

This instrument prepared by and should be returned to:

SB Dev. Corp.  
3545 Market Place  
Hoover, Alabama 35226

County Division Code: AL040  
Inst. # 2016108854 Pages: 1 of 45  
I certify this instrument filed on  
10/18/2016 10:00 AM Doc: REST  
Alan L. King, Judge of Probate  
Jefferson County, AL. Rec: \$148.00

Clerk: PEEPLESC

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**BROCK POINT RESIDENTIAL  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Brock Point Residential Declaration of Covenants, Conditions and Restrictions is made this 29<sup>th</sup> day of SEPTEMBER, 2016, by **SB DEV. CORP.**, an Alabama corporation.

**RECITALS**

WHEREAS, Developer, as hereinafter defined, is the fee simple owner of the Property, as hereinafter described; and

WHEREAS, Developer desires that the Property be developed improved, leased, sold and conveyed for single family residential uses, subject to certain easements, covenants, conditions, restrictions, requirements, charges, liens and obligations, in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration, and maintenance of the Property and such additions thereto as may hereafter be made to this Declaration; and

WHEREAS, Developer has created or will create Brock Point Residential Association, Inc., an Alabama nonprofit corporation, to which will be delegated the responsibility for the management and regulation of the Lake and Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against any of the Property that is now or may hereafter be included in the Subdivision, as hereinafter defined, and of levying assessments against the owners of Lots within the Subdivision to enable the Association to perform such obligations.

NOW, THEREFORE, In order to enhance and protect the value, amenities, attractiveness and desirability of the Lots and the Common Areas within the Property, and in furtherance of a

general plan for the development, protection, maintenance, improvement, and sale of the Property, Developer hereby declares that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied, and used subject to the following covenants, restrictions, easements, rights, liens, and charges, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any portion of the Property and any Additional Property, as hereinafter defined, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

## **Article I DEFINITIONS**

**Section 1.1** As used in this Declaration, the following terms shall have the following meanings, which meanings shall be applicable to both the singular and plural forms and tenses of such terms.

**Section 1.2 Additional Property.** The term “Additional Property” shall mean and refer to any real property and any improvements situated thereon lying adjacent to or in proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

**Section 1.3 Affiliate.** The term “Affiliate” shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term “control” (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

**Section 1.4 ARC.** The term “ARC” shall mean the Architectural Review Committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

**Section 1.5 Architectural Standards.** The term “Architectural Standards” shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article IV below for the purpose of establishing policies, guidelines and minimum requirements with regard to the construction, location, landscaping, design, architectural style and elements, and any other matters relating to the construction of Improvements on the Lots. In addition, the term “Architectural Standards” shall include, without limitation, any additional construction and development guidelines adopted from time to time by the ARC or the Board.

**Section 1.6 Assessment.** The term “Assessment” shall mean any and all assessments to be levied against the Owners and Lots pursuant to the authority vested in the Association, and such term shall include the Annual Assessments, Special Assessments, and Individual Assessments, all as described in Article VI hereof.

**Section 1.7 Association.** The term “Association” shall mean Brock Point Residential Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

**Section 1.8 Board.** The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as provided in the Certificate of Formation and Bylaws.

**Section 1.9 Building.** The term “Building” shall mean and refer to any building or other structure of any nature constructed, situated, erected, maintained, placed, or installed on any of the Lots.

**Section 1.10 Buffer Area.** The term “Buffer Area” shall mean, as to each Lake Lot, a 30-foot, natural, undisturbed buffer area along the rear of each Lake Lot measured from the high water mark of the Lake abutting such Lake Lot, which area is subject to the terms and provisions of Section 3.7 below.

**Section 1.11 Bylaws.** The term “Bylaws” shall mean the Bylaws of the Association, as such by-laws may be amended from time to time.

**Section 1.12 Certificate of Formation.** The term “Certificate of Formation” shall mean the Certificate of Formation of the Association, as said Certificate may be amended from time to time.

**Section 1.13 Common Areas.** The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners and which shall include (regardless of whether legal title to the same has been conveyed to the Association) (a) all permanent signage for the Property situated on or within portions of the Property identified on any Subdivision Record Map as Common Areas or within rights-of-way of any public roads within the Property (but specifically excluding any signage located within the boundaries of any Lot unless an easement has been granted to (and accepted by) Developer or the Association for signage on such Lot), including, without limitation, informational, traffic, and street signage; (b) all street lights and landscaping lighting situated within the right-of-way of any streets within any portion of the Property (to the extent the same are not being maintained by any governmental authority); (c) all sidewalks, paths and on-street parking spaces, if any, situated within any portion of the Property (other than such areas located within the boundaries of any Lot or which are maintained by any governmental authority); (d) all gates, walls, fences, Improvements, landscaping, and landscaped areas situated within the rights-of-way of any public roadways within the Property, including all medians within any public roadways within the Property (other than any such areas located within the boundaries of any Lot or which are owned or maintained by any governmental authority); (e) the Lake, all water features, storm drains and sewers, drainage, or watershed protection or retention

ponds, basins or other areas and facilities located within the Property (other than such areas located within the boundaries of any Lot or which are maintained by any governmental authority); (f) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery, and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers or any governmental authorities), including sanitary sewer pumping stations; (g) any and all other areas designated on any Subdivision Record Map as a “Common Area” or “Common Areas”; (h) any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

**Section 1.14 Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Article VII below, together with all amounts assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

**Section 1.15 Declaration.** The term “Declaration” shall mean and refer to this Brock Point Residential Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

**Section 1.16 Developer.** The term “Developer” shall mean SB Dev. Corp., an Alabama corporation and its successors and assigns.

**Section 1.17 Improvement.** The term “Improvement”, with an initial capital letter, shall mean and refer to any Building, structure, or device constructed, erected, or placed upon any Lot which in any way affects, alters or causes a change in the exterior appearance of any Lot or any Building situated thereon. Improvements shall include, by way of illustration and not limitation, any fence, wall, sign, lighting system, site paving, grading, screen enclosure, utility line, statuary, signs, flags, flag poles, water fountains, yard sets, tree houses, swing sets, decorative building, landscaping, landscape device, or personal property installed, constructed, attached, placed or maintained on the exterior of any Lot or Building.

**Section 1.18 Lake.** The term “Lake” shall mean and refer to the approximately 15 acre, more or less, lake containing an impounded standing body of open water surrounded by land and serving as a drainage basin for the Property. The term Lake shall include, but not be limited to, any aquatic fish and wildlife, biological species and ecological systems contained therein , as well as all of the the real property situated beneath the aforesaid lake, any islands within or on the aforesaid lake, and the dam and spillway for the same.

**Section 1.19 Lot.** The term “Lot” shall mean and refer to any portion of the Property upon which it is intended that a Building be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each Lot indicated thereon (other than any Lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration.

**Section 1.20 Lake Lot.** The term “Lake Lot” shall mean and refer to any Lot within the Property which is contiguous to the Lake.

**Section 1.21 Member.** The term “Member” shall mean any Person who is a member of the Association. Every Owner shall be a Member.

**Section 1.22 Mortgage.** The term “Mortgage” shall mean any mortgage or other security device encumbering a Lot or Building or any interest therein and which shall have been duly and properly recorded in the Probate Office.

**Section 1.23 Mortgagee.** The term “Mortgagee” shall mean the holder of any Mortgage as shown in the records kept and maintained in the Probate Office.

**Section 1.24 Occupant.** The term “Occupant” shall mean and include any Owner, the family members, guests, tenants, agents, employees, or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees, and any other person who occupies or uses any Building or structure on any Lot. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot.

**Section 1.25 Owner.** The term “Owner” shall mean and refer to the record owner as shown in the records kept and maintained in the Probate Office, including Developer, of fee simple title to any Lot or Building, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee of any Lot upon which a Building has been constructed, unless and until such Mortgagee has foreclosed its Mortgage and purchased such Lot or Building at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser, or vendor who has an interest in any Lot or Building solely by virtue of a lease, contract, installment contract, or other agreement.

**Section 1.26 Person.** The term “Person” with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization.

**Section 1.27 Probate Office.** The term “Probate Office” shall mean and refer, collectively, to the Office of the Judge of Probate of Shelby County, Alabama, and any successors thereto which serves as the official public registry for the recording of real estate documents in Shelby County, Alabama.

**Section 1.28 Property.** The term “Property” shall mean and refer to that certain real property situated in Shelby County, Alabama, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Property shall also include any Additional Property, if any, made subject to this Declaration pursuant to Section 2.2 hereof. The Property is also sometimes referred to herein as the “Brock Point Residential Property.”

**Section 1.29 Purchaser.** The term “Purchaser” shall mean the first Person (other than any Affiliate of Developer) who acquires a Lot from Developer.

**Section 1.30 Subdivision.** The term “Subdivision” shall mean all phases of the Property as reflected on any Subdivision Record Map, collectively, and any additions, amendments, or supplements thereof, which are subject to the terms and provisions of this Declaration.

**Section 1.31 Subdivision Record Map.** The term “Subdivision Record Map” shall mean any subdivision maps or plats reflecting any portion of the Property which Developer may record in the Probate Office, including any additions, amendments, or supplements thereto that include any portion of the Property.

**Section 1.32 Turnover Date.** The term “Turnover Date” shall mean the first to occur of: (i) the date on which Developer ceases to own any portion of the Property; or (ii) the date on which Developer elects, in its sole and absolute discretion, to terminate its management rights and responsibilities pursuant to Section 11.1 hereof.

## **Article II PROPERTY SUBJECT TO RESTRICTIONS**

**Section 2.1 General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof and each Lot or Building shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer, Developer, and all Owners and Occupants of such Property and any Lot or Building. This Declaration shall not apply to any other real property owned by Developer unless the same is specifically subjected to this Declaration by written instrument in accordance with Section 2.2 hereof.

**Section 2.2 Additional Property.** Developer reserves the right, in its sole and absolute discretion and without the consent of the Association or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Building, at any time and from time to time during the term of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by the Association or any Member thereof or by any Owner, Occupant or Mortgagee of any Lot or Building) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such

Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions, or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer, which consent may be withheld for any or no reason, and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, assigns, transfers, and conveys to such transferee or purchaser in writing the rights reserved herein by express reference to Section 2.2 of this Declaration.

**Section 2.3 Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, Developer may, by deed, contract, or other instrument filed for record in the manner specified in Section 2.2 above, alter, amend, or modify the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Building, and to the extent necessary, each Purchaser of a Lot, and all Persons acquiring an interest therein, by acceptance of the instrument conveying such interest, does hereby give, grant, and appoint Developer the power coupled with an interest as its agent to execute any and all instruments reasonably necessary to make such alterations, amendments or modifications.

**Section 2.4 Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot or Building within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Building; (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot or Building within the Property; and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

**Section 2.5 Additional Covenants.** Developer may, in its sole and absolute discretion, create additional restrictive covenants, in addition to the terms and provisions of this Declaration, for any portions of the Property. Furthermore, other owner associations may be created for portions of the Property subject to any such additional covenants. Only those portions of the Property which are specifically subjected to and encumbered by any such additional restrictive covenants shall be bound by the terms and provisions thereof or shall be allowed to have any membership interest in any such additional owners' associations which may be established from time to time by Developer. In the event of any conflict or ambiguity between the terms and provisions of any such additional restriction covenants and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall at all times control.

**Section 2.6 Development of Property.** At any time prior to the occurrence of the Turnover Date and at any time thereafter for so long as Developer owns any portion of the Property, Developer shall have the right to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installing and maintaining any Improvements in or to the Common Areas; (b) changing the location of the

boundaries of any Lots owned by Developer or the boundaries of any of the Common Areas; (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer; (d) installing and maintaining any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas; (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks, or other uses; and (f) removing or exempting any portion of the Property and any Lots or Common Areas from the terms and provisions of this Declaration. The exercise by Developer of any of the rights reserved unto Developer in this Section 2.6 may be exercised by Developer without any requirement that the consent or approval of the Association or any Member thereof or any Owners or Mortgagees be obtained, and to the extent necessary, each Purchaser of a Lot, and all Persons acquiring an interest therein, by acceptance of the instrument conveying such interest, does hereby irrevocably give, grant, and appoint Developer the power coupled with an interest as its agent to execute any and all instruments reasonably necessary to make such improvements and changes. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer and its respective Affiliates may now or in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.2 above.

**Section 2.7 Subdivision.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, any Subdivision Record Map of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Buildings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such Subdivision Record Map or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such Subdivision Record Map were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.7 may be exercised by Developer without any requirement that the consent or approval of the Association or any Member thereof or any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Common Areas and other portions of the Property owned by Developer, and (b) amend from time to time and at any time Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property, and to the extent necessary, each Purchaser of a Lot, and all Persons acquiring an interest therein, by acceptance of the instrument conveying such interest, does hereby irrevocably give, grant, and appoint Developer the power coupled with an interest as its agent to execute any and all instruments reasonably necessary to record, modify, amend, revise and otherwise add to, at any time and from time to time, any Subdivision Record Map.



**Article III**  
**EASEMENTS**

**Section 3.1 Grant of Nonexclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Board with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants and parties having a right or interest therein, and their respective successors or assigns. Subject to the remaining terms of this Declaration, the easements and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, nonexclusive, appurtenant to, and shall pass and run with title to each Lot.

**Section 3.2 Reservation and Grant of General Access and Maintenance Easement.** Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the ARC, the Association and their respective agents, employees, representatives, invitees, successors, and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through, and upon each Lot for the purposes of (a) providing ingress to and egress from each Lot for (i) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration, and (ii) the performance of the respective duties of Developer, the ARC, and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC, or the Association pursuant to this Declaration. Upon completion and occupancy of any Building, the foregoing easement shall not be deemed to allow or grant any rights to Developer, the ARC, or the Association to enter into any Buildings except (a) in the case of emergencies, which shall be utilized only during normal business hours and whenever practicable only upon advance notice to the Owner or Occupant of such Lot directly affected thereby; and (b) mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC, or the Association to perform any of the foregoing actions.

**Section 3.3 Reservation and Grant of Easements With Respect to Common Areas.**

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

(b) Developer does hereby establish and reserve for itself, its successors and assigns, and does hereby grant to the Association, its successors and assigns, the permanent right to change, modify, and realign the boundaries of any of the Common Areas, if any, situated on a Lot. Developer does further establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its successors and assigns (i) a permanent and perpetual non-exclusive easement for access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all Improvements thereon, if any, situated on a Lot for such purposes as Developer or the Association deems appropriate, (ii) the right to grant to third parties rights to use the Common Areas if any, situated on a Lot, and (iii) the right to grant to third parties, other real property and the owners of such real property rights to use any of the Common Areas. Developer reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer may, in its sole discretion, determine.

**Section 3.4 Reservation and Grant of Easement for Utilities.** Developer does hereby establish and reserve for itself, its successors and assigns, and does hereby grant to the Association, its successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through, and upon all portions of the Property, including all Common Areas and all Lots, which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining, and operating master television, telecommunication, or cable systems, security and similar systems, and all utilities necessary or convenient for the use of any portion of the Property or other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property, a Lot, or any other real property. The easements established, reserved and granted herein shall include the right of Developer and the Association, their respective successors and assigns, to cut and remove trees, undergrowth, shrubbery or other vegetation, to grade, excavate, or fill, and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.4 to the contrary, (i) the utilization of any of the easements and rights established, reserved, and granted pursuant to this Section 3.4 shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot, (ii) shall not be deemed to allow the exercise of any easement rights inside any Buildings situated on any Lot, (iii) Developer and the Association shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved, established, or granted pursuant to this Section 3.4 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established, reserved, and granted herein, and (iv) the establishment, reservation, and grant of easements pursuant to this Section 3.4 shall not create any obligation, responsibility, or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.4.

**Section 3.5 Reservation and Grant of Easements for Sidewalks and Signs.**

(a) Developer does hereby establish and reserve for itself, its successors and assigns, and does hereby grant to the Association, its successors and assigns, a permanent and perpetual easement appurtenant over, across, through, and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot and any roadway which is directly adjacent to and abuts such Lot for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, traffic directional signs, and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

(b) Developer does hereby establish and reserve for itself, its successors and assigns, and does hereby grant to the Association, its successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Lot which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating, and replacing a perimeter wall, fence, mound, or berm and landscaping around the perimeter boundary of the Property; provided, however, that (i) neither Developer nor the Association shall have any obligation to construct any such perimeter wall, fence, mound or berm or any landscaping, and (ii) to the extent either Developer or the Association desires to exercise the easement rights reserved in this Section 3.5, Developer or the Association shall have the further right, at any time and from time to time, to alter, change, modify, terminate, and remove any improvements constructed by Developer or the Association on any portion of the Property pursuant to this Section 3.5.

**Section 3.6 Reservation and Grant of Environmental Easement.** Developer does hereby establish and reserve for itself, its successors and assigns, and does hereby grant to the Association, its agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through, and upon all Lots and all unimproved portions of any Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time affecting or otherwise promulgated or instituted by any governmental authorities or the Board. The easement and right established, reserved, and granted herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any governmental authorities, including, without limitation, any watershed, soil erosion, storm water discharge, or environmental rules, regulations, or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved or granted in this Section 3.6 shall not unreasonably interfere with the use or occupancy of any Building.

**Section 3.7 Establishment of Buffer Area with Respect to Lake Lots.**

(a) Subject to the provisions of Sections 3.7(b) and 3.7(c) below, Developer does hereby establish a permanent and perpetual natural, undisturbed buffer area, free from any

Improvements of any nature, within the Buffer Area of each Lake Lot. No Owner or Occupant or any of their respective contractors, licensees or invitees shall, without the prior written consent of the ARC, (i) clear, grade, excavate or fill any portion of the Buffer Area on such Owner's Lake Lot, (ii) cut, remove, kill, damage or destroy any trees or other vegetation within the Buffer Area on such Owner's Lake Lot or (iii) install, construct or place any Improvements (including, without limitation, fences (including underground fencing) or walls) or any personal property of any nature or kind within the Buffer Area on such Owner's Lake Lot other than a walkway or path, a dock and a personal watercraft, to the extent any of the foregoing are approved in writing by the ARC. The ARC shall have the right to adopt and change from time to time regulations regarding the maintenance of all Buffer Areas, which regulations shall be provided to all Owners of Lake Lots and shall be binding upon all Owners of Lake Lots.

(b) Developer does further establish and reserve for itself and does hereby grant to the Association, the ARC and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon the Buffer Area created on each Lake Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash therefrom so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that the reservation and grant of the foregoing easement rights with respect to the Buffer Area shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

(c) Notwithstanding anything provided in this Section 3.7 to the contrary, to the extent any Additional Property is subsequently added to the terms and provisions of this Declaration which, at the time this Declaration is amended to add such Additional Property, has existing Buildings or other Improvements which lie within the Buffer Area on any Lake Lots comprising any portion of such Additional Property, then any such existing Buildings or other Improvements (including repairs and replacements thereof) shall not be subject to the terms and provisions of Section 3.7(a) above.

#### **Article IV ARCHITECTURAL CONTROL**

**Section 4.1 Committee Composition.** The ARC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 4.2 below. The persons designated to serve on the ARC may, but shall not be required to be, Owners or Occupants. The regular term of office for each member of the ARC shall be three years, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 4.2 below.

**Section 4.2 ARC Membership.**

(a) DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AT ALL TIMES PRIOR TO THE OCCURRENCE OF THE TURNOVER DATE TO APPOINT AND REMOVE ALL MEMBERS OF THE ARC. Any person appointed as a member of the ARC by Developer may be removed, with or without cause, at any time by

Developer. In the event of the death or resignation of a member of the ARC who has been appointed by Developer, then Developer shall appoint a substitute member of the ARC to fill such vacancy.

(b) Developer reserves the right, at any time prior to the Turnover Date, to elect, in a written notice given to the Association, to no longer retain the exclusive rights to appoint and remove members of the ARC as set forth in Section 4.2(a). Following the giving of such notice by Developer to the Association, the Board shall, at all times thereafter, have the right to appoint and remove all persons who serve on the ARC. Any person appointed as a member of the ARC by the Board may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC who has been appointed by the Board, the Board shall appoint a substitute member of the ARC to fill such vacancy. The terms and provisions of this Section 4.2(b) shall not be effective until such time as Developer elects, in its sole and absolute discretion, to relinquish the right to appoint and remove members of the ARC, which election must be evidenced by a written notice provided by Developer to the Association in accordance with the terms and provisions of Section 4.2(a) above.

**Section 4.3 Procedure and Meetings.** The ARC shall elect a chairman and him or her, or in his or her absence any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors, or attorneys in order to advise and assist the ARC in performing its functions set forth herein. All such costs and expenses incurred by the ARC in the review of any plans shall be paid by the Owner submitting such plans to the ARC for review and approval. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

**Section 4.4 Architectural Standards.** The ARC is hereby authorized to promulgate and amend and modify from time to time written Architectural Standards governing policies, guidelines, and minimum requirements with respect to the construction, location, landscaping, and design of all Buildings and any other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Building or other Improvements on a Lot are to be submitted to and approved by the ARC, and any other matters affecting the construction, repair, or maintenance of any Building or other Improvements on any Lot; provided, however, that any Architectural

Standards and any amendments and modifications thereto must be approved by (a) Developer, at all times that Developer has the right to appoint and remove the members of the ARC, or (b) the Board at all times that the Board has the right to appoint and remove the members of the ARC. The Architectural Standards and any and all amendments thereto adopted from time to time by the ARC (and approved by Developer or the Board, as provided above) shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

**Section 4.5 Approval of Plans and Specifications.**

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE BUILDINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT (OTHER THAN BY DEVELOPER), WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR ANY BUILDING SITUATED THEREON UNLESS PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 4.5 (b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY BUILDINGS OR IMPROVEMENTS SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION TO AN EXISTING BUILDING OR OTHER STRUCTURE ON A LOT BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE), UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 4.5(b) BELOW.

(b) The plans and specifications required under Section 4.5(a) shall be in such form and shall contain such information as may be reasonably required by the ARC, and shall include but not necessarily be limited to:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives, and walkways and their relation to the boundaries of any Lot;

(ii) A foundation plan, floor plan, landscape plan, and exterior elevations of the Buildings as they will actually appear after all back filling and landscaping is done from finished ground up;

(iii) A specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the ARC is unfamiliar;

(iv) The name and address of the Owner's contractor who will construct any Building or other Improvements on the Lot; and

(v) The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to such address as may be established by the ARC from time to time.

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other two (2) copies shall be returned to the Owner submitting the same marked "approved," "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within any Buildings situated on such Owner's Lot without the necessity or requirement that the approval or consent of the ARC be obtained so long as (i) such improvements and alterations do not affect the exterior appearance of such Building, and (ii) the gross square footage of heated and cooled space within such Building is not increased.

(d) The ARC may, in its sole discretion, establish a fee sufficient to compensate for the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors or attorneys retained in order to review such plans and specifications and monitor or otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner seeking approval of plans and specifications. The ARC reserves the right, in its sole and absolute discretion, to require each Owner or such Owner's contractor, to execute a soil erosion and storm water discharge indemnity in favor of the ARC, the Association, and Developer.

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

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

**Section 4.6 Landscaping Approval.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation, or fill of any nature shall be implemented or installed by any Owner (other than by Developer) on any Lot unless and until landscaping plans therefor have been approved by the ARC. Notwithstanding the foregoing, an Owner may periodically remove, change, plant, and replant annual flowers in beds on such Owner's Lot designated for annual flowers (as shown on the landscaping plans approved by the ARC).

**Section 4.7 Construction Without Approval.** If (a) any Improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot without ARC approval of the plans and specifications for the same, or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot are not being complied with, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 4.11 below.

**Section 4.8 Inspection.** The ARC and any agent, employee or representative thereof, may at any reasonable time, and from time to time, enter upon and inspect any Lot or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or other wrongful act by the ARC.

**Section 4.9 Subsurface Conditions.** The approval of plans and specifications by the ARC for any Building or other Improvements on a Lot shall not be construed in any respect as a representation or warranty by the ARC or Developer to the Owner submitting such plans, or to any successors or assigns of such Owner, that the surface or subsurface conditions of such Lot are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvements thereon. Each Owner, for such Owner and all Occupants of any Improvements situated on the Lot owned by such Owner, does hereby irrevocably and unconditionally waive and release Developer the ARC, the Association and each agent, employee, representative, shareholder, partner, officer, director, or the holder of any ownership or financial interest in any of the foregoing entities or committees, of and from any and all



damage, loss, action, cause of action, liability, cost, expense or prejudice suffered, claimed, paid or incurred by any Owner or Occupant of such Owner's Lot or any Buildings or other Improvements constructed thereon on account of the use of fill dirt or the possibility that underground mines, tunnels, sink holes and other subsurface conditions which may result in sinkholes or other types of ground subsidence exist on, upon or under any of the Lots.

**Section 4.10 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association, nor any agent, employee, representative, shareholder, partner, officer, director or the holder of any ownership or financial interest in any of the foregoing entities or committees shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, shareholder, partner, officer, director, or the holder of any ownership or financial interest in any of the foregoing entities or committees from, any and all damage, loss, action, cause of action, liability, cost, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed, or approved in accordance with the provisions of this Article IV, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article IV, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries or death of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees, of any such Owner or Occupant, or any damage to any Buildings, Improvements, or the personal property of any Owner, Occupant or the respective guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Buildings or Improvements or the plans and specifications therefor, or any past, present, or future soil or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels, and limestone formations on or under any Lot), and (vi) any other loss, claim, damage, liability, or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, or any Improvements situated thereon.

**Section 4.11 Enforcement and Remedies.** In the event any of the provisions of this Article IV are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective guests, invitees, agents, employees, or contractors of any Owner or Occupant, the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements, or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to remedy or extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article IV including, without limitation, attorneys' fees, court costs, costs, and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or

expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article IV, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 6.2 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 6.8 below and may be foreclosed as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 4.11 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity, or any other rights and remedies contained in this Declaration.

**Section 4.12 Compliance Certification.** The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Building or other Improvements to a Lot have been constructed in accordance with the provisions of this Declaration.

**Section 4.13 Limitation on Size of Structures.**

(a) No Building or other Improvements shall be erected, altered, placed or permitted to remain on any Lot other than a residential Building not to exceed two (2) stories in height above the exterior ground level, and a garage for the storage of not more than three passenger vehicles.

(b) No detached building other than the Building shall be constructed or permitted on any Lot unless approved by the ARC. No Building may be constructed within any easement area shown on any Subdivision Record Map and, except as authorized by the ARC pursuant to the provisions of Section 3.7 above, no Buildings or other Improvements shall be constructed or permitted within the Buffer Area on any Lake Lot.

(c) The minimum heated or cooled living floor area, exclusive of porches, garages, decks, patios, and carports, for each Building on any Lot shall be as follows:

(i) 2,200 square feet for a one story Building;

(ii) 3,000 square feet for one and one-half and two story Buildings.

(d) The minimum heated or cooled square footage requirements set forth in subsections (c) and (d) above may be modified by the ARC, subject to zoning requirements, and at the sole discretion of the ARC, following review of the final construction plans of a proposed residence to be built on a specific Lot.

(e) The maximum building height for Buildings shall be thirty-five (35) feet above the exterior ground level.

**Section 4.14 Exterior Finishes, Lighting and Roof Penetrations.** All exterior finishes on any building shall be brick, wood, stone, or masonry siding. Vertical exterior surfaces above the roofline of any Building may be finished with siding materials other than brick. All plumbing

and ventilation roof penetrations exposed above the roofline of any Building shall be painted a color that complements the roofing material and shall be located so as to minimize visibility from the part of any Building facing a street. Spot and flood lighting fixtures attached to homes shall be directed in such a manner so as to not direct light outside of the Lot boundaries.

**Section 4.15 Lot Maintenance.**

(a) Each Lot Owner shall prevent the any unclean, unsightly, or unkempt conditions of all Improvements and the grounds on his Lot and shall immediately correct any condition on the Lot that could, in the sole discretion of the ARC, decrease the aesthetic attractiveness of the specific area or of the Property as a whole.

(b) Unless specifically identified herein as being the sole responsibility of the Association, the maintenance and repair of each Lot and any Buildings or other Improvements situated on each Lot and all lawns, landscaping and grounds on or within a Lot shall be the responsibility of the Owner of such Lot. Subject to the terms and provisions of Section 3.7 above, the Owner of each Lake Lot shall be solely responsible for the maintenance of all Buffer Areas situated on such Owner's Lake Lot. All Buffer Areas situated on each Lake Lot shall be maintained in a vegetated state substantially in the same condition as existed on such Lake Lot at the time of initial occupancy of any Building constructed on such Lake Lot. Each Owner shall be responsible for maintaining his or her Lot and any Buildings or other Improvements situated thereon in a neat, clean and sanitary condition, both inside and outside of any Building or other Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Buildings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent owner or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot or Building without first obtaining the prior written approval of the same from the ARC.

(c) Each Lot shall be landscaped in accordance with plans and specifications approved by the ARC. All areas of any Lot which are not improved with the construction of a Building thereon (except those areas which are to be maintained as a Buffer Area as required by the terms of Section 3.7 above) shall at all times be maintained by the Owner thereof in a fully and well-kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 4.15(c) shall apply to all portions of a Lot up to the edge of the pavement of the roadway abutting such Lot and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Subject to the provisions of Section 3.7 above, grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Subject to the provisions of Section 3.7 above, trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Subject to the provisions of Section 3.7 above, dead vegetation, stumps, weeds, trash, refuse, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Subdivision. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on

any Lot nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas or any other portion of the Subdivision.

(d) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any Building or the landscaping, grounds or other Improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC.

(e) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement of the Common Areas is caused by either the negligence or willful acts of an Owner or Occupant, or their respective, invitees, licensees or contractors, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have seven (7) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such seven (7) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Article VI below. If, and to the extent that, the Association undertakes any action pursuant to this Section 4.15(e) on behalf of any Owner, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

## **Article V RESTRICTIONS**

**Section 5.1 Use Restrictions.** The Property shall be used for single-family residential purposes only, and no trade or business purposes shall be conducted on any Lot (other than home offices to be approved by the ARC and subject to any restrictions and limitations as the ARC may reasonably require and any sales offices or model homes constructed pursuant to Section 5.5 below). No building or structure other than one (1) Building (and a detached garage if approved by the ARC) shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners;

(b) display or discharge of firearms, or fireworks on the Common Areas; provided, however, that the display of lawful firearms on the Common Areas is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Areas to or from an Owner's Lot so long as the firearm is not carried in a threatening manner. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(c) raising, breeding, or keeping of any animals, livestock, reptiles, birds, fowl or poultry; provided that an Owner shall be permitted to keep not more than two dogs or cats as domestic pets on a single Lot and provided further that the ARC may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the ARC; and

(d) exploring, mining, boring, quarrying, drilling, or otherwise removing oil or other hydrocarbons, minerals, gravel, or natural gas.

Any Owner may request from the ARC at any time a determination of whether a prospective use of a Lot is permitted. A certificate of compliance signed by a member of the ARC shall be deemed to be conclusive that the use is permitted.

**Section 5.2 Storm Drains.** Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets, and other structures necessary for control of storm drainage and runoff for the Property. No Owner or Occupant or any of their respective licensees, invitees or contractors shall alter, modify, or in any way interfere with the functionality of these structures. Additionally, no Owner or Occupant or any of their respective licensees, invitees or contractors shall allow debris, grass clippings, fences, or any other items to impede or impair the function of any drainage structure and shall maintain the same if located on such Owner's Lot.

**Section 5.3 Lake.**

(a) The Owner of each Lot and the respective Occupants of such such Owner shall be permitted to use the Lake for canoeing, swimming, fishing, and other recreation purposes subject to the reasonable rules and regulations established by the Association from time to time. With respect to those Owners and Occupants of Lots which are not Lake Lots, access to the Lake shall be limited to those Common Areas designated by the Association from time to time and shall not be over, across or upon any of the Lake Lots. Motor powered watercrafts are prohibited on the Lake except that electric trolling motors may be used with the express written permission of the Association and in accordance with all rules and regulations of the Association.

(b) Subject to the provisions of Section 3.7(c) above, the Owner of each Lake Lot shall be permitted to build one (1) dock on that portion of such Owner's Lake Lot adjacent to the Lake, subject to approval of the plans, specifications, size and location of the same by the ARC. In no event shall any dock exceed eight feet in length and twelve feet in width and not more than four feet of the length of the dock may extend over (or into) the water of the Lake.

(c) Subject to the provisions of Section 3.7(c) above, no wharf, bulkhead or other structure or obstruction shall be built into or maintained upon any Lake Lot.

(d) No boat canal shall be constructed upon any Lot nor shall any facility or device be constructed or installed upon any Lot which shall alter in any way the course, boundaries or elevation of the Lake or which shall involve or result in the removal of water from the Lake.

(e) The Owner of each Lot shall obtain liability insurance in an amount not less than \$500,000 per occurrence for any damage to property or person caused by such Owner, or any Occupants of such Owner or any licensees, contractors, or invitees of such Owner on or around the Lake and shall provide proof of such insurance to the Association at least annually and upon request by the Association.

(f) The Owners and Occupants of any Lake Lot shall refrain from any actions or activities which would interfere with the use of the Lake by other Owners and their respective Occupants, as determined by the ARC, in its sole and absolute discretion. Such prohibited activities shall include, without limitation, burning materials where the smoke would interfere with the reasonable use and enjoyment of the Lake, maintenance of dogs or other pets which interfere with the use of the Lake due to loud barking or odors, playing of loud radios or musical instruments or allowing trash, rubbish, or other debris to be placed upon or remain on or within the Lake or any Lake Lot which is unsightly, as determined by the ARC, in its sole and absolute discretion.

**(g) The Owner of each Lot in the Subdivision, for himself or herself and any Occupant of such Lot and their respective heirs, executors, personal representatives, administrators, successors and assigns, by acceptance of a deed to such Lot and each Mortgagee, by acceptance of a Mortgage encumbering such lot, for themselves and their respective successors and assigns, do hereby:**

**(i) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of (1) any loss, damage or injury of personal property, including death, as a result of any entry onto the Lake by any such Owner, occupant, mortgagee or any of their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns; and (2) the rise and fall of the water level of the Lake, including without limitation, the flow of water onto and out of the Lake which could result in or cause damage, by flooding or otherwise, to any Improvements or any other personal property situated on any portion of any Lake or such Owner's Lot or which would result in or cause any Improvement situated on or adjacent to the Lake or on such Owner's Lot to be unusable due to low or high water levels; and**

**(ii) Acknowledge and agree that:**

**(1) The Lake constitutes part of the storm water detention areas for storm water drainage within the Property and shall be subject to increase or decrease in water levels based on the amount of storm water which drains into the Lake;**

**(2) Neither Developer, the ARC, the Association nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about the Lake;**

**(3) The use of the Lake by any Owner or Occupant or any of their respective family members, guests, invitees, heirs, executives, personal representatives, administrators, successors and assigns, shall be at the sole and absolute discretion, risk and expense of the person or entity using the Lake;**

**(4) Neither Developer, the ARC, the Association nor any of their respective agents, employees, representatives, successors or assigns, shall be obligated to take an action to maintain a specific water level for the Lake; and**

**(5) The Lake, as with any body of water, poses a potential threat of life threatening harm and each Owner or Occupant and their respective family members, guests and invitees shall exercise utmost care and safety precautions in, upon and around the Lake.**

**Section 5.4 Leasing.** Lease terms of any Building or Lot shall be for a period of not less than six months. Each Owner shall insure that any tenant of any Building or Lot is provided a copy of this Declaration and that any lease entered into by such Owner contains a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs incurred by the Association or ARC in enforcing the same.

**Section 5.5 Model Homes.** Developer shall have the right to construct or allow others to construct and maintain one or more model homes on the Property prior to the Turnover Date, and to furnish and decorate the same to market any homes with the Property and to hold open houses as Developer, in its sole discretion, may determine.

**Section 5.6 Pre-Existing Restrictions.** Each Owner acknowledges and agrees that the Property is also subject to those certain Amended and Restated Restrictive Covenants dated November 3, 1989 and recorded in Book 265, Page 96 in the Probate Office which, among other restrictions (but without limitation), prohibits any Building within 75 feet of the Lot line of any Lots adjoining Dunnivant Valley Road, prohibits a garage opening directly to Dunnivant Valley

Road, and requires the ground floor area of any Building within 200 feet of Dunnavant Valley Road to contain at least 2,200 gross square feet.

**Section 5.7 Additional Regulations.** In addition to the restrictions set forth in this Declaration, the (a) ARC and the Board, each in their sole and absolute discretion, shall have the right from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, and each Lot or Building, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot, and (b) Board shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interest of all Owners, which rules and regulations shall be binding on all Owners and each Lot.

**Section 5.8 Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of this Article V, the Architectural Standards and any rules and regulations adopted by the ARC and the Board. Any variance request shall be in writing and, upon approval of the same by the ARC or the Board, as applicable, shall be evidenced by a written variance executed by the ARC or the Board, as applicable.

**Section 5.9 Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Building and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article V, shall constitute an Individual Assessment to such Owner and, if the same is not paid when due, shall be subject to the lien provided for in Article VI below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.9 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

## **Article VI COVENANT FOR ASSESSMENTS**

**Section 6.1 Affirmative Covenant to Pay Assessments.** Each Owner, by acceptance of a deed for a Lot, whether or not so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may



be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of this Declaration. Notwithstanding the foregoing, but subject to the provisions of Section 6.6 below, Lots owned by Developer or any Affiliate thereof shall not be subject to any Assessments by the Association, be it Individual, Annual, or Special Assessments. The Annual, Special, and Individual Assessments, together with interest, as hereinafter provided, 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. Each such Assessment, together with interest, late charges, costs, and reasonable attorneys' fees shall also be the personal obligation of the Owner of the Lot at the time the Assessment is due. In the event of co-ownership of any Lot, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall commence as to each Lot as provided in Section 6.5 below and be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Building, Common Areas or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Board. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

**Section 6.2 Individual Assessment.** Any expenses incurred by the Association in enforcing any of the provisions of these Covenants against any specific Owner or Occupant shall be deemed an Individual Assessment ("Individual Assessment") against such Owner or Occupant and the respective Lot owned or occupied by such Owner or Occupant. Any Individual Assessment 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 assessment.

**Section 6.3 Annual Assessments.**

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association and (ii) the amount of Annual Assessments which shall be payable by each Lot. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for

all of the Property for the then applicable year and each Owner shall pay his or her prorata share of the same as provided in Section 6.5 hereof. As used herein, the term "Annual Assessments" with respect to each Lot shall mean the prorata portion of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of this Section 6.3. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 6.4 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

**Section 6.4 Special Assessments.** In addition to the Annual Assessments authorized in Section 6.3 above, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred or to be incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments must be approved by a majority of the Members of the Association who are "in good standing", as defined in the Bylaws, voting at a duly convened meeting of the Association or in a ballot vote by the Members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 6.4. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 6.5 hereof.

**Section 6.5 Amount of Assessments.** Both Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Lots within the Subdivision, with the Owner of each Lot being required to pay his or her prorata share of such Annual Assessments and Special Assessments, as determined by a fraction, the numerator of which shall be the total number of Lots owned by such Owner and the denominator of which shall be the total number of Lots, within the Subdivision, as reflected on all Subdivision Record Maps for the Property, at the time such Annual Assessments or Special Assessments are levied. Both Annual Assessments and Special Assessments shall commence when such Lot is conveyed by Developer to a Purchaser, and shall be due and payable in such manner as established by the Board. The Board shall fix the amount of the Annual Assessment against each Owner and 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. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice, provided such due date shall be at least thirty (30) days from the date of such notice. Each Owner of a Lot, by acceptance of a deed to such Lot, acknowledges and agrees that the Annual Assessments and Special Assessments, if

any, payable by such Owner are subject to change, modification, increase or decrease, respectively, each year.

**Section 6.6 Payment of Assessments by Developer.** Notwithstanding anything provided herein to the contrary, Developer shall have the option, in its sole discretion, to either pay Annual Assessments on Lots owned by Developer or fund the actual cash deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses (exclusive of funding of reserves) in any particular year; provided, however, that Developer shall have no obligations to fund any reserves established from time to time by the Association or the Board. To the extent Developer elects to fund the actual cash deficits, then such funding may occur at any time during a calendar year (which may be at the end of any calendar year), as determined by Developer, in its sole and absolute discretion. At such time as Developer no longer has any interest in any Lot, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

**Section 6.7 Certificate.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessment on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot shall be conclusive as to its contents.

**Section 6.8 Effect of Non-Payment of Assessments; Liens; Remedies.**

(a) Any Assessments, whether Annual, Special or Individual, which are not paid on or before the due date shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any Assessments not paid by the due date shall be subject to a late charge which the Board may from time to time establish. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorney's fees and expenses, court costs and all other expenses paid or incurred by the Association with respect to such action. The lien and equitable charge upon each Lot for Assessments shall also include all late fees, interest as specified above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments. In the event any Assessments or other amounts due to the Association are not paid by any Owner when the Assessment becomes due, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

(i) The Association may commence and maintain a civil action against the Owner for a personal money judgment to enforce all such charges and obligations for Assessments 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; or

(ii) The Association may enforce the lien created pursuant to Section 6.8(b) below in the manner hereinafter provided.

(b) There is hereby created a continuing lien on each Lot, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late fees or charges, interest at the rate specified in this Section 6.8, and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, shall provide written notice of the assessment and lien to such defaulting Owner, which written notice shall state the date and amount of delinquency and shall be given by personal delivery or first class United States mail, postage prepaid. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. At least 30 days prior to recording a statement of lien, the Association shall give written notice (the "Lien Notice") to such defaulting Owner in the manner set forth in Section 12.5 below (except that such Lien Notice shall be given by certified mail to such defaulting Owner) stating that the statement of lien will be recorded in the Probate Office. At any time after the expiration of 30 days following the giving of the Lien Notice, the Association shall file a statement of lien and perfect its lien against the Lot of such delinquent Owner, which statement of lien shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office:

(i) The name of the Association;

(ii) The name of the defaulting Owner;

(iii) The legal description and street address, if any, of the Lot upon which the lien claim is made;

(iii) The total amount claimed to be due including the due date of any Assessments, together with late charges, interest at the rate specified in this Section 6.8, collection costs and attorneys' fees and expenses incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

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

(c) The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (I) grant to and vest in the Association

and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

**Section 6.9 Lien Subordinate to Mortgages.** The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot. No Mortgagee shall be required to collect Assessments on behalf of any Owner. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot.

**Section 6.10 Damages.** In addition to the rights and remedies set forth above, if any Owner or Occupant, or any Owner's or Occupant's contractors, family members, guests or invitees, shall violate or attempt to violate any provisions of this Declaration set forth herein, Developer, the Association, or the ARC, jointly and severally, shall have the right to prosecute a civil action for the recovery of damages against such Owner as a result of such violations or maintain a proceeding against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies. In any such proceedings, Developer, the Association, or the ARC, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 6.8(a) above. The failure of Developer, the Association, or the ARC to institute proceedings for any one or more violations of this Declaration shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

**Section 6.11 Exempt Property.** The Board shall have the right to exempt any portion of the Property from any Assessments and liens created herein provided that such part of the Property exempted is used, and as long as it is used, for any of the following purposes:

- (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; or
- (b) As a Common Area.

**Article VII  
COMMON EXPENSES**

**Section 7.1 Common Expenses.** All of the following items set forth in Sections 7.1(a) through 7.1(d) below are hereby declared to be Common Expenses (“Common Expenses”) which the Association shall collect and pay from through Annual Assessments and which all Owners are obligated to pay as provided in Article VI hereof; provided, however, that the enumeration of these expenses shall in no way limit the Association from determining other expenses incurred in managing the Association or operating, maintaining, repairing and replacing any of the Common Areas or the Property as expenses subject to collection by Annual Assessment:

(a) Maintenance and Repair of Common Areas:

(i) The costs and expenses to keep, operate, maintain, repair and replace any of the Common Areas in good repair and in a clean and attractive condition, including the following:

(A) Any electrical costs to operate all common lighting and any other electrical device incurred in relation to any of the Common Areas, including street lighting;

(B) All costs and expenses of operating, maintaining, repairing and replacing any other amenities or facilities serving the Property which the Board, in its sole and absolute discretion, determines to be in the best interest of the Association, the Property or the Owners to so operate, maintain, repair or replace;

(C) Water bills and sprinkler system maintenance and repair incurred in relation to any of the Common Areas;

(D) Any insurance for the any of the Common Areas;

(E) Any management fees, accounting fees, and legal expenses incurred by the Association;

(F) Any and all costs associated with other property conveyed to the Association by Developer;

(G) Maintenance costs of all detention ponds and storm water drainage areas which constitute part of the Common Areas; and

(H) Such other matters which involve or are related to the use, repair, maintenance, upkeep, or ownership of any of the Common Areas as determined by the Association.

(b) Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants, and attorneys, and (ii) materials, supplies, and equipment as may be reasonably necessary for the management, supervision, and maintenance of the Common Areas.

(c) Property Taxes. All ad valorem taxes and other assessments relating and connected to the Common Areas.

(d) Insurance:

(i) Fidelity and directors' and officers' liability insurance covering all directors, officers, and employees of the Association and all managing agents having any authority over any Association funds;

(ii) Adequate property and casualty insurance for the benefit of the Association insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Board may determine;

(iii) Commercial general liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and all members, directors, officers, partners, agents, and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board may determine;

(iv) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board may determine; and

(v) All insurance coverage authorized hereunder shall be written in the name of the Association. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, and the Owners, Occupants, and the family members, servants, agents, and guests of the Owners or Occupants.

**Section 7.2 Reserves**. The Association may establish reserves for the payment of future Common Expenses, including reserves for maintenance of the storm water detention system for the Property.

**Section 7.3 Interested Transactions**. The Association may obtain materials or services from Developer or any of its Affiliates in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials or services is, in the opinion of the Board, comparable with the

compensation of any non-affiliated third party providing similar materials or services which can be reasonably made available to the Association.

**Section 7.4 Enforcement of Declaration and Rules and Regulations.** All fees, costs, and expenses, including attorneys' fees through all appellate levels, in connection with the Association's rights to enforce all of the Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Certificate of Formation, by the Bylaws or this Declaration, to the extent not recoverable by Individual Assessment, shall be deemed a Common Expense.

**Article VIII**  
**NATURE OF COVENANTS, DEFAULTS AND REMEDIES**

**Section 8.1 Covenants Running with the Land.** The terms and provisions of this Declaration shall constitute a servitude in and upon the Property, and all Lots contained therein, and shall run with the Property and all Lots and inure to the benefit of and be enforceable by Developer, the ARC, the Association and their respective designated successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded in the Probate Office, after which time the said Declaration shall automatically be extended for successive period of ten years, unless an agreement signed by the Owners of two-thirds or more of the then existing Lots within the Property, agreeing to terminate or modify this Declaration, is recorded in the Probate Office within one year of the expiration of the initial term or the expiration of any extended term.

**Section 8.2 Remedies for Default.** The existence of any default hereunder by any Person subject to the terms, conditions, covenants, and restrictions of this Declaration shall give Developer, the ARC, the Association and their respective Agents, representatives, successors or assigns, in addition to all other remedies specified herein, the right to proceed by a civil action to compel compliance with the terms of this Declaration and to prevent the violation or breach of any of them. Notwithstanding anything provided herein to the contrary, this Declaration shall be recorded for the benefit of Developer, the ARC, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

**Section 8.3 Nature of Remedies.** All rights, remedies, and privileges granted to the Developer, the ARC, the Association, their respective agents, representatives, successors and assigns pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party in a civil action. The failure at any time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

**Section 8.4 No Reverter.** No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent, or as creating any possibility of a reverter.



**Article IX**  
**FUNCTION OF ASSOCIATION**

**Section 9.1 Name.** The name of the Association for the Property is Brock Point Residential Association, Inc., which shall be incorporated as an Alabama nonprofit corporation.

**Section 9.2 Maintenance Responsibilities.** The Association may, at any time, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct, and repair all of the Improvements within the Common Areas, to include plantings and shrubbery, maintenance of all storm water detention facilities, and to maintain, repair and operate any other easement area shown on any Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain and manage the Common Areas so as to preserve the Common Areas in their improved state and prevent any unlawful, offensive, obnoxious, or unpermitted activity to be conducted thereon;

(c) Replace injured and diseased trees or other vegetation within the Common Areas to the extent the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(d) Do all such other acts which the Board deems necessary and proper to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

Notwithstanding anything provided in this Declaration to the contrary, the obligations of the Association to maintain, manage, operate, repair and replace the Common Areas shall be limited to the actual amount of Annual Assessments collected by the Association from the Owners.

**Section 9.3 Other Rights of Association.** The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII hereof, and adopt rules, regulations, procedures and policies with respect to:

- (a) garbage and trash collection and removal;
- (b) motor vehicle operation;
- (c) parking of motor vehicles on streets or roads in the Property;
- (d) Lake use and maintenance, and
- (e) such other matters including the general welfare of the Property as a whole.

**Article X**  
**AMENDMENT OF DECLARATION**

**Section 10.1 Amendments.**

(a) Prior to the Turnover Date, this Declaration may be altered, amended, or modified by Developer, in Developer's sole discretion, and to the extent necessary, each Purchaser of a Lot, and all Persons acquiring an interest therein, by acceptance of the instrument conveying such interest, does hereby irrevocably give, grant, and appoint Developer the power coupled with an interest as its agent to execute any and all instruments reasonably necessary to so alter, amend, or modify this Declaration. Prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

(b) Following the Turnover Date, an amendment to this Declaration may be proposed by written request signed by the Owners of not less than one-fourth of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Association after written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, is be mailed to the Owners not less than ten (10) days nor more than fifty (50) days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice and such waiver, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners in "good standing", as defined in Section 2.10 of the Bylaws, who own not less than two-thirds of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be certified by the Association as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Office, within thirty (30) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered at or prior to such meeting.

**Section 10.2 Scrivener's Error.** Notwithstanding the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of any amendment to this Declaration consented to by Developer. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by Developer without the consent of any other party.

**Article XI**  
**PERIOD OF DEVELOPER CONTROL**

**Section 11.1 Developer Control Prior to Turnover Date.**

(a) Notwithstanding any provision contained herein to the contrary, in view of Developer's and Developer's financial commitment to the Subdivision, Developer's obligations to pay any operating deficits as provided in Section 6.6 above, and Developer's obligations and need to insure the success of the Subdivision, until the Turnover Date, Developer shall have (i) the sole and exclusive right to manage all of the affairs and decisions of the Association, (ii) the sole and exclusive right to appoint and remove all members of the Board of the Association, who need not be Owners, (iii) the sole and exclusive right to appoint and remove all members of the ARC, and (iv) the sole and exclusive right to amend this Declaration, the Certificate of Formation, and the Bylaws of the Association.

(b) Developer may terminate its management rights and responsibilities, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time prior to the Turnover Date. Prior to the Turnover Date, Developer shall have the sole and exclusive right to take all actions and do all things in behalf of the Association.

(c) On or prior to the occurrence of the Turnover Date, all Common Areas, if any, owned by Developer shall be transferred and conveyed by Developer to the Association by quitclaim deed. Developer may, in its sole and absolute discretion, elect to transfer and convey to the Association by quitclaim deed any other real property owned by Developer at any time prior to or after the occurrence of the Turnover Date. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, cause any real property conveyed to the Association to be conveyed free and clear of all liens and encumbrances other than taxes for the then current year and all subsequent years thereafter, the terms and provisions of this Declaration and all other easements, restrictions, rights-of-way, reservations and other matters of record and such other terms, covenants and agreements as may be required by Developer (which may include, by way of illustration, but not limitation, the reservation of easements and other rights as to such real property conveyed by Developer to the Association). The Association shall accept conveyances by quitclaim deeds of any and all real property which may be conveyed to it by Developer and, if requested by Developer, from any builders or developers of any portion of the Property and all such Property shall thereafter constitute and be deemed to be part of the Common Areas. In addition, on or before the Turnover Date, Developer shall transfer and assign to the Association and the Association shall assume all of Developer's rights and obligations under any and all agreements entered into by Developer on behalf of the Association or which benefit the Association. **Developer does not make, and has not made, any representations or warranties, either express or implied, as to the physical condition of any real or personal property which may be conveyed by Developer to the Association and the Association shall accept any such real or personal property in its then "AS IS" condition, "WITH ALL FAULTS".**

**Article XII**  
**GENERAL PROVISIONS**

**Section 12.1 Deeds Subject to Covenant.** Each conveyance of a Lot in the Subdivision shall be subject to the terms and conditions of this Declaration regardless of whether such conveyance contains a reference to this Declaration.

**Section 12.2 Obligation of Owner to Build or Restore.**

(a) Each Owner shall complete the construction of a Building on or before the expiration date of one (1) year from the commencement of construction, including grading or clearing the Lot, except upon written approval of the ARC.

(b) In the event a Building on any Lot within the Property is damaged or destroyed, in whole or in part, by fire or other casualty, then the Owner of such Lot shall be obligated to repair or replace the Building within one year from the date of such damage or destruction and repair or replacement of such structure shall be in accordance with the covenants and restriction set forth in this Declaration. All debris resulting from any damage or destruction shall be removed and the Lot restored to a slightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

**Section 12.3 Indemnity for Damages.** Each and every Owner and future Owner, by accepting a deed to any Lot, agrees to indemnify Developer and the Association for any damage caused by such Owner, the Occupants of such Owner and any contractors, agents or employees or such Owner, to roads, streets, gutters, sidewalks, walkways or other aspects of public ways, including all surfacing thereon, or to water drainage or storm sewer lines, or sanitary sewer lines constructed by Developer within the Subdivision, or for which Developer has responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by an Owner, each Owner accepts knowledge of this Declaration, and ratifies the covenants contained herein and thus releases the right to prosecute Developer for the inconveniences the Owner deems inadequate or unbecoming of the Owner's needs or desires.

**Section 12.4 No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve, or do any other action within any portion of a Lot or Building, the entering thereon and the taking of such action shall not be deemed a trespass.

**Section 12.5 Notices.** Subject to the provisions of Section 6.8(b) above, any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly given or served upon such Owner when deposited into the United States mail, first-class delivery, postage prepaid, to the address which any Owner has provided in writing to the Association as the address to which all notices from the Association to such Owner shall be given (and, if any Owner does not provide written notice of the specific address notices from the Association are to be delivered, then any and all notices to such Owner from the Association shall be delivered to the street address of the Lot owned by such Owner).

**Section 12.6 Severability.** Invalidation of any provision or provisions hereof by judgment of any court shall in no way affect any other provisions, all of which shall remain in full force and effect.

**Section 12.7 Governing Law.** This Declaration is made pursuant to the laws of the State of Alabama, and it shall be construed and interpreted in accordance therewith. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute, or litigation shall be governed by the laws of the State of Alabama.

**Section 12.8 Captions.** The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit, enlarge or describe the scope or intent of this Declaration.

**Section 12.9 Usage.** Whenever used herein the singular shall include the plural and vice versa and the use of any gender shall include all genders.

**Section 12.10 Binding Effect.** The terms and provisions of this Declaration should be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns and inure to the benefit of Developer, Association, the ARC, the Association, and all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**Section 12.11 Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. Declaration shall be construed under and in accordance with the laws of the State of Alabama.

**Section 12.12 Rights of Third Parties.** This Declaration shall be recorded for the benefit of Developer, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

**Section 12.13 No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

**Section 12.14 Standards for Review.** Whenever in this Declaration the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically

provided herein to the contrary, be given or withheld in the sole and absolute discretion of the ARC or the Association, as the case may be.

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

**Section 12.16 Assignment.** Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

**Section 12.17 No Waiver.** All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure by Developer, the ARC or the Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction

**Section 12.18 Effective Date.** This Declaration shall become effective upon its recordation in the Probate Office.

**Article XIII  
DISPUTE RESOLUTION**

**Section 13.1 Agreement to Resolve Disputes Without Litigation.**

(a) Developer, the ARC, the Association and their respective officers, directors, and committee members, all Lot Owners, and all persons subject to this Declaration (collectively, "Bound Party"), agree that it is in the best interest of all concerned to resolve disputes involving the Subdivision, Developer, the ARC, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to directly or indirectly file suit in any court with respect to a Claim (hereinafter defined), and to submit such Claim to the alternative dispute resolution procedures set forth in Section 13.2.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of this Declaration, the Architectural Standards, any rules and regulations adopted by the Association, the Certificate of Formation or the Bylaws (collectively, the “Governing Documents”); or

(ii) the rights, obligations and duties of any Bound Party under the Declaration or any Governing Documents;

(iii) except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

(A) any suit by the Association to collect Assessments or other amounts due from any Owner;

(B) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) against any Owner and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of any of the Governing Documents;

(C) any suit between Owners, which does not include Developer, the ARC, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of any of the Governing Documents;

(D) any suit in which any indispensable party is not a Bound Party; or

(E) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 13.2(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

**Section 13.2 Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant’s proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 13.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama selected by both sides if the Association is a party. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be required to initiate arbitration proceedings on the Claim, as set forth in Section 13.2(e) below. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Arbitration; No Trial by Jury. Any dispute between an Owner or the Association, as one of the parties, against Developer or any Affiliate thereof, as the other party ("Dispute"), and any Claims which remain after the conclusion of the dispute resolution procedures described in Section 13.2 above, shall be resolved by final and binding arbitration by a single arbitrator in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. EACH PARTY ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS AND DISPUTES. All disputes concerning the arbitrability of any Claim or the enforceability or scope of this provision shall be subject to the same binding arbitration. The parties shall bear equally the cost of the arbitrator, and each party shall otherwise bear its own costs; provided, however, that the prevailing party shall be entitled to recover all of its costs in such arbitration, including reasonable attorneys' fees and



expenses. The arbitrator shall follow the law applicable to any Claim and shall be empowered to award any damages or other relief which would be available under law applicable to any such Claim. The determination of the arbitrator shall be final, binding on the parties, and non-appealable and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by, and relating to, the Subdivision, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.

**Section 13.3 Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, the Association shall not initiate any judicial or administrative proceedings unless first approved by the affirmative vote of the Members in “good standing”, as defined in Section 2.10 of the Bylaws, entitled to cast seventy-five percent (75%) of the votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated to enforce the provisions of this Declaration, including, but not limited to, collection of Assessments and foreclosure of liens;
- (b) initiated to challenge taxation or condemnation proceedings involving the Common Areas;
- (c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (d) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 13.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

*[The remainder of this page has been left intentionally blank]*

IN WITNESS WHEREOF, SB DEV. CORP., has caused this Declaration to be executed and delivered by its duly authorized representative on the date set out first above.

SB DEV. CORP., an Alabama corporation

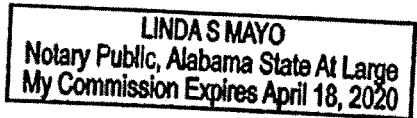
By: *[Signature]*

STATE OF ALABAMA     )  
SHELBY COUNTY        )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Scott Rohrer, whose name as Vice President of SB Dev. Corp., an Alabama corporation, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 29 day of September, 2016.

*Linda S Mayo*  
Notary Public  
My commission expires: \_\_\_\_\_



## CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE (this "Consent") is made and entered into as of the 12<sup>th</sup> day of October, 2016 by **SAMFORD UNIVERSITY**, an Alabama nonprofit corporation ("Mortgagee").

### R E C I T A L S:

Mortgagee is the holder of that certain Purchase Money Mortgage and Security Agreement dated as of November 2, 2015 executed by SB DEV. CORP., an Alabama corporation ("Mortgagor"), recorded as Instrument Number 20151103000382750 in the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time (collectively, the "Mortgage").

The Mortgage encumbers various real property including, without limitation, all of the Property, as defined and described in the Declaration (as defined below).

Mortgagee desires to (a) consent to the execution by Mortgagor of the Brock Point Declaration of Covenants, Conditions and Restrictions dated as of SEPTEMBER 29, 2016 (the "Declaration") which is being recorded contemporaneously herewith and to which this Consent is attached and made a part thereof and (b) agree that, following the foreclosure of the Mortgage, the rights and interests of all of the Owners, as defined in the Declaration, shall not be affected thereby. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby covenant and agree as follows:

1. Mortgagee does hereby consent to the execution of the Declaration.
2. Mortgagee does hereby agree that, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in the Property (collectively, a "Foreclosure Action"), then (a) the Declaration and all of the rights and privileges of Owners under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every Owner and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Mortgagor under the Declaration and shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee, nor shall Mortgagee be deemed to have assumed any indebtedness or other liabilities of Developer existing or incurred by Developer prior to the date of such Foreclosure Action, and (d) Mortgagee (or any purchaser at foreclosure) shall execute

any documents or instruments reasonably requested by the Owners and their respective successors and assigns to confirm that all of the terms and provisions of the Declaration shall continue in full force and effect with respect to the Property following any such Foreclosure Action.

IN WITNESS WHEREOF, Mortgagee has executed this Consent as of the day and year first above written.

**SAMFORD UNIVERSITY**, an Alabama nonprofit corporation

By: *Harry B. Brock, III*  
Harry B. Brock, III  
EVP and VP for Business & Financial Affairs

STATE OF ALABAMA )  
JEFFERSON )  
SHELBY COUNTY )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Harry B. Brock, III, whose name as Executive Vice President and Vice President for Business and Financial Affairs of SAMFORD UNIVERSITY, an Alabama nonprofit corporation, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said nonprofit corporation.

Given under my hand and seal this 12<sup>th</sup> day of October, 2016.

*Deborah Boyd Partridge*  
Notary Public  
My commission expires: \_\_\_\_\_



**DEBORAH BOYD PARTRIDGE**  
Notary Public, Alabama State At Large  
My Commission Expires Aug. 15, 2019

**EXHIBIT A**

**Legal Description of Property**

Lots 1 through 16, inclusive, and Common Areas CA-1 and CA-2, according to the Final Plat of Brock Point Phase 1A, as recorded in Map Book 46, Page 67 in the Office of the Judge of Probate of Shelby County, Alabama.