  
20070626000450170 1/39 \$114.75  
Madison Cnty Judge of Probate, AL  
06/26/2007 10:18:00AM FILED/CERT

**DECLARATION OF PROTECTIVE COVENANTS  
FOR  
SHOAL CREEK**

This instrument was prepared by:  
**ABLES, BAXTER, PARKER & HALL, P.C.**  
**Attorneys at Law**  
By: L. Bruce Ables, Esq.  
315 Franklin Street, S.E.  
Post Office Box 165  
Huntsville, Alabama 35804-0165  
(256) 533-3/40  
FAX (256) 533-3751  
Real Estate FAX (256) 533-0554  
E-Mail: [bables@abphlaw.com](mailto:bables@abphlaw.com)  
Web Site: [www.abphlaw.com](http://www.abphlaw.com)

Covington & Co/Shoal Creek

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
DEFINITIONS	1
PROPERTY SUBJECT TO THIS DECLARATION	
1. Property Hereby Subjected To This Declaration.....	2
2. Other Property .....	2
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	
1. Membership.....	2
2. Voting.....	2
ASSESSMENTS	2
1. Assessments.....	2
2. Purpose of Assessment.....	3
3. Creation of the Lien and Personal Obligation for Assessments .....	3
4. Computation .....	3
5. Special Assessments.....	4
6. Lien for Assessments.....	4
7. Effect of Nonpayment of Assessments: Remedies of the Association.....	4
8. Date of Commencement of Assessments.....	5
9. Specific Assessments.....	5
10. Budget Deficits During Declarant Control.....	6
MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION	6
1. Association's Responsibility .....	6
2. Owner's Responsibility.....	7
3. Party Walls and Party Fences.....	7
4. Conveyance of Common Property by Declarant to Association.....	8
USE RESTRICTIONS AND RULES	8
1. General .....	8
2. Residential Use .....	8
3. Signs.....	9

4.	Vehicles.....	9
5.	Leasing.....	9
6.	Occupants Bound.....	9
7.	Animals and Pets .....	10
8.	Nuisance.....	10
9.	Unsightly or Unkempt Conditions.....	11
10.	Architectural Standards.....	11

<u>Article</u>	<u>Section</u>	<u>Page</u>
	11. Antennas .....	12
	12. Drainage.....	12
	13. Sight Distance at Intersections .....	13
	14. Rubbish, Trash, Garbage, Etc .....	13
	15. Subdivision of Lot .....	13
	16. Firearms; Fireworks.....	13
	17. Fences .....	13
	18. Utility Lines .....	13
	19. Air Conditioning Units .....	13
	20. Artificial Vegetation, Exterior Sculpture, and Similar Items .....	13
	21. Energy Conservation Equipment.....	13
	22. Swimming Pools .....	14
	23. Lighting.....	14
	24. Exteriors.....	14
	25. Sidewalks .....	14
	26. Minimum Building Size .....	14
	27. Gardens .....	14
	28. Storage Tanks.....	14
	29. Exposed Foundations.....	15
	30. Retaining and Boundary Walls.....	15
	31. Residence Construction; Landscaping .....	15
	32. Temporary Structures.....	15
	33. Mailboxes.....	15
	34. Toys, Furniture, Etc .....	15
	35. Garage Sales .....	16
	36. Accessory Buildings.....	16
VII.	INSURANCE AND CASUALTY LOSSES	16

1.	Insurance on Common Property .....	16
2.	Individual Insurance .....	18
3.	Damage and Destruction - Insured by Association.....	18
4.	Damage and Destruction - Insured by Owners.....	19
CONDEMNATION .....		19
ANNEXATION OF ADDITIONAL PROPERTY .....		19
1.	Unilateral Annexation By Declarant .....	19
2.	Other Annexation.....	20
MORTGAGEE PROVISIONS .....		20
1.	Notices of Action .....	20
2.	Special FHLMC Provision.....	21
3.	No Priority .....	22
4.	Notice to Association .....	22
5.	Amendments by Board.....	22
6.	VA/HUD Approval.....	22
7.	Applicability of Article X.....	22
8.	Failure of Mortgagee to Respond.....	22
EASEMENTS		
1.	Easements for Encroachment and Overhang .....	22
2.	Easements for Use and Enjoyment.....	23
3.	Easements for Utilities .....	24
4.	Easement for Entry.....	24
5.	Easement for Maintenance .....	24
GENERAL PROVISIONS		
1.	Enforcement .....	25
2.	Self-Help .....	25
3.	Duration.....	25
4.	Amendment .....	26
5.	Partition .....	26
6.	Gender and Grammar .....	26
7.	Severability.....	26
8.	Captions .....	27
9.	Perpetuities.....	27

10.	Indemnification .....	27
11.	Construction and Sale Period .....	28
12.	Contracts Executed During Declarant Control .....	28
13.	Books and Records .....	28
14.	Financial Review .....	28
15.	Notice of Sale or Lease .....	29
16.	Agreements .....	29
17.	Implied Rights .....	29
18.	Variances .....	29
19.	Use of Recreational Facilities by Non-members .....	29

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Name</u>	
A	Definitions.....	33
B	Property Submitted .....	34

**DECLARATION OF PROTECTIVE COVENANTS  
FOR SHOAL  
CREEK**

THIS DECLARATION is made on the date hereinafter set forth by Covington and Co., Inc., an Alabama corporation (hereinafter sometimes called "Declarant");

**WITNESSETH**

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1 of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 hereof to the provisions of this Declaration to create a residential Community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE ALABAMA CONDOMINIUM OWNERSHIP ACT OF 1973, ALA. CODE SECTION 35-8-1, ET, SEQ.

Article I  
Definitions

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A", attached hereto and by reference made a part hereof.

Article II  
Property Subject To This Declaration

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or Otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and any additional property made subject to this Declaration by Declarant, hereafter.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

Article III  
Association Membership and Voting Right

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section 2. Voting. After the Delcarant no longer has control over the Association members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

Article IV  
Assessments

Section 1. Assessments. Declarant, by and through the Board of Directors, will make an assessment on each lot after it is deeded and a house is erected on it in the amount of Thirty Dollars (\$30.00) per lot. All vacant lots owned by the Declarant will pay an assessment, Twenty-five percent (25%) of the assessment on lots that have a home constructed on it. The annual

assessment will be Three Hundred Sixty Dollars (\$360.00) and it will be due on the 1<sup>st</sup> day of January of each year.

Section 2. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of the planned pool and cabana, all of which may be more specifically authorized from time to time by the Board of Directors.

Section 3. Creation of the Lien and Personal Obligation for Assessment. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association:(a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 4. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year.



The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 5. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section. 6. Lien for Assessment. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor

of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with "any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 8. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot subject to this Declaration on the later of (1) thirty (30) days following the conveyance of such Lot to a Person other than the Declarant or when the Declarant no longer has control over the Association. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. After assessments begin as to any Lot, the annual assessment for all unoccupied Lots owned by Declarant or a builder shall begin and prior to the construction and occupancy of a residence thereon, shall be an amount equal to twenty-five (25%) percent of the annual assessment otherwise due.

Section 9. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article VI Sections 1 and 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as previously provided herein.

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Section 10. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

## Article V

### Maintenance: Conveyance of Common Property to Association

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall maintain all entry features for the Community and shall maintain and pay the expenses for water, or electricity, if any, provided to all such -entry features. The Association shall also maintain all medians, cul de sac islands located in the Community and a landscaped strip as described on Exhibit "B" hereof. All property outside of Lots located within the Community which was originally maintained by Declarant, and any detention pond(s) located within the Community, including the trees and other vegetation which screen the detention pond(s) shall be maintained by the Association.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

The foregoing maintenance shall be performed consistent with the Community-Wide standard.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have fourteen (14) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a fourteen (14) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the/others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. If a dispute arises concerning a party wall or fence, or anything under the provisions of this Section, including assessments, each party shall appoint one (1) arbitrator. If any party refuses to appoint an arbitrator within fourteen (14) days after written request therefor

by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators so appointed shall appoint one (1) additional arbitrator and the decision by a majority of those three (3) arbitrators shall be binding upon the parties and be non-appealable and not subject to review in any court. The parties agree that the decision of the arbitrators may be enforced in a court of competent jurisdiction. The arbitrators to be appointed shall be licensed realtors in Madison County, Alabama but not a licensed realtor associated with the Declarant.

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Such property may include, without limitation, a sewer treatment plant with feeder lines and related easements.

## Article VI

### Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, cancelled, or modified in a regular or special meeting by a Majority of the Total Association Vote. Notwithstanding anything contained herein, no Owner shall be in violation of any use restriction contained herein or promulgated hereunder for the uninterrupted continuation of any improvement, use or condition existing on any Lot at the time such Lot became subject to this Declaration.

Section 2. Residential Use. All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws and does not create a disturbance, and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities. No structure of a temporary character including, without limitation, a trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 3. Signs. No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, "For Sale" and "For Rent" signs consistent with the Community-Wide Standard may be erected upon any Lot, and any builder may erect one (1) sign not larger than, ten (10) square feet to advertise the property during the construction and sale period. The prohibitions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 4. Vehicles. The term vehicles, when as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, four-wheelers, scooters, go-carts, trucks, campers, buses, vans, recreational vehicles, tractors, mowers and automobiles. No more than four (4) automobiles shall be parked on any Lot, other than in the garage or carport, on a regular basis. Vehicles may be kept and parked in the back yard of the lot owner, provided the back yard is properly fenced.

However, no vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than fifteen (15) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such fifteen (15) day period, such vehicle shall be considered a nuisance and may be removed from the Community. No towed vehicle, boat, recreational vehicle, motor home, tractor, mower or mobile home shall be temporarily kept or stored in the Community for any period in excess of two (2) weeks unless kept in a garage or other area designated by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

No commercial vehicle larger than a pick-up truck or private passenger van shall be allowed upon or parked within the Community at any time except for delivery purposes or in connection with the construction or maintenance of utilities or other improvements.

All single-family detached residences shall contain a minimum of a two-(2)-car garage or carport

Section 5. Leasing. Lots may be leased for residential purposes only. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and

regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

Section 6. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets.

Pets shall be registered, licensed and inoculated as required by law.

Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on their Lot. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be earned on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except, such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 10. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Control Committee established by the Board. The Board may divide the Architectural Control Committee into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ for the Architectural Control Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated. Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may provide for a review fee.

In the event that the Architectural Control Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Control Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board, the Architectural Control Committee or their respective representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these protective covenants have been or are being complied with. Such Person(s) shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.



PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING, STRUCTURAL DESIGN, QUALITY OF MATERIALS, OR SOIL STABILITY (ALL SOIL STABILITY TESTING, BORING, GEOLOGICAL SURVEYS AND THE LIKE ARE THE SOLE RESPONSIBILITY OF THE LOT OWNER), WHETHER OR NOT SUCH PLANS AND SPECIFICATIONS WERE PREPARED BY, ON BEHALF OF OR WITH THE PARTICIPATION OF ANY MEMBER OF THE BOARD OR THE ARCHITECTURAL CONTROL COMMITTEE. BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARCHITECTURAL CONTROL COMMITTEE, THE MEMBERS THEREOF, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 11. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Lot including, without limitation, satellite dishes unless screened from the view of streets and neighboring Lots in a manner approved by the Architectural Control Committee. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost effective way to transmit or receive the signals sought to be transmitted or received.

Section 12. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all

Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 13. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

Section 14. Rubbish, Trash, Garbage Etc. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site.

Section 15. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to re-plat any Lot or Lots owned by Declarant. Any such division, boundary line change, or re-platting shall not be in violation of any applicable subdivisions and/or zoning regulation.

Section 16. Firearms; Fireworks. The use of firearms, fireworks and pyrotechnic devices in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, and small firearms of all types.

Section 17. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written Consent of the Architectural Control Committee. The Architectural Control Committee may issue guidelines detailing acceptable fence styles or specifications. Chain link and other forms of wire fencing shall be prohibited.

Section 18. Utility Lines. No overhead Utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 19. Air Conditioning Units. Window air conditioning units shall be prohibited.

Section 20. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior Sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee.

Section 21. Energy Conservation Equipment. No solar energy Collector panels or attendant hardware, windmills or Other energy conservation equipment shall be constructed or

installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee.

Section 22. Swimming Pools. Swimming pools, including, without limitation, above-ground swimming pools, shall not be erected without the prior written Consent of the Architectural Control Committee. Swimming pools shall not be located in other than the rear or side yard of a Lot and no nearer than five (5) feet to any Lot line unless otherwise Specifically approved by the Architectural Control Committee.

Section 23. Lighting. Except for approved lighting as originally installed on a residence, exterior lighting Visible from the street shall not be Permitted, except for (a)one (1) decorative post light; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights for a sixty (60) day period beginning on November 15 each year; or (d) front house illumination of model homes.

Section 24. Exteriors. No Owner shall change the roof type, color of shingles, color of exterior paint, brick type or color of brick without the prior written consent of the Architectural Control Committee. Except as may be permitted by the Architectural Control Committee, the exterior of each residence shall be composed of at least thirty-five (35%) percent brick, stone or other approved masonry.

Section 25. Sidewalks. A sidewalk meeting the requirements of Madison County shall be installed along the street fronting each Lot by the Owner prior to the issuance of a certificate of occupancy for any improvement located on such Lot. Sidewalks shall not be altered or obstructed by any Owner or Occupant. Any sidewalk located on a Lot shall be maintained by the Owner in accordance with Article V, Section 2, hereof.

Section 26. Minimum Building Size. All residences shall contain a minimum of eighteen hundred (1,800) square feet of centrally heated living space which space shall specifically exclude, without limitation, open porches, garages and unfinished storage areas; provided, however the Declarant shall have the right to specify in the Supplementary Declaration a greater or lesser minimum building size applicable to all or any portion of the property being unilaterally annexed to the Community by the Declarant pursuant to Article IX, Section 1, hereof All dimensions shall be measured from the outside of the exterior walls to the outside of the exterior walls.

Section 27. Gardens. No vegetable gardens, compost gardens, greenhouses or other food source planting shall be allowed in the front or on the sides of any residence on any Lot.

Section 28. Storage Tanks. No above ground storage tanks or receptacles for the storage of fuel, water or any other substance shall be permitted on any Lot without the prior written consent of the Architectural Control Committee.

Section 29. Exposed Foundations. No block foundation wall may be exposed on any Lot. If a residence is faced with brick, the foundation wall shall be faced to grade with brick. If a building is faced with wood or stucco, the foundation walls shall be faced to grade with stucco, brick, stone or any approved masonry product as approved by the Architectural Control Committee.

Section 30. Retaining and Boundary Walls. Boundary walls as approved by the Architectural Control Committee may be erected on Lots, provided that the same are set back from the street at least as far as the front building line/No walls, other than retaining walls may be constructed along the front Lot line of any Lot. No retaining wall shall extend to a height greater than three (3) feet above the earth being ..retained. No boundary wall, nor any wall enclosing a patio or courtyard, shall extend to a height greater than eight (8) feet from ground level, except with the consent of all adjoining Lot owners and the Architectural Control Committee. All boundary and retaining walls must be of brick, stone, stucco or other material approved by the Architectural Control Committee.

Section 31. Residence Construction; Landscaping. Construction of a residence on a Lot must commence within sixty (60) months of the conveyance of the Lot from the Declarant. Such construction shall be completed not later than one hundred eighty (180) days after commencement. Each Lot Owner must landscape their Lot in a manner consistent with the Community-wide Standard within one hundred eighty (180) days from the date a certificate of occupancy is issued therefor. Thereafter each Lot shall be maintained by the Owner consistent with such standard which shall include mowing of lawns or grassed areas to a height of less than six (6) inches at all times. Prior to construction, all grass and weeds on any Lot shall be maintained to a height of less than twelve (12) inches at all times.

Section 32. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, bam, or other out-building shall be permitted on any Lot at any time temporarily or permanently, except with the prior written consent of the Architectural Control Committee; provided, however, that temporary structures' may be erected for use in connection with the repair or rebuilding of residences or any portion thereof. Temporary construction or storage trailers must be approved as to type and location by the Architectural Control Committee before they are placed on a Lot. All such temporary trailers shall only be on the Lot during construction and immediately after construction is completed the same shall be removed.

Section 33. Mailboxes. Mailboxes of a type consistent with the Community-Wide standard shall be selected and placed by the Owner of each Lot and shall be maintained by the Owner to complement the residences and the neighborhood.

Section 34. Toys Furniture, Etc. Articles of personal property belonging to any Lot Owner, including, without limitation, baby carriages, bicycles, wagons, toys, furniture and clothing, shall only be stored or kept in the dwelling, garage or other storage building out of public view.

Section 35. Garage Sales. Sales of personal property on the premises by garage sales, patio sales and similar sales to the general public are limited to twice a year per Lot and for not more than three (3) consecutive days each.

Section 36. Accessory Buildings. No accessory building shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Board or its designee. All such accessory buildings may be constructed of materials which are compatible with the residence. The front of the building facing the street must be brick. In no event will a prefabricated metal or plastic building be approved.

## Article VII

### Insurance and Casualty Losses

Section 1. Insurance on Common Property. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors and officers liability insurance. The public liability policy may have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Alabama.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be, required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee,

(v) that any other insurance clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a paid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does, acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a specific assessment.

Section 3. Damage and Destruction -Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the

determination of whether damage or destruction shall be repaired or reconstructed. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 4. Damage and Destruction-Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris there from within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration.

#### Article VIII Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been Constructed, then, unless within sixty (60) days after such taking, at least seventy-five (75%) percent of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Article VII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

#### Article IX

##### Annexation of Additional Property

##### Section 1. Unilateral Annexation By Declarant.

(a) As the owner thereof or, if not the owner, with the Consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the Property to be annexed is located a Supplementary Declaration describing



the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community), upon the affirmative vote of a Majority of the Owners (other than Declarant so long as the consent of Declarant is required) the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

## Article X

### Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an eligible holder), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a

period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty(60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) and so long as the U.S. Department of Housing and Urban Development ("HUD") is insuring or the Veterans Administration("VA") guaranteeing any Mortgage, the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association, shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection) other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute change, waiver, or abandonment within the meaning of this subsection);

(d) fail to maintain insurance, as required by this declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay

overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this. Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to; such. Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owners Lot.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. VA/ HUD Approval. As long as the Declarant has the right to appoint and remove the directors of the Association, the following actions shall require the prior approval of the VA so long as the VA is guaranteeing any Mortgage in the Community, and HUD so long as HUD is insuring any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and/or HUD as applicable; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles Incorporation.

Section 7. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## Article XI Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than

five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any

property for development and/or sale in the Community) and two-thirds (2/3) of the Owners (other than Declarant so long as the consent of Declarant is required).

(b) Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owners tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot, if leased.

Section 3. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment relates to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request by the Board.

Section 5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Article XII  
General Provisions

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, (he By-Laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter limit the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods often (10) years, unless such extension is disapproved by the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote. A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary, to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose whatsoever, including adding further restrictions or deleting restrictions set out herein, provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property for development and/or sale in the Community, or subject to annexation to the Community.

Section 5. Partition. The Common Property shall remain undivided, and no Lot Owner, nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written, consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision

which can be given, effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Perpetuities. If any of the covenants; conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association. (except to the extent that such officers Or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 11. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, Construction, and sales activities related to property described on Exhibit "B" and Exhibit "C" to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, Under, on or in the Community: the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and



drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant owns any property for development and/or sale in the Community, or subject to annexation to the Community.

Section 12. Contracts Executed During Declarant's Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the directors and officers of the Association under the By-Laws shall contain a termination clause permitting, the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 13. Books and Records, (a) Inspection by Members and Mortgage. This Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records; .
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents;

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 14. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having reviewed the Board's financial statements, by a Majority of the Total Association Vote,

the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

Section 15. Notice of Sale or Lease. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

Section 16. Agreements. Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 17. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 18. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 19. Use of Recreational Facilities By Nonmembers. The Association, or for so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX hereof, the Declarant, shall have the unilateral right to grant to persons who are not members of the Association the right to use the Community recreational facilities constructed by Declarant. The extent and duration of nonmember use shall be determined by the Association or Declarant granting such use. Non-member use rights may be granted to individuals as an easement appurtenant -to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. Non-member user fees shall be set by and shall be paid to the Association. Such fees shall reflect only the expenses of operating the recreational facilities and the percentage increase in such fees from year to year shall not exceed the percentage increase in the annual assessment levied against members of the Association. Such fees shall, unless otherwise provided by the Association, be paid in one (1) annual installment to the Association.

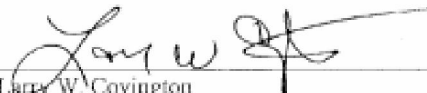
Any use right granted by the Declarant to nonmembers which extends beyond the termination of Declarant's option to unilaterally subject additional property to this Declaration shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon, nonmember use by Declarant are complied with by the non-member user.

Declarant hereby expressly reserves unto itself, its successors and assigns, and the Association hereby grants, a nonexclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community, (including, without limitation, the above described recreational facilities), without obligation and without charge to the Declarant, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Community roads, parking areas and walkways.

Declarant shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by a nonmember entitled to use the Community recreational facilities constructed by Declarant.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 25th day of June, 2007.

**COVINGTON AND CO., INC., a corporation**

By   
Larry W. Covington  
Its President

STATE OF ALABAMA )

)

COUNTY OF MADISON )

I, the undersigned, a notary public, in and for said county in said state, hereby certify that Larry W. Covington, whose name as President of Covington and Co., Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officers and with full authority, executed the same Voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 25th day of June, 2007

A handwritten signature in cursive script, appearing to read "T. W. Covington", is written over a horizontal line. To the right of the signature, the word "(SEAL)" is printed in a small, sans-serif font.

Notary Public

My Commission Expires:

## EXHIBIT "A"

### Definitions

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean Shoal Creek Community Association Inc., a nonprofit Alabama corporation, its successors and assigns. The "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Alabama Corporate law.

(b) "By-Laws" shall refer to the By-Laws of Shoal Creek Community Association Inc., attached to this Declaration as Exhibit "E" and incorporated herein by this reference

(c) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(d) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration of all or any portion of the real property described in Exhibit "C", attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(e) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(f) "Declarant" shall mean and refer to Covington and Co., Inc., a corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the Declarant hereunder, by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood

that as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) Declarant hereunder at any one point in time.

(g) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(h) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(i) "Mortgage" means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

(j) "Mortgagee" shall mean the holder of a Mortgage.

(k) "Occupant" shall mean any Person occupying all or any portion of a residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(l) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(m) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(n) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(o) "Total Association Vote" means all of the votes attributable to members of the Association (other than votes of Declarant, so long as Declarant has the right to appoint and remove the directors of the Association) and the consent of Declarant (so long as Declarant has the right to appoint and remove the directors of the Association).

EXHIBIT "B"  
Property Submitted

**All Lots and Blocks located in Shoal Creek Subdivision, as the same appears of record as Document No. 20070105000011350, Probate Office of Madison County, Alabama, except for Lot 6, which is specifically excluded from this Declaration.**

20070626000450170 39/39 \$114.75  
Madison Cnty Judge of Probate, AL  
06/26/2007 10:18:00AM FILED/CFRT