on the recorded plat.

No dwelling house, garage, outbuilding or other structure of any kind, except driveways and

sidewalks, shall be built, erected or maintained upon any such easements, and said easements shall, at all times, be open and accessible to public or quasi-public utility company, and other persons erecting, constructing or servicing such utilities and Declarant, its successors and assigns, all of whom shall have the right of ingress and egress thereto, and therefrom and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights-of-way are reserved, or may hereinafter be reserved.

3.10 Drainage. Drainage flow shall not be obstructed nor be diverted from drainage or utility easements as designated on said plat. No fences or other structure shall be erected in a manner that will hinder or prohibit the free flow from the drainage easement, and the owner will keep the same clean and free from obstruction. For a period of five (5) years from the date of conveyance of any Lot, Declarant reserves a blanket easement on, over and under the ground within the Subdivision to maintain and correct drainage or surface water in order to maintain health, safety and appearance. Such right expressly includes the right to cut trees, bushes and shrubbery, make any grading of the road or take similar action, following which Declarant will restore the property as nearly as possible to its original condition.

The Association, which will be created to maintain the Common Areas of the Subdivision and to perform such other duties as are set forth herein, in the Articles and in the By-Laws, shall be responsible for maintaining the drainage system of the Subdivision pursuant to the relevant County and Municipal ordinances, rules and regulations, as follows:

- a. The Association shall inspect all drainage structures monthly and clean said structures periodically as is necessary to remove all silt and other debris.
- b. The Association shall maintain all swales and detention ponds in the same state as their original construction by repairing and/or replacing sod and/or grass as necessary to maintain all slopes and berms.
- c. The Association shall repair and/or replace all concrete culverts, flumes, swales and/or headwalls as necessary to maintain said structures as originally constructed.
- d. The Association shall be required to perform such other maintenance and/or repair to the drainage systems of the Subdivision as are reasonably necessary for the drainage system to function properly.

3.11 Beach Access. There is no dedicated beach access.

ARTICLE IV **GENERAL LAND USE AND OTHER RESTRICTIONS**

4.01 Nuisances. No noxious or offensive activity shall be carried upon any Lot, nor shall anything

be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

4.02 Temporary Structures. No structure of a temporary character, trailer, shack, garage, barn or other outbuilding shall be erected or used on any Lot at any time either temporarily or permanently, except during the initial home construction process.

4.03 Signs. No sign of any kind shall be displayed to the public view on any Lot, except one (1) professional sign of not more than five (5) square feet advertising the Lot for sale or rent may be placed in the window of a dwelling. The Declarant shall be exempt from this section. No signs of a decorative nature may be placed on the exterior of any home, or on any lot.

4.04 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, a Lot Owner may have no more than two (2) dogs. No Owner shall be allowed to bring a cat into the Subdivision. No pet may be kept for breeding or maintained for any commercial purposes, nor shall they be bred for non-commercial purposes. All pets shall be kept inside the owner's Dwelling and shall not be allowed onto the balconies, decks or carports of any Dwelling. All pets shall be kept on leashes when outside of the Dwelling.

4.05 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, garbage, trash or other waste. All such waste shall be kept in sanitary, covered containers, which shall be maintained in a clean and sanitary condition. Each Owner shall be responsible for furnishing his or her own trash receptacle for trash retrieval by a waste management company. Trash receptacles shall not be placed by the street for more than twenty-four (24) hours for waste retrieval and shall otherwise be kept in an enclosed area hidden from view.

4.06 Maintenance of Property. Each Lot Owner shall keep his or her respective Lots and all improvements thereon in good appearance and repair, free of debris. All lawns shall well landscaped. Furthermore, all lawns shall be mowed regularly. All trees and shrubbery shall be pruned. Lawns shall be kept free of noxious insects, and infectious and spreading weeds, all in a manner consistent with good property management. In the event the Lot Owner shall fail to comply with these provisions, the Association, upon thirty (30) days written notice to Owner, shall have the right to enter upon said Lot to correct same and shall be entitled to levy a special assessment against the Owner of said Lot to cover the cost thereof.

4.07 Utilities and Antennas. All utilities shall be placed underground. Each Lot Owner is required to connect to said utilities at his or her expense. No exterior towers or satellite dishes shall be erected on any Lot or Dwelling.

4.08 Mailboxes and Property Identification Markers. All mailboxes and mail box posts must be approved by the Architectural Review Committee. The Lot Owner shall not place any additional lettering on the mailbox, except as required by the Postal Service and only after approval from the A.R.C.

4.09 Vehicles. The immobilization of any vehicle for repairing or overhauling at a Lot or on any street within the Subdivision is prohibited. Vehicles shall not be parked on any yard or Lot other than on a driveway or in a garage, and vehicles shall not be parked on the street over night. No vehicle shall be worked on or repaired on any Lot, driveway, yard or street.

4.10 Boat and Boat Trailers. No boats, water craft or trailers may be stored on a Lot whatsoever or the Common Areas.

4.11 Recreational Vehicles and Other Trailers. Recreational Vehicles and trailers may not be stored or kept on a Lot or on the Common Areas.

4.12 Clotheslines. No clotheslines shall be maintained on any Lot.

4.13 Fences. No fences shall be erected on any Lot.

4.14 Grills and Propane Tanks. No grills or propane tanks of any kind shall be placed on any Lot, in any Dwelling or on the Common Areas, except gas or electric grills shall be allowed on concrete areas underneath a Dwelling.

4.15 Exterior Color Schemes. Exterior color schemes shall be submitted to the Architectural Review Committee for approval. This requirement shall also include all exterior maintenance painting, unless the original color scheme is retained. Notwithstanding the above, the original exterior color scheme may not be changed except by a vote of 100% of the owners.

4.16 Miscellaneous. Wood piles, dog houses, kennels, etc., shall not be allowed on any Lot or on the Common Areas.

4.17 Subdividing of Property. No Lot shall be sold or subdivided except as a whole for the purpose of building a complete Dwelling, and only one Dwelling shall be constructed upon each Lot. Two (2) Lots may be combined into one Lot or a Lot may be divided between two (2) adjoining Lots for the purpose of creating a larger Lot, but no more than one Dwelling shall be built on any Lot and portion of an adjoining Lot that may have been divided or subdivided to create a larger Lot. This paragraph is subject to the subdivision regulations promulgated by Gulf Shores, Alabama.

4.18 Speed Limit. The maximum speed limit in the Subdivision shall be five (5) miles per hour as posted by the Declarant.

4.19 Zoning Regulations. The Subdivision is in a zoned area of Gulf Shores, Alabama. As such, the each Owner must ensure that his Lot and all buildings and improvements thereon comply with the ordinances of the City of Gulf Shores.

4.20 No Cut/no Fill Area. All areas labeled as "No Cut/No Fill" on the Plat of the Subdivision shall remain in their natural states in perpetuity.

ARTICLE V ARCHITECTURAL CONTROL

5.01 Membership of the Architectural Review Committee. The initial members of the Architectural Review Committee, hence A.R.C., shall be Edwin J. Spence, Zachary A. Cordova and Diana Matthews. At such time as Edwin J. Spence, Zachary A. Cordova and Diana Matthews, in their sole discretion should collectively elect to relinquish the duties and responsibilities of the A.R.C., then in that event the A.R.C., shall be appointed by, and serve, at the pleasure of the Board of Directors of the Association. The initial A.R.C. shall serve subject to the power of the Declarant as hereinafter set forth. The A.R.C. may charge a review fee to offset the expense of making a review.

When the A.R.C. is appointed by the Board of Directors, there shall be at least three (3) members of the A.R.C. A member of the A.R.C. may also be a director or officer of the Association. Once elected, any member of the A.R.C. may be removed and a new member elected to his place by a majority vote of the Board of Directors of the Association.

5.02 Approval of Architectural and Landscape Plans. No building or Dwelling, fences, walls, driveways, parking areas, service courts, satellite dishes, antennas, dog houses, flagpoles or other structure shall be commenced, erected or maintained nor shall any addition to or exterior change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, material, floor plan, structural specifications, exterior color scheme, location, square footage and grading shall have been submitted to and approved by a majority of the members of the A.R.C., and a copy of the plans and building specifications to be lodged permanently with A.R.C. Upon submission of the plans as herein specified, the A.R.C. shall have thirty (30) days to approve or disapprove any such building plans and specifications, and may in its absolute discretion, reject any or all the plans which are not suitable or desirable for any reason, including purely aesthetic reasons. In approving or passing upon such plans and specifications, the A.R.C. shall have the absolute and discretionary right to take into consideration the stability of the proposed building, the materials from which it is to be constructed, the Lot upon which it is proposed to be erected, the harmony thereof with the surrounding Lots as planned and taking into consideration the outlook from the adjacent or neighboring Lots. All such building plans and specifications shall consist of not less than section details, floor plans of all floors, elevation drawings of all exterior walls fronting any street, roof plans and a plot plan showing the location and orientation of the building on the Lot, with all setbacks and shall also show the location of driveways, service courts, parking and all other proposed construction upon the Lot. At the same time, a preliminary landscape development plan shall be submitted to the A.R.C. for approval concurrently with the building plans. A final landscape plan shall be submitted and approved before planting. The A.R.C. reserves the absolute right to establish and enforce the general development criteria for the approval of construction of a Dwelling on the Lot which is subject to these restrictions, said right to include general or specific requirements concerning the nature, kind, shape, height, width, materials, color schemes, as well as the architectural and structural requirements thereof. The Declarant shall be exempt from

this Section.

5.03 Landscape. Plans for all landscaping shall be provided the A.R.C. for all portions of the Lot. All landscaping, including sodding the front and side yards and planting as shown on the landscape plan shall be kept and maintained thereafter for the duration of this Declaration. The Declarant shall be exempt from this Section.

5.04 Variances. The A.R.C. may issue variances from any building covenant, except set back requirements and dwelling size covering the construction or alteration of improvements on the property provided such improvements substantially comply with the provisions hereof and provided the A.R.C. acts in accordance with adopted and published guidelines and procedures.

5.05 Enforcement. The A.R.C. shall have the right to enforce any of its powers granted in this Declaration and the provisions applicable to it in this Declaration in the same manner as is provided for the Association to enforce the provisions of the Development Documents, whether set forth in the By-Laws or this Declaration, including, without limitation, the right to impose a lien upon the Lot of a violating Lot Owner.

ARTICLE VI LOT OWNERS ASSOCIATION

The Declarant has formed or will cause to be formed West Side Cottages Property Owners Association, Inc., an Alabama non-profit corporation.

6.01 Powers and Duties. The maintenance, operation and administration of the Common Areas of the Development shall be by the Association, membership in which shall consist of the Lot Owners only. The Association shall be a not for profit corporation incorporated by a Certificate of Formation 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 Areas; and with reference to any and all other matters in which all the Lot Owners have a common interest. The Association shall have all the powers and duties set forth in § 10A-3-1.01, et seq., CODE OF ALABAMA 1975, as well as all the powers and duties granted to or imposed on it under the By-Laws, the Articles and 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 Development. The Board shall have the authority and duty to levy fines 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.

6.02 Membership. Each Lot Owner shall be a Member of the Association, so long as he is a Lot Owner. A Lot Owner's membership shall immediately terminate when he 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.

6.03 Voting Rights. The Association shall have one (1) class of regular voting membership. Members shall be all Lot Owners (including the Declarant) of Unimproved Lots and Improved Lots. Each Member who has presented to the Association satisfactory proof that such Member is an Owner of any such Lot prior to the close of business on the Record Date established in accordance with the Association's By-Laws, shall be entitled to notice of and shall be entitled to one (1) vote for each Unimproved or Improved Lot owned, which vote is not divisible, in all matters in which membership voting is authorized in this Declaration, the By-Laws, the Articles or any other rules and regulations shall be binding upon the Association and its Members with respect to Members' voting rights.

Each Member who has provided satisfactory proof of ownership as set forth above prior to the applicable Record Date, so long as such Member is not then delinquent in the payment of assessments, shall be entitled to vote at any meeting of Members, or on any matter requiring a vote of Members, occurring subsequent to the date upon which the Member becomes a Lot Owner, and each such Member shall be entitled to the number of votes calculated above as if each Member had been a Member for a full year and had paid the Regular Annual Assessment for the year in which the vote takes place. Payment of any Special Assessment shall not entitle Members to additional votes.

When any Lot entitling the Owner thereof to membership in the Association has an Owner which is a corporation, limited liability company, trust, partnership, or where two or more person or entities are Owners, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, one officer, manager, member, trustee, person or entity shall be designated the Voting Member to bind all the others. Written evidence of such designation in a form satisfactory to the Board shall be delivered to the Board prior to the exercise of a vote of such Lot Owners.

6.04 Governance. The Association shall be governed by a Board of Directors, consisting of not fewer than three (3) nor more than five (5) Members. Initially, the Board shall consist of three (3) Members, with the number in subsequent years to be determined by the Members of the Board of Directors as provided in the By-Laws.

6.05 Election to the Board of Directors.

- a. The Board of Directors shall be elected by the Members.
- b. In electing Directors of the Association, each Member shall be entitled to cast one (1) vote per Lot owned by such Member for each Director's position to be filled. No cumulative voting is permitted.

6.06 Indemnification. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which such Director or officer may be entitled.

6.07 Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Common Areas, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association, nor for injury or damage caused by the elements, or other Lot Owners or Persons.

6.08 By-Laws. The Association and its Members shall be governed by the By-Laws.

6.09 Quorum Required for Any Action Authorized at Regular or Special Meetings. The quorum required for any action which is subject to a vote of the Members at a meeting of the Association shall be as follows:

With respect to any particular proposed action, the presence at the meeting of the Association of Members, in person or by proxy, entitled to cast thirty percent (30%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a majority of those Members entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting, from time to time, without notice other than announcement of the meeting, until the requisite number of members, present in person or by proxy, shall be present; provided, however, that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If a quorum is present, a majority of the votes which are properly voted at any meeting shall determine any matter coming before the meeting unless a different vote is required by statute, by this Declaration, by the Articles or by the By-Laws. The Members at a meeting at which a quorum is once present may continue to transact business at the meeting or any adjournment thereof, notwithstanding the withdrawal of enough Members to have less than a quorum. Notwithstanding the foregoing, except with respect to an amendment effected by the Declarant in order to add property to the Subdivision, no action to amend this Declaration shall be effective unless taken at a meeting at which Members entitled to cast sixty-seven percent (67%) or more of the total vote of the Membership are present, either in person or by proxy.

6.10 Proxies. Each Member of the Association entitled to vote may vote in person or by proxy at any meeting of the Association. Each proxy shall be executed in writing by the Member or by his duly authorized attorney-in-fact, shall state the meeting for which such proxy is given and shall be filed with the

Secretary of the Association. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date.

6.11 *Ballots by Mail.* When authorized by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for a vote of the Members and a ballot on which each Member may vote for or against the motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in this Declaration. However, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

6.12 *Proviso.* Subject to the provisions herein, until the Declarant sells each Lot in the Subdivision and each Lot in any additional phase that may be added by the Declarant by amendment, the By-Laws and rules adopted by the Declarant shall govern and the Declarant shall have the exclusive right to appoint, remove and designate the officers and members of the Board of Directors, and neither the Lot Owners nor the Association nor the use of the Common Areas by Lot Owners shall interfere with the completion of the contemplated improvements and the sale of the Lots. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board; but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

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 Lots and the display of signs. The Declarant may maintain sales offices, management offices, leasing and operations offices, and models on any Lot of the Development or on Common Areas in the Development without restriction as to the number, size or location of said sales offices, management offices, leasing and operations offices and models. The Declarant shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one Lot location to another or from one area of the Common Areas to another area of the Common Areas in the Development. The Declarant may maintain signs on the Common Areas advertising the Development. The rights of the Declarant as provided for in this paragraph shall cease and terminate when the Declarant relinquishes control of the Association.

6.13 *Availability of Records.* The Association shall keep financial records sufficiently detailed to enable the Association to comply with §10A-3-2.32, CODE OF ALABAMA 1975. The Association shall make reasonably available in the county where the Subdivision is located for examination by Lot Owners or their authorized agents, current copies of the Declaration, Articles, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

6.14 *Reserves for Replacements.* 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 VII
MEMBERS' RIGHTS IN THE COMMON AREAS

7.01 *Members' Easements of Enjoyment in Common Areas.* Subject to the provisions of this Declaration, the rules and regulations of the Association, and any fees or charges established by the Association, every Member and every guest or lessee of such Member shall have an easement of enjoyment in and to the Common Areas in the Subdivision, and such easement shall be appurtenant to and shall pass with the title to every Lot. A Member's or lessee's spouse and children who reside with such Member or lessee in the Development shall have the same easement of enjoyment hereunder as a Member. The easement of enjoyment herein shall pass from a Member to a lessee during the lease term; provided, however, the Association may adopt additional restrictions to its rules and regulations limiting the easement of enjoyment of guests and lessees, including, but not limited to the specification of minimum lease terms, the number of guests allowed, or the prohibition of use by lessees or guests as to specific Association properties.

7.02 *Title to Common Areas.* The Declarant has or will convey the Common Areas, or any part or parts thereof, including without limitation the retention pond area(s) by statutory warranty deed to the Association, subject to all restrictions and limitations of record and to all additional restrictions and covenants set forth in the deed of conveyance. The Association shall be required to accept such conveyance of the Common Areas and shall, after such conveyance, immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Association's Board of Directors subject to this Declaration. The Common Areas shall also be conveyed subject to all easements and restrictive covenants of record at the time of conveyance and the rights that others may have to use certain Common Areas.

7.03 *Extent of Members' Easements.* The easements of enjoyment created hereby shall be subject to the following:

- a. the right of the Association, in accordance with its By-Laws, to place mortgages or other encumbrances on the Common Areas as security for borrowings by the Association;
- b. the right of the Association, in accordance with its By-Laws, to take such steps as are reasonably necessary to protect Common Areas against foreclosures;
- c. the right of the Association, in accordance with its By-Laws, to suspend the voting rights and easements of enjoyment of any Member lessee or guest of any Member for any period during which the payment of any assessment against the property owned by such Member is delinquent, and for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the

Association shall not constitute a waiver or discharge of the Members' obligation to pay such assessment, and provided that the Association shall not suspend the right to use any roadways belonging to the Association although such use shall be subject to the rules and regulations established by the Association for such use;

d. the right of the Association, in accordance with its By-Laws and subject to the general covenants, to place any reasonable restrictions upon the use of the roadways shown on the Plat as being within the Development, subject to a Lot Owner's or lessee's right of ingress and egress, including, but not limited to the types and sizes of the vehicles permitted to use said roadways, the maximum and minimum speeds of vehicles using said roadways, all other necessary traffic and parking regulations, and the maximum noise level of vehicles using said roadway. The fact such restrictions on the use of the roadways shall be more restrictive than the laws of a state or local government shall not make such restrictions unreasonable;

e. the right of the Association, in accordance with its By-Laws, to adopt and publish rules and regulations governing the use of the Common Areas, including, without limitation the swimming pool and swimming pool area, and the conduct of Members, their lessees or guests, and to establish penalties for the infraction of such rules and regulations;

f. the right of the Declarant, or the Association in accordance with its By-Laws, to dedicate or transfer to any public or private utility company, utility or drainage easements on, over or under any part of the Common Areas;

g. the right of the Association, in accordance with its By-Laws, to give or sell all or any part of the Common Areas including a leasehold interest, to any public agency, public authority, public service district, utility company or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift of sale or determination as to the purposes or as to the conditions thereof shall be effective unless such gift, sale or determination as to the purposes or as to the conditions shall be authorized by the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the votes cast at a duly constituted meeting of the Association. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the Managing Member or Vice Managing Member, and Secretary of the Association, and such certificate shall be annexed to any instrument or dedication or transfer affecting the Common Areas prior to the recording thereof. Such certificates shall be conclusive evidence of Authorization by the Members;

h. restrictions and limitations affecting later phases, if any, as set forth in this Declaration as it may be later amended by the Declarant; and

i. the rights that others may have to use Common Areas.

ARTICLE VIII
COVENANTS FOR ASSESSMENTS

8.01 Creation of the Lien and Personal Obligations for Assessments. Each Owner, by acceptance of a deed to a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agent designated by the Association to hold such monies), in the manner set forth herein:

- a. Annual Assessment (or Regular Assessment) or charges levied each year by the Association;
- b. Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided; and,
- c. Individual Assessments which may be levied against any Lot and the Lot Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of these Protective Covenants. Notwithstanding the foregoing, Lots owned by Declarant, shall not be subject to any Assessment by the Association, be it Annual, Special or Individual Assessments.

The Annual (Regular), Special, and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided and/or as provided by laws of the State of Alabama. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person(s), jointly and severally, who was or were the Owner(s) of such Lot and improvements thereon at the time when the Assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the Assessments, interest, penalties, fines and costs of collection.

8.02 Purpose of the Assessments. Notwithstanding any provision contained herein, until such time that the Declarant has in fact conveyed to the Association all of the Common Areas, all assessments of any nature provided for herein shall be due and payable to the Declarant, its successors and/or assigns, and all rights hereby established on behalf of the Association, including all remedies in the event of default by a Lot Owner, shall accrue to the benefit of the Declarant. The assessments levied by the Association or the Declarant shall be used exclusively for the operation of the Association and the management, repair, care and maintenance of the Common Areas and any improvements constructed thereon, which are for the benefit of all Lot Owners, and to provide all services which the Declarant or Association is authorized to provide hereunder; including, but not limited to, payment of taxes and insurance, costs of labor and equipment, erosion control devices, materials, management, bookkeeping and Lot Owner information services, repayment of loans and such other action as is necessary to carry out its authorized functions. Such assessments shall not be used to maintain or repair any property not belonging to the Association. At the Board's discretion, the Association may establish and maintain a reserve fund with such sums as the Board

determines in good faith are necessary and adequate for the periodic maintenance, repair, and replacement of improvements to the Common Area (the "Reserve Account").

Notwithstanding the foregoing, the following property, individuals, partnerships, corporations or other legal entities subject to these Protective Covenants, shall be exempted from assessments, charges and liens created herein: (i) the Declarant and any Lots(s) owned by the Declarant; (ii) the Grantee in conveyances made for the purpose of granting utility and drainage easements; (iii) the Common Areas; and (iv) property which is used in the maintenance and service of facilities within Common Areas, or by non-profit, governmental or charitable institutions.

8.03 Annual (Regular) Assessments. The Association shall levy Annual (Regular) Assessments in such amounts as are necessary for the maintenance, repair and replacement (as applicable) of any improvements located on the Common Area, insurance, any Reserve Account, and any and all other expenses of the Association (whether pertaining to the ownership, operation, use, maintenance, and/or repair of the Common Areas or otherwise), each Owner for each Lot owned shall pay a portion of the total amount necessary for such purposes to the Association. Basic cable, internet and phone service (collectively "bulk services") shall be exclusively provided by the Association, which shall be bulk-billed and included in the annual budget, thereby a part of the Annual Assessment. Unless otherwise provided by the Board of Directors or Declarant, Annual (Regular) Assessments shall be due and payable on a pro rata basis with one-eighth (1/8th) of the Annual Assessment which shall commence annually, on a date as determined by the Board of Directors or Declarant, and shall be payable in either annual, quarterly or monthly installments, as also determined by the Board of Directors or Declarant. The amount of the Annual (Regular) Assessment assessed against each Lot Owner as provided herein, shall be assessed in its entirety by the Association or Declarant as a lien at the beginning of each Annual Assessment period.

8.04 Special Assessments. In addition to the Annual (Regular) Assessments authorized above, the Board of Directors may levy against the Lot Owners, at any time, one or more Special Assessments 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 Areas, any entrance wall or signage, including fixtures and personal property related thereto, any additions to the Common Areas, facilities and equipment required to offer the services authorized herein, or, for the repayment of any loan made to the Association to enable it to perform the duties and functions authorized herein. The proportion of each Special Assessment to be paid by the Lot Owners shall be equal to their respective proportions of the Annual (Regular) Assessments made for the year during which such Special Assessment(s) are levied.

8.05 Date of Commencement of Annual Assessments. Notwithstanding anything in the foregoing to the contrary, the Annual (Regular) Assessment provided for herein shall commence on the date on which a deed to a Lot is delivered to an individual other than the Declarant. The Board of Directors or Declarant shall fix the amount of the Annual (Regular) 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 Lot Owner subject thereto. The Board of Directors shall determine if Annual and Special Assessments will be

collected annually, quarterly, monthly, or at some other interval and shall set due dates for Assessment payments. If the Board of Directors or Declarant does not fix an Annual Assessment in advance of any Annual Assessment period, the Annual Assessment for the period will be the same as for the prior period until the Board or Declarant fixes a new Annual Assessment amount.

8.06 Individual Assessments. Any expenses incurred by the Association or Declarant in enforcing any of the provisions of these Protective Covenants and/or A.R.C. Guidelines against any specific Lot Owner or Occupant or Occupant of Lot Owner shall be deemed an Individual Assessment or fine against such Lot Owner and the respective Lot owned by such Owner. Such Individual Assessment or fine shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same. Said Individual Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall be a continuing lien upon each Lot beginning on the date assessed, and which lien may be enforced in the manner hereinafter provided and/or as provided by laws of the State of Alabama

8.07 Effect of Nonpayment of Assessments; Liens; and Remedies of the Association. Any Assessments (whether Annual (Regular), Special or Individual) which are not paid on or before the due date of the same shall bear interest thereon at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama. In addition to interest, any Assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

a. The Association or Declarant may commence and maintain a suit at law against any Lot Owner for a personal money judgment, or seek injunctive relief, to enforce all such charges and obligations for Assessments or fines and other amounts including the late charge and interest specified above as well as all attorneys' fees, court costs and all other costs and expenses paid or incurred by the Association in connection therewith; and/or,

b. Furthermore, the Association may enforce the lien created in these Protective Covenants, against each Lot in the amount of all Assessments or fines outstanding against such Lot (the "Assessment Lien"). Interest, costs, and reasonable attorneys' fees of any action brought by the Association in respect of an Assessment and/or the Assessment Lien applicable to such Assessment shall be added to the amount of such Assessment and shall be secured by the Assessment Lien. Each such Owner, by his acceptance of a deed to or other conveyance of an interest in 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 Assessment as a debt and to foreclose the Assessment 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 with a power of sale on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the Assessment Lien. The Assessment Lien may be foreclosed by the Association in the same manner as real estate mortgages with a power of sale in the State of Alabama. The Association shall have the power to bid for an interest foreclosed under an Assessment Lien at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments by non-use of the Common Area or abandonment of said Owner's Lot. The Board of Directors may also suspend the use rights of any Owner of the Common Area in the event of a failure to pay any Assessment within thirty (30) days of the applicable due date. Furthermore, and without limiting any rights of the Association or Declarant hereunder, the Association shall have the right to transfer, assign and convey to any third party any debt associated with any unpaid Assessments and the Assessment Lien that is associated therewith.

8.08 Lien Rights under the HOA Act. The lien rights granted and reserved to the Association in accordance with Article VIII herein shall be in addition to, and shall not be in lieu of, the lien rights that are granted to the Association by §35-20-12, CODE OF ALABAMA 1975, more commonly referred to the Alabama Homeowners' Association Act (the "HOA Act"). The Association or Declarant shall have the right, exercisable by the Board of Directors in its sole and absolute discretion, to elect from time to time whether to establish, record, enforce, foreclose or otherwise treat a lien against an Owner's Lot as being (a) an Assessment Lien granted and reserved in accordance with these Protective Covenants or (b) a lien granted to the Association by Section 35-20-12 of the HOA Act. Any lien granted to the Association by Section 35-20-12 of the HOA Act and sought to be enforced by the Association shall be enforced in accordance with the terms and conditions of the HOA Act.

8.09 Election of Remedies. Institution of a suit at law to collect payment of any delinquent Assessments shall not be deemed to be an election by the Association or Declarant which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it, nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the Assessment Lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

8.10 Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any first mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage on said Lot or any proceeding in lieu thereof, shall extinguish the Assessment Lien 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 Assessment Lien associated therewith or relieve the prior Owner from any personal liability for any unpaid Assessments occurring prior to said sale or transfer.

8.11 Estoppel Letter. The Association shall, within thirty (30) days after receiving a written

request therefore and for a reasonable charge, as established by the Board of Directors or Declarant, certify to the amount of any unpaid Assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of Assessments due with respect to a Lot shall be binding upon the Association.

ARTICLE IX
FUNCTIONS OF ASSOCIATION

9.01 *Ownership and Maintenance of Common Areas.* The Association shall be authorized to own and/or operate and maintain Common Areas and equipment, furnishings, and improvements devoted thereto. Land included in "Common Areas" shall be used in the manner set forth by the Declarant and/or the Association.

9.02 *Services.* The Association shall be authorized, but not required, to provide the following services which shall not limit or affect any services provided by any municipality, county, state or federal agency:

- a. employment of a manager, an independent contractor, or such other employees as are necessary to perform services for the Association;
- b. cleanup and maintenance of all roadways, road medians and Common Areas, including the pool area, within the Subdivision and also public properties which are located within or in a reasonable proximity to the Subdivision such that their deterioration would affect the appearance of the Subdivision as a whole;
- c. landscaping and landscape maintenance of roadways, sidewalks, walking and bicycle paths, and any Common Areas;
- d. lighting of roadways, sidewalks and paths through the Property located in any subsequent phase;
- e. administrative services, including but not limited to legal, accounting and financial services; and communication services informing Members of activities, notice of meetings, referenda and other matters incident to the above listed services;
- f. liability and hazard insurance covering improvements and activities on the Common Areas;
- g. water, sewage, drainage and any necessary utility services not provided by a public body, private utility or the Declarant;
- h. maintenance of water pollution and shoreline erosion abatement measures;

- i. basic cable, internet and phone service (collectively “bulk services”);
- j. exercise of any rights reserved by the Declarant and transferred by the Declarant to the Association including, but not limited to, all rights and functions of the Declarant under the general covenants;
- k. taking of any and all actions necessary in the discretion of the Board of Directors to enforce this Declaration and all other covenants and restrictions authorized by the Board of Directors.

9.03 Reduction of Services. The Board of Directors of the Association shall periodically define and list a minimum level of services of the sort described herein to be furnished by the Association in any given year.

9.04 Obligations of the Association. The Association shall not be obligated to carry out or offer any of the functions or services specified by the provisions of this Article. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association or set forth in the By-Laws, taking into consideration the funds available to the Association and the needs of the Members of the Association.

9.05 Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association to perform its authorized functions. The Declarant may make loans to the Association, subject to approval by the Declarant of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the limits of the maximum regular annual assessments at any time there are any outstanding amounts owing the Declarant from loans made by the Declarant to the Association.

9.06 Transfer of Authority. This Declaration provides the Declarant with various controls and rights, to be exercised (if at all) at the discretion of the Declarant. This Declaration further provides that any of the Declarant's rights and powers set forth herein may be specifically assigned to the Association. In the event that such powers are assigned of record to the Association, the Association shall promptly provide for appropriate procedures to perform its obligations pursuant to the powers transferred to it.

ARTICLE X AMENDMENT

10.01 Plans. The Declarant shall have the right to amend or alter the Subdivision plans so long as it has control of the Association.

10.02 Declaration by the Declarant. The Declarant shall have the right to alter, amend or repeal

these Protective Covenants so long as it has control of the Association.

10.03 Declaration by the Association. Once the Declarant has relinquished control of the Association, the Association shall have the right to alter, amend or repeal this Declaration by the affirmative vote or agreement of all Members to which at least fifty percent (50%) of the votes in the Association are allocated. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

10.04 Prohibited Amendments. No amendment may be adopted that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted to the Declarant without the consent of the Declarant. These Protective Covenants shall not be amended during the time the Declarant is in control of the Association, except by the Declarant in its sole discretion.

ARTICLE XI **MISCELLANEOUS**

11.01 Covenants, Conditions and Restrictions. The Subdivision Documents shall to the extent applicable, and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to be covenants running with the Subdivision, the Property, the Lots and with every part thereof and interest therein; and all of the provisions of the Subdivision Documents shall be binding on and inure to the benefit of any Lot Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Lot Owners shall be subject to and shall comply with the provisions of the Subdivision Documents and any rules and regulations promulgated thereunder.

11.02 Severability. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this Declaration, the Articles, the By-Laws, any rules and regulations of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portions thereof.

11.03 Notice. The following provisions shall govern the construction of the Subdivision Documents, except as may be specifically provided to the contrary herein: All notices required or desired under the Subdivision Documents to be sent to the Association shall be delivered in person or sent by first-class mail to the address of the Association, which may be designated from time to time by notice in writing to all Lot Owners. All notices to any Lot Owner shall be delivered in person or sent by first-class mail to the address of such Lot Owner at the Subdivision, or to such other address as he may have designated from time to time, in a writing to the Association. Proof of such mailing or personal delivery to a Lot Owner by the Association may be provided by the affidavit of the Person or by a post office certificate of mailing. All notices to the Association by a Lot Owner shall be deemed to have been given when delivered to the

addressee in person or by a post office certificate of mailing of the date of the mailing.

11.04 Governing Law. Any dispute or litigation arising between any of the parties concerning matters, rights, or duties affected or determined by the Subdivision Documents, shall be governed by the laws of the State of Alabama.

11.05 Waiver. No provisions contained in the Subdivision Documents or any rules and regulations promulgated by the Board shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

11.06 Ratification. Each Lot Owner, by reason of having acquired ownership of his Lot, whether by purchase, gift, operation of law or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Subdivision Documents, and any Rules and Regulations promulgated thereunder, are fair and reasonable in all material respects.

11.07 Captions. The captions used in the Subdivision Documents are inserted solely as a matter of convenience and reference and shall not be relied on and/or used in construing the effect or meaning of any of the text of the Subdivision Documents.

11.08 Enforcement. In the event any Lot Owner fails to comply with any provision contained in this Declaration, the By-Laws or the Articles, the Association, through its Board of Directors, shall have the right to enforce such provision by any means available at law or in equity, including, without limitation, the right to impose a fine against the Owner(s) and Lot(s) owned by the non-complying party. If a fine is imposed, such fine may be collected in the same manner provided for the collection of Assessments set forth in this Declaration and in the By-Laws.

11.09 Costs and Attorney's Fees. In any proceeding arising because of an alleged default under any of the provisions of the Subdivision Documents by a Lot Owner or any failure to comply with any of the provisions of the Subdivision Documents by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court or Arbitrator.

11.10 Conflicting Provisions. In the event of any conflict between the provisions of this Declaration, the By-Laws or the Articles, this Declaration shall govern.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed on this the 3rd day of May, 2019.

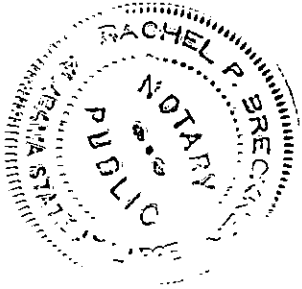
**DECLARANT
West Side, LLC, an Alabama
Limited Liability Company**

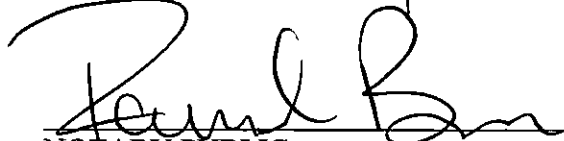
By: 
EDWIN J. SPENCE, Its Managing Member

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that EDWIN J. SPENCE, whose name as Managing Member of West Side, LLC, 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, he, in such capacity, is duly authorized, and has executed the same voluntarily for and as the act of the company on the day the same bears date.

GIVEN under my hand and seal this the 3rd day of May, 2019.




NOTARY PUBLIC
My Commission Expires: 11/20/22

*This Instrument Prepared By:
Daniel H. Craven, Esq.
Daniel H. Craven, P.C.
P.O. Drawer 4489
Gulf Shores, AL 36547
Voice: 251-968-8170
Fax: 251-968-4837
Email: danielhcraven@gmail.com*