

**By-Laws of Vernon Hill
Owners Association, Inc.**

Vernon Hill

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BYLAWS
OF
VERNON HILL OWNERS ASSOCIATION, INC.

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**BYLAWS
OF
VERNON HILL OWNERS ASSOCIATION, INC.**

ARTICLE I

THE ASSOCIATION

1.1 **Name.** The name of this Association shall be "Vernon Hill Owners Association, Inc.", an Alabama nonprofit corporation (the "Association"), which has been formed pursuant to Articles of Incorporation of the Association (the "Articles of Incorporation") which have been filed with the Probate Office of Jefferson County, Alabama. The provisions of these Bylaws are expressly subject to the terms and provisions of the Vernon Hill Declaration of Covenants, Conditions and Restrictions dated 9/19/95, 1995, which has been recorded as Instrument No. 9510/4083 in the Probate Office of Jefferson County, Alabama (which, together with all subsequent amendments thereto, is hereinafter referred to as the "Declaration"). Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Declaration.

1.2 **Principal Office.** The principal office of the Association in the State of Alabama shall be located at 5467 Vicksburg Circle, Birmingham, Alabama 35210. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate from time to time.

1.3 **Registered Office.** The registered office of the Association required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama shall be the same as the principal office of the Association.

ARTICLE II

MEMBERS

2.1 **Membership.** Each person who is the Owner of any Lot or Dwelling in the Development shall be a member of the Association. Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer. If a Lot or Dwelling is owned by more than one person and if only one of those persons is present at a meeting of the Association, that person shall be entitled to cast the vote appertaining to such Lot or Dwelling; provided, however, that if more than one of those persons is present, the vote appertaining thereto shall be cast only in accordance with their unanimous agreement, and, if no unanimous agreement is reached,

the vote appurtenant to such Lot or Dwelling shall be suspended. No Owner, whether one or more persons, shall be entitled to more than one vote per Lot or Dwelling owned. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Dwelling. As used in these Bylaws, "member" shall mean an Owner, as defined in the Declaration. Notwithstanding anything provided herein or in the Articles of Incorporation to the contrary, for so long as Developer owns any Lot or Dwelling in the Development, or until Developer notifies the Association that Developer relinquishes such rights to the Association, (a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association, (ii) appoint the officers of the Association and the members of the ARC, as defined in the Declaration, (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association and the members of the ARC, (iv) amend these Bylaws and the Articles of Incorporation, (v) amend the Declaration (subject to the limitations set forth in Section 10.2 of the Declaration), (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members of the Association are entitled to vote on the matters described in item (b) below of this Section 2.1) and (b) the voting rights of the members of the Association shall be limited to (i) approving increases in the annual Assessments in excess of the amount set forth in Section 8.4(c) of the Declaration and any special Assessments as provided in Section 8.5 of the Declaration, (ii) approving amendments to the Declaration if such approval is required pursuant to Section 10.2 of the Declaration and (iii) voting on amendments to the Declaration as provided in Section 10.3 of the Declaration. As long as Developer is the Owner of any Lot or Dwelling in the Development or until Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, the members shall have no further voting rights or privileges in the Association. The voting rights of any member who has violated the Declaration or who is in default in the payment of Assessments (as defined in the Declaration) may be limited and suspended in accordance with the provisions of the Declaration or any rules and regulations adopted by the Association.

2.2 Annual Meeting. The annual meeting of the members of the Association shall be held at 10:00 a.m. on the last day of January of each year or at such other time or such other day within such month as shall be fixed by the Board of Directors. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. At the annual meeting, the members of the Association shall, subject to the terms of Sections 2.1 and 3.3 of these Bylaws, elect the Board of Directors of the Association, review the annual budget for the Association as provided in the Declaration and otherwise transact such other business as may come before such meeting. If the election of Directors shall not be held on the day designated herein for any annual meeting of the members of the Association, or any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members of the Association as soon thereafter as may be convenient.

2.3 Special Meetings. Special meetings of Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or the Board of Directors of the Association and shall be called by the President or Secretary of

the Association upon the petition of at least one-half (1/2) or more of the total votes in the Association.

2.4 **Place of Meeting.** The Board of Directors may designate any place, either within or without the State of Alabama, as the place of meeting for any annual or special meeting. In the absence of any designation, all meetings shall be held at the principal office of the Association in the State of Alabama.

2.5 **Notice of Meeting.** Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of any annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Board of Directors, the President, the Secretary, or the officer of persons calling the meeting, to each member of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the books of the Association, with postage thereon prepaid. If given personally, such notice shall be deemed to have been delivered to the member upon delivery of the same to the Lot or Dwelling of such member.

2.6 **Quorum.** With respect to the annual or any special meeting of the members of the Association, a quorum shall be deemed to exist if members of the Association entitled to cast over fifty percent (50%) of all of the votes of the Association are present, in person or by proxy, at such meeting. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.7 **Proxies.** At all meetings of the members of the Association, a member may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

2.8 **Voting by Members.** Subject to the provisions of Sections 2.1 and 3.3 of these Bylaws, each member of the Association shall be entitled to one (1) vote for each Lot or Dwelling owned by such member. Developer shall be entitled to one (1) vote for each Lot or Dwelling in the Development owned by Developer. No fractional voting shall be permitted. When more than one person is the owner of a Lot or Dwelling, the provisions of Section 2.1 of these Bylaws shall be applicable to the exercise of such voting rights. For purposes of these Bylaws, the Articles of Incorporation and the Declaration, the vote of a "majority" of the members of the Association shall mean the vote of more than fifty percent (50%) of the total number of votes represented at a meeting, whether in person or by proxy. Unless a greater proportion is specified in these Bylaws, the Articles of Incorporation or the Declaration and, subject to the terms and provisions of Sections 2.1 and 3.3 of these Bylaws, any matter which requires the vote of, approval, disapproval or consent of the members of the Association shall be deemed to have been given if a

"majority" of the members of the Association represented at a meeting, either in person or by proxy, affirmatively vote for, approve, disapprove or consent to the same.

2.9 **Informal Action by Members.** Any action required or permitted to be taken at a meeting of the members of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE III

BOARD OF DIRECTORS

3.1 **General Powers.** The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

3.2 **Number, Tenure and Qualifications.** The number of Directors of the Association shall be three (3). Each Director shall hold office until his successor shall have been elected and qualified. Directors need not be residents of the State of Alabama or members of the Association.

3.3 **Election, Removal and Replacement of Directors.**

(a) For so long as Developer is the Owner of any Lot or Dwelling within the Development or until Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association (i) all of the members of the Board of Directors of the Association shall be elected by Developer and (ii) Developer shall have the right at any time and from time to time to remove any Directors, either with or without cause, and may appoint a successor to such removed Director or otherwise fill any vacancies on the Board, without any consent or approval of any of the members.

(b) At such time as Developer no longer owns any Lot or Dwelling within the Development or at such time as Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, the members of the Association shall elect, by majority vote of the members of the Association, new members of the Board of Directors of the Association as provided in Section 12.1 of the Declaration. Thereafter, the members of the Association, by affirmative vote of a majority of the members, shall (i) elect the members of the Board of Directors at the annual meeting of the members of the Association and (ii) have the right to remove, either with or without cause, at any time or from time to time, any of the members of the Board and appoint a successor to such removed Director. There shall be no cumulative voting by the members.

3.4 **Regular Meetings.** A regular meeting of the Board of Directors shall be held, without further notice than this bylaw, immediately after, and at the same place as, the annual meeting of the members of the Association; provided, however, that any such regular meeting may be held at any other time or place which shall be specified in a notice

given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Directors. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

3.5 **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President, any Vice President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Alabama, as the place for holding any special meeting of the Board of Directors called by them.

3.6 **Notice.** Notice of any special meeting shall be given either (a) by written notice at least 48 hours in advance of such meeting, delivered in person or by leaving such notice at the place of business or residence of each Director, or by depositing such notice in the United States mail, postage prepaid, addressed to the Director at his address as it appears on the records of the Association; (b) verbally in person or by telephone at least 24 hours in advance of such meeting by communication with the Director in person or by telephone; or (c) by telegram delivered to the telegraph company at least 24 hours in advance of such meeting. Any Director may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

3.7 **Quorum.** A majority of the number of Directors fixed by Section 3.2 of these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. If a quorum is present when the meeting is convened, the Directors present may continue to do business, taking action by a vote of a majority of quorum as fixed above, until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum as fixed above, or the refusal of any Director present to vote.

3.8 **Manner of Acting.** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by statute, the Articles of Incorporation or these Bylaws.

3.9 **Action Without a Meeting.** Any action required or permitted to be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

3.10 **Vacancies.** For so long as Developer is the Owner of any Lot or Dwelling in the Development or until Developer relinquishes Developer's right to fill vacancies to the Association, any vacancy occurring in the Board of Directors shall be filled by Developer as provided in Section 3.3(a) above. At such time as Developer no longer owns any Lot or Dwelling in the Development or at such time as Developer notifies the Association that Developer has relinquished Developer's rights hereunder to the Association, any vacancy occurring in the Board of Directors, other than a vacancy

occurring by reason of a Director's removal pursuant to Section 3.3(b) of these Bylaws, may be filled by the affirmative vote of a majority of the remaining Directors. In the event that there are no remaining Directors, then the vacancy or vacancies occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the members of the Association. A Director elected or appointed to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

3.11 **Compensation.** By resolution of the Board of Directors, each Director may be paid his expenses, if any, of attendance at each meeting of the Board of Directors. No such payment shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

3.12 **Committees.**

(a) The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate from among its members one or more committees, each committee to consist of one or more of the Directors and each of which committees, to the extent provided in such resolution, shall have and may during intervals between the meetings of the Board, exercise all the authority of the Board of Directors, except that no such committee shall have the authority of the Board of Directors in reference to issuing capital stock, amending the Articles of Incorporation, adopting a plan of merger or consolidation, filling vacancies in the Board of Directors or amending the Bylaws of the Association. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law.

(b) Notwithstanding anything provided to the contrary in Section 3.12(a) above, at such time as Developer no longer owns any Lot or Dwelling in the Development or, upon Developer's written notice to the Association that it no longer desires to exercise the rights to appoint and remove members of the ARC as provided in Section 5.2(a) of the Declaration, then the Board of Directors shall appoint all members of the ARC in accordance with the provisions of Article V of the Declaration.

3.13 **Resignations.** Any Director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board of Directors or by giving written notice thereof to the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

3.14 **Participation in Meetings by Conference Telephone.** Members of the Board of Directors or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other

at the same time and participation by such means shall constitute presence in person at such meeting.

ARTICLE IV

OFFICERS

4.1 **Principal Officers.** The principal officers of the Association shall be elected by the Board of Directors and shall include a President, one or more Vice Presidents, a Secretary and a Treasurer and may, at the discretion of the Board of Directors, also include a Chairman of the Board and such other officers as may be designated from time to time. Any number of offices may be held by the same person, except the offices of President and Secretary. None of the principal officers need be Directors of the Association.

4.2 **Election of Principal Officers; Term of Office.** The principal officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the members. If the election of principal officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each principal officer shall hold office until his successor shall have been duly elected and qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. If the Board of Directors shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board of Directors.

4.3 **Subordinate Officers, Agents and Employees.** In addition to the principal officers, the Association may have such other subordinate officers, agents and employees as the Board of Directors may deem advisable, each of whom shall hold office for such period and have such authority and perform such duties as the Board of Directors, the Chairman of the Board, the President, or any officer designated by the Board of Directors, may from time to time determine. The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any subordinate officer, agent or employee of the Association.

4.4 **Delegation of Duties of Officers.** The Board of Directors may delegate the duties and powers of any officer of the Association to any other officer or to any Director for a specified period of time for any reason that the Board of Directors may deem sufficient.

4.5 **Removal of Officers or Agents.** Any officer or agent of the Association may be removed by the Board of Directors at any time, either with or without cause, and the Board of Directors may appoint a successor to such removed officer and agent. Election or appointment of any officer or agent shall not of itself create contract rights.

4.6 **Resignations.** Any officer may resign at any time by giving written notice of resignation to the Board of Directors, to the Chairman of the Board, to the President or to the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of a resignation shall not be necessary to make the resignation effective.

4.7 **Vacancies.** A vacancy in any office, the holder of which is elected or appointed by the Board of Directors, because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term of such office. A vacancy in any other office for any reason shall be filled by the Board of Directors, or any committee, or officer to whom authority for the appointment, removal or filling of vacancies may have been delegated by these Bylaws or by resolution of the Board of Directors.

4.8 **Chairman of the Board.** The Chairman of the Board, who must be a member of the Board of Directors, shall preside at all meetings of the members of the Association and of the Board of Directors at which he is present. The Chairman of the Board shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors.

4.9 **President.** The President shall, in the absence of the Chairman of the Board, preside at all meetings of the members of the Association and of the Board of Directors at which he is present. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall have general supervision over the business and affairs of the Association. The President shall have all powers and duties usually incident to the office of the President except as specifically limited by resolution of the Board of Directors. The President shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors.

4.10 **Vice Presidents.** In the absence or disability of the President or if the office of President be vacant, the Vice Presidents, in the order determined by the Board of Directors, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board of Directors at any time to extend or confine such powers and duties or to assign them to others. Any Vice President may have such additional designation in his title as the Board of Directors may determine. Each Vice President shall generally assist the President in such manner as the President shall direct. Each Vice President shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors or the President.

4.11 **Secretary.** The Secretary shall act as Secretary of all meetings of the members of the Association and of the Board of Directors at which he is present, shall record all the proceedings of all such meetings in a minute book to be kept for that purpose, shall have supervision over the giving and service of notices of the Association, and shall have supervision over the care and custody of the records and seal of the Association. The Secretary shall be empowered to affix the corporate seal to documents,

the execution of which on behalf of the Association under its seal is duly authorized, and when so affixed may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board of Directors. The Secretary shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors or the President.

4.12 **Treasurer.** The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Association and shall cause the funds of the Association to be deposited in the name of the Association in such banks or other depositories as the Board of Directors may designate. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board of Directors. The Treasurer shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors or the President.

4.13 **Salaries.** The officers of the Association shall not be entitled to any salaries or other compensation except for expenses incurred on behalf of the Association which shall be reimbursed.

ARTICLE V

FISCAL MATTERS AND BOOKS AND RECORDS

5.1 **Fidelity Bonds.** The Board of Directors may require that any contractor or employee of the Association handling or responsible for Association funds furnish an adequate fidelity bond. The premium for any such bond shall be paid by the Association and shall constitute a Common Expense.

5.2 **Books and Records Kept by Association.** The Association shall keep detailed, complete and accurate financial records, including itemized records of all receipts and disbursements, shall keep detailed minutes of the proceeds of all meetings of the members and of the Board of Directors and committees having any of the authority of the Board of Directors, and shall keep such other books and records as may be required by law or necessary to reflect accurately the affairs and activities of the Association. The Association shall keep at the office of the Association a record giving the names and addresses of the Directors and all members of the Association, which shall be furnished by each Owner pursuant to Section 5.10 of these Bylaws.

5.3 **Inspections.** The books, records and papers of the Association shall at all times during reasonable business hours be subject to inspection by any member or his agent or attorney for any proper purpose. True and correct copies of the Articles of Incorporation, these Bylaws, the Declaration, and all rules and regulations of the Association with all amendments thereto, shall be maintained at the principal registered offices of the Association and copies thereof shall be furnished to any member on request on payment of a reasonable charge therefor.

5.4 **Contracts.** The Board of Directors may authorize any officer or officers, or agent or agents of the Association, in addition to the officers so authorized by the Declaration and these Bylaws, to enter into any contract or execute and deliver any instrument in the name of, or on behalf of the Association, and such authority may be general or confined to specific instances.

5.5 **Checks, Drafts, etc.** All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer of the Association.

5.6 **Deposits.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

5.7 **Gifts.** The Board of Directors may accept, on behalf of the Association, any contribution, gift, bequest or devise for the general purposes, or for any special purpose, of the Association.

5.8 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

5.9 **Annual Statements.** Not later than four (4) months after the close of each fiscal year, the Board of Directors shall prepare or cause to be prepared a balance sheet showing in reasonable detail the financial condition of the Association as of the close of its fiscal year and an income and expense statement showing the results of its operations during its fiscal year. Such statements may, in the discretion of the Board, be audited statements. Upon receipt of written request, the Treasurer promptly shall mail to any member copies of the most recent such balance sheet and income and expense statement on payment of a reasonable charge therefor.

5.10 **Notices.** Each member shall be obligated to furnish to the Secretary of the Association, the address, if other than the Lot or Dwelling of such member, to which any notice or demand to the Owner under the Declaration of these Bylaws is to be given, and if no address other than such Lot or Dwelling shall have been designated, all such notices and demands shall be mailed or delivered to such Lot or Dwelling.

5.11 **Payment of Taxes on Common Areas and Insurance Premiums.** The Board shall, to the extent funds are available, cause payment to be made, in a timely manner, for all Common Expenses of the Development, including all taxes assessed against the Common Areas or Association property and all insurance premiums.

ARTICLE VI

INSURANCE

6.1 **Types of Coverage.** The Association shall maintain in effect at all times as a Common Expense the types of insurance coverage required by the Declaration, any workmen's compensation or other insurance required by law, and such other insurance as the Board may from time to time deem appropriate. The Board shall review the amount and terms of such insurance annually.

6.2 **Damage or Destruction to Common Areas.** Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas 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, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Association shall promptly commence and complete the repair and restoration of any portions of the Common Areas damaged by any such fire or other casualty. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all members, without the necessity of a vote or the consent or approval of any of the members, as provided in the Declaration, to provide funds to pay such excess costs of repair or reconstruction. Such a special Assessment shall be levied against the members equally in the same manner as annual Assessments are levied, and additional special Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such special Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined by the Board of Directors that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

6.3 **Condemnation of Common Areas.** Whenever all or any part of the Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board, the award made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which Improvements have been constructed, then the Association shall restore or replace such Improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors and the ARC (as defined in the Declaration). If the award is not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all members, without the necessity of a vote or the consent or approval of any of the members, as provided in the Declaration, to provide funds to pay such excess costs of repair or reconstruction. Such a special Assessment shall be levied against the members equally in the same manner as annual Assessments are levied, and additional special Assessments may be made at any time during or following the completion of any repair or reconstruction. If the Board of Directors determine that such Improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association to be used as provided in the Declaration.

(b) If the taking or sale in lieu thereof does not involve any Improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award or net funds shall be retained by and for the benefit of the Association.

ARTICLE VII

INDEMNIFICATION

7.1 **Indemnification.** The Association shall, to the fullest extent permitted by applicable law, indemnify any person (and the heirs, executors and administrators of such person), who, by reason of the fact that he is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, was or is a party or is threatened to be made a party to:

(a) any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals, (other than an action by or in the right of the Association), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such claim, action, suit or proceeding; or

(b) any threatened, pending or completed claim, action, suit or proceeding by or in the right of the Association to procure a judgment in its favor, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action, suit or proceeding. Any indemnification by the Association pursuant hereto shall be made only in the manner and to the extent authorized by the Articles of Incorporation and applicable law, and any such indemnifi-

cation shall not be deemed exclusive of any other rights to which those seeking indemnification may otherwise be entitled.

7.2 Indemnification Insurance. The Association shall have the power and authority to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, member, manager or agent of the Association or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under applicable law.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Waiver of Notice. Whenever any notice is required to be given under any provision of law, the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, the Board of Directors or members of a committee of Directors need be specified in any written waiver of notice unless otherwise required by these Bylaws. Attendance by a Director at a meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

8.2 Incorporation by Reference. All of the terms, provisions, definitions, covenants and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in these Bylaws and in the Declaration, then the provisions of the Declaration shall at all times control.

8.3 Power of Directors to Amend. The Board of Directors shall have the right, power and authority to alter, amend or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any regular or special meeting of the Board. Furthermore, at such time as Developer no longer owns any Lot or Dwelling in the Development, the members of the Association, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association, may alter, amend, or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any annual meeting or at a special meeting called for such purposes.

8.4 Seal. The Board of Directors may, but shall not be obligated to, provide a corporate seal which shall be circular in form and have inscribed thereon the name of

the Association, the state of incorporation and such other words as the Board of Directors may prescribe; provided, however, that the use of the seal of the Association on any contract or agreement shall not be required to evidence the validity, authenticity or approval of such contract or agreement.

VERNON HILL

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DATED SEPTEMBER 19, 1995

This instrument prepared by and upon
recording should be returned to:

Mary P. Thornton
Dominick, Fletcher, Yeilding,
Wood & Lloyd, P.A.
2121 Highland Avenue South
Birmingham, Alabama 35205
(205) 939-0033

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VERNON HILL

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS VERNON HILL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 19th day of September, 1995 by CRIMSON DEVELOPMENT COMPANY, L.L.C., an Alabama limited liability company ("Developer").

RECITALS:

Developer is the owner of the Property, as described in Section 1.24 below, and desires to develop, improve, lease and sell the Property for single-family detached residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has heretofore caused the Association, as defined in Section 1.6 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.10 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making annual, special and individual Assessments, as defined in Section 1.5 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Jefferson County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described in Exhibit A attached hereto and any of the Additional Property, as described in Section 1.1 below, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 **Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or contiguous with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time approve for addition to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

1.2 **ARC.** The term or letters "ARC" shall mean the architectural review committee appointed pursuant to Section 5.2 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.3 **Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 5.4 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Lot, Dwelling or Common Area.

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

1.5 **Assessment.** The term "Assessment" shall mean, collectively, the annual and special assessments and individual assessments and/or any other charges assessed against an Owner by the Association pursuant to the terms of this Declaration.

1.6 **Association.** The term "Association" shall mean Vernon Hill Owner's Association, Inc., an Alabama nonprofit corporation.

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

1.8 **Buffer Area.** The term "Buffer Area" shall mean and refer to those portions of the Property, including any Additional Property, designated as "Buffer Area" on the subdivision plat(s) of the Property as recorded in the Office of the Judge of Probate of Jefferson County, Alabama and made subject to the terms and provisions of this Declaration. **THE BUFFER AREAS ARE NOT PART OF THE COMMON AREAS.**

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

1.10 **Common Areas.** The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall also include (a) all public or private roadways or easements within the boundaries of the Property upon which public or private roadways providing ingress to and egress from the Property for use by all Owners of the Property have been constructed, (b) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, improvements,

landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians within any public or private roadways, whether the same are located within the boundaries of the Property or on any public or private roadways which may be adjacent to or in close proximity with the Property which provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling), (c) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, basins or other areas and facilities, if any, located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling), (d) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and (e) all parks, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Property, if any, which are designated by Developer as Common Areas from time to time.

1.11 **Common Expenses.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.4(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.12 **Declaration.** The term "Declaration" shall mean and refer to this Vernon Hill Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.13 **Developer.** The term "Developer" shall mean Crimson Development Company, L.L.C., an Alabama limited liability company, and its successors and assigns.

1.14 **Development.** The term "Development", with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.2 hereof.

1.15 **Dwelling.** The term "Dwelling", with an initial capital letter, shall mean and refer to any improved Lot intended for use as single-family detached residential housing units.

1.16 **Governmental Authority.** The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

1.17 **Improvement.** The term "Improvement", with an initial capital letter, shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling or Common Area.

1.18 **Living Space.** The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

1.19 **Lot**. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. In the event any Lot is resubdivided pursuant to the provisions of Section 2.4 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

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

1.21 **Mortgagee**. The term "Mortgagee", with an initial capital letter, shall mean and refer to the holder of any Mortgage.

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

1.23 **Owner**. The term "Owner", with an initial capital letter, shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, limited liability company, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

1.24 **Property**. The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.1 **General Declaration**. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the

terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling and Common Area thereof.

2.2 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Jefferson County, Alabama submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property.

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

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

ARTICLE III

EASEMENTS

3.1 **Grant of Non-Exclusive Easements to Owners for Common Areas.** Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other Owners, Occupants and other parties having any rights or interest therein. The easement and rights granted pursuant to this

Section 3.1 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

3.2 Reservation of General Access Easement.

(a) Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of providing ingress to and egress from each Lot and Dwelling for (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or directly affected thereby.

(b) It is anticipated that a single family residential home shall be constructed on each Lot. Each home shall be located in such a manner so that there shall be a minimum of ten (10) feet between each home located on the Property (to be measured between the closest outside walls of the homes). The home to be constructed on each Lot may be situated so that one side wall of the home is located up to and on one side line of the Lot (provided that the required distance between each home on the Property is maintained). Any such Lot shall hereafter be referred to as the "dominant lot" and the side line which the home is located up to or on shall thereafter be referred to as the "dominant side". The owner(s) of each dominant lot shall have, and there is hereby created in favor of each dominant lot, a five (5) foot wide easement across the Lot which joins the dominant lot on its dominant side, the easement to extend along their common property line from the front to the rear thereof, for the limited purpose of facilitating the construction and maintenance of the home. The easement herein created shall apply not only during the construction phase but shall also run with the Lots subject thereto and in favor of the dominant lot, and apply to the continued maintenance and repair of the home and the reconstruction of a home in the event of its partial or total destruction. Any party exercising its rights under the easement herein established shall not cause any damage to any Lot which is subject to this easement and may exercise its rights only during reasonable hours and in a reasonable manner. The easement herein created shall not permit the alteration in any manner or any area subject to the easement by the Owner of the "dominant lot".

3.3 Reservation of Easements With Respect to Common Areas.

(a) Easement Upon Common Areas. Developer does hereby establish and reserve, for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in, on and to any Lot or

Dwelling, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing.

(b) Changes in Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas and any Lots owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.4 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same.

3.5 Reservation of Easement for Walks, Trails and Signs. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant, over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling and any public or private roadway which is directly adjacent to and abuts such Lot or Dwelling for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

3.6 Reservation of Easement for Buffer Area. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land twenty (20) feet in width running parallel to and along the perimeter boundary of the Property for the purpose of establishing a Buffer Area. Developer does hereby establish and

declare, for the benefit of Developer and the Association and their respective successors and assigns, that the Buffer Areas (i) shall be and remain a natural, undisturbed buffer area, free from any Improvements of any nature except that Developer may landscape such area in a manner and to the extent determined by Developer in Developer's sole discretion, (ii) shall not, without the prior written consent of Developer or the ARC, be used for any activities, whether as play areas for children, picnic areas, recreational areas or any other uses whatsoever and (iii) shall not be improved with any Improvements of any nature (including, without limitation, fences, walls, decks, outdoor furniture, recreational equipment or devices of any nature, equipment, tools, machinery, buildings or other structures).

3.7 Reservation of Maintenance Easement. Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.8 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any applicable watershed, soil erosion or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the ARC or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

ARTICLE IV

ASSOCIATION

4.1 Membership. The Owner of each Lot or Dwelling shall be a member of the Association. For purposes of determining membership in the Association, each dwelling unit situated on any portion of the Property shall be deemed a separate individual Dwelling. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling is owned by more

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

4.2 **Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the Property or until such time as Developer notifies the Association that Developer relinquishes such rights to the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

4.3 **Voting Rights.** Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws (which, among other things, provide that only Developer, for so long as Developer owns any Lot or Dwelling within the Property, shall be exclusively entitled to take various actions and vote on all matters to be voted on by the members of the Association) and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Article XI below, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling owned. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.4 above or the submission of any Additional Property to the terms of this Declaration. For purposes of this Section 4.3, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

4.4 **Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to

be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.5 **Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings and Common Areas so long as the same do not conflict with, contradict or attempt to supersede any of the terms and provisions of this Declaration.

4.6 **Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the ARC and the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the ARC or the Board of the Association. The officers, agents, representatives and members of the ARC or the Board of the Association shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction and shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC or the Association. The Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the ARC or the Board harmless from any and all liability to others on account of any such contract or commitment.

ARTICLE V

ARCHITECTURAL REVIEW COMMITTEE AND ARCHITECTURAL STANDARDS

5.1 **Committee Composition.** The ARC shall consist of not less than three (3) nor more the seven (7) persons, each of whom shall be appointed or elected as provided in

Section 5.2 below. The members of the ARC may, but shall not be required to be, members of the Association or Owners of any Lot or Dwelling. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.2 below may be removed with or without cause in the manner provided in Section 5.2 below.

5.2 Appointment and Removal of ARC Members.

(a) For so long as Developer is the Owner of any Lot or Dwelling within the Property or until such time as Developer notifies the Association that Developer relinquishes such right of appointment and removal to the Association, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as Developer is no longer the Owner of any Lot or Dwelling within the Property or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 5.2(a) above, then the members of the ARC shall be appointed by the Board of the Association.

(c) Any member of the ARC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 5.2(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.2(b) above are in effect. In the event of death or resignation of a member of the ARC, then Developer, in the event of the provisions of Section 5.2(a) above are applicable, or the Board, in the event the provisions of Section 5.2(b) above are applicable, as the case may be, shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.3 Procedure and Meetings. The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairmen, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC.

5.4 Architectural Standards. The ARC is hereby authorized, but not obligated, to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and other Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

5.5 Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING BY ANY OWNER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS SECTION 5.5.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property. Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements.

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations or any failure to comply with any of the provisions of this Declaration or the Architectural Standards. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Property. The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking the ARC's approval of plans and specifications.

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

5.6 Landscaping Approval. In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner, other than the Developer, on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the ARC.

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

5.8 **Subsurface Conditions.** The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by Developer or the ARC to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

5.9 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling or any Improvements situated thereon.

5.10 **Commencement and Completion of Construction.** Construction of a Dwelling upon a Lot shall commence within one (1) year of the purchase of such Lot from Developer. Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one

(1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities.

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

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

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

6.1 **Use Restrictions.** Except as otherwise provided to the contrary in this Section 6.1, each Lot and Dwelling shall be used for detached single-family residential purposes only. No trade or business may be carried on in or from any Lot or Dwelling, provided, however, that the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic.

6.2 Building Setbacks.

(a) Minimum building setback lines for all Dwellings shall be established either (i) by the ARC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development) or (iii) in the deed from Developer to the Owner of such Lot.

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.2(a) above.

6.3 **Minimum Living Space.** Minimum Living Space requirements shall be established (i) by the ARC, (ii) on the subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development) or (iii) in the deed from Developer to the Owner of a Lot.

6.4 Landscaping and Trees.

(a) Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot.

(b) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for roadways providing ingress to or egress from the Property. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners.

(c) Unless located within ten (10) feet of such Owner's Dwelling, driveway or sidewalk, no Owner, other than Developer, shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the ARC nor shall the foregoing be deemed to release any Owner from the provisions of Section 5.6 above.

6.5 Roofing. The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling.

6.6 Exterior Lighting. All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by the ARC.

6.7 Exterior Materials and Finishes. All exterior building material finishes for any Dwelling shall be approved by the ARC.

6.8 Fences. No fences of any kind or material, including electric or invisible fences, shall be permitted within the Property except as approved by the ARC.

6.9 Windows and Window Treatments.

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

(b) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

6.10 **Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters and all heating, ventilating and air conditioning compressor units and equipment shall, to the extent practicable, be located on each Lot so as not be visible from any public or private roadways. No window mounted heating or air conditioning units or window fans shall be permitted.

6.11 **Satellite Dishes and Antennae.** Subject to the approval of the ARC as to size, appearance, location and function, miniature satellite dishes which are three (3) feet in diameter or less and not visible from any street may be allowed on Lots or Dwellings.

6.12 **Outdoor Furniture, Recreational Facilities and Clotheslines.**

(a) Any yard (exterior) furniture placed, kept, installed, maintained or located on any Lot or Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any public or private street providing access to the Property. No interior furniture (i.e., sofas, etc.) shall be allowed outside any Dwelling.

(b) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from any public or private street and from any adjacent Lot or Dwelling.

6.13 **Pets and Animals.** No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, Dwelling or other portion of the Property; provided, however, that, unless otherwise approved by the Board, not more than three (3) dogs or cats may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Property, including the right to assess fines for violations of such rules and regulations.

6.14 **Trash, Rubbish and Nuisances.** No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Dwellings within the Property or any real property owned or being developed by Developer in close proximity to the Property. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for

any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Dwelling or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

6.15 **Above or Below Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot, Dwelling, or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwellings. Only public sewage systems shall be utilized for the discharge of sewage from any Lot or Dwelling.

6.16 **Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling unless approved by the ARC; provided, however, that the foregoing shall not be deemed to prohibit (a) any detached garages or other structures which are approved in writing by the ARC, (b) dog houses, as provided in Section 6.19, and (c) construction trailers and/or sales offices of Developer.

6.17 **Construction of Improvements.**

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any public or private roadways and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property. Used construction materials may be burned on-site so long as such burning is conducted at the rear of such Lot or Dwelling and does not create a nuisance to other Owners or violate the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any public or private street providing access to or within the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any street within the Development.

(b) Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

(c) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each

ARTICLE VIII

COMMON AREA ASSESSMENTS

8.1 Assessments and Creation of Lien. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) annual Assessments, as established and to be collected as provided in Section 8.4 below, (b) special Assessments, to be established and collected as provided in Section 8.5 below, and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided in Section 8.9(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.9(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Dwelling and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. In the event of co-ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. All other Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature.

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

8.3 Uniform Rate of Assessments.

(a) Both annual and special Assessments, as described in Sections 8.4 and 8.5 below, shall be assessed against each Lot or Dwelling in the Property at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his prorata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots or Dwellings owned by such Owner and the denominator of which shall be

the total number of Lots and Dwellings in the Property at the time such annual or special Assessment is levied.

(b) Notwithstanding anything provided in Section 8.3(a) above to the contrary, in the event any Additional Property is added to the Property, then the Lots and/or Dwellings within the Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Property.

8.4 Computation of Annual Assessments.

(a) The Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorata share of the same as provided in Section 8.3 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner.

(b) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.5 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(c) The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, trash collection and security services;

(iv) The costs of any insurance policies purchased for the benefit of the Association including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors

and omissions insurance, directors and officers liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association or for any members of the ARC;

(v) Expenses of maintaining, operating and repairing the Common Areas and any other amenities and facilities serving the Property which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair;

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(vii) The expenses of the ARC which are not defrayed by plan review charges;

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

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

8.5 Special Assessments. In addition to the annual Assessments authorized in Section 8.4 above, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments. The Board may make such special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.3 above.

8.6 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or

Dwellings. The individual Assessments provided for in this Section 8.6 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.6 shall apply, without limitation, to any individual Assessments levied pursuant to Section 7.2(b) above and Article XI below.

8.7 Notice of Meetings and Quorum. With respect to any meeting of the Members of the Association, including, without limitation, any meetings which are called for the purpose of approving special Assessments pursuant to Section 8.5 above, (a) written notice of such meeting shall be sent to all Owners not less than ten (10) days and not more than fifty (50) days in advance of such meeting and (b) the presence in person or by proxy of Owners entitled to cast at least fifty percent (50%) of all of the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of (i) a majority of the Owners who are voting in person or by proxy and (ii) Developer, to the extent Developer owns any Lot or Dwelling in the Property, shall be required to approve any matter submitted to the members of the Association for approval.

8.8 Date of Commencement of Assessments.

(a) The annual Assessments provided for herein shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding special Assessments shall be adjusted for each Lot or Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is conveyed. Annual and special Assessments for Lots and Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the date on which such Lot or Dwelling is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or special Assessments on any Lots or Dwellings which it, or its affiliates, owns in the Development.

(b) For so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the option to either pay annual Assessments on Lots or Dwellings owned by Developer or fund any deficits which may exist between the total amount of annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Development. At such time as Developer no longer has any interest in any Lot or Dwelling within the Development, Developer shall have

no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the Common Areas.

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

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association, all annual and special Assessments provided for herein and any individual Assessments levied or assessed pursuant to the terms of this Declaration. In the event any Assessments or any portions thereof are not paid when due, the same shall be subject to a late charge in an amount determined from time to time and uniformly applied by the Board, in the case of annual Assessments, special Assessments and/or individual Assessments, and the Owner of such Lot or Dwelling shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessments shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.9(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to this Section 8.9 above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any

portion of the Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, as the case may be, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association and be recorded in the Probate Office of Jefferson County, Alabama.

(d) The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and/or its respective agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or their respective agents, as the case may be, the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.10 **Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments or other charges authorized herein with respect to any Lot or Dwelling in the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Jefferson County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.9(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Jefferson County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 8.9(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by a Mortgagee on such Owner's Lot or Dwelling.

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

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

9.1 Damage or Destruction to Common Areas.

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

(b) Notwithstanding anything provided in Section 9.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

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

9.3 Condemnation of Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent

domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Property cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board of the Association shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.3(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

9.4 **Condemnation of Lots or Dwellings.** In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and

ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

9.5 **Insurance.** Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot, Dwelling and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot or Dwelling, does hereby waive and release the Association and Developer and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors from any and all liabilities or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage is caused by the fault or negligence of the Association, Developer, the ARC or any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors.

ARTICLE X

TERM AND AMENDMENTS

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

10.2 **Amendment by Developer.** For so long as Developer owns any Lot or Dwelling within the Property or until such time as Developer notifies the Association that Developer relinquishes such right hereunder to the Association, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Jefferson County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided,

however, that (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Dwelling, or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. Any amendment made pursuant to this Section 10.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.2.

10.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.2 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Mortgagee must be approved by such Mortgagee and (ii) during any period in which Developer owns any Lot or Dwelling within the Property, then Developer must approve such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.3(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama. Notwithstanding anything provided in this Section 10.3(b) to the contrary, Developer shall have the right, at its option, to add Additional Property to the Declaration as provided in Section 2.2 above.

ARTICLE XI

ENFORCEMENT

11.1 **Authority and Enforcement.** In addition to the rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board of the Association from time to time, then the Association, the Board, the ARC and the Developer shall each, jointly and severally, having the power and right, at their option, to (a) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling and shall be a personal obligation of such Owner which is guilty of such violation, (b) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the recreational facilities located in or upon the Common Areas, (c) suspend an Owner's right to vote in the Association, (d) enjoin such violation or noncompliance and/or (e) through their respective designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. The Board shall have the power to impose all or any combination of any of the foregoing sanctions. All costs and expenses incurred by the Association, the Board, the ARC or Developer in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of this Declaration and all such costs shall be deemed individual Assessments pursuant to Section 8.6 above. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association, the Board, the ARC and Developer set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by any of them either at law or in equity in the event of any violation or breach by any Owner or Occupant of any of the terms or provisions of this Declaration.

11.2 **Procedure.** In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or their respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights pursuant to Section 11.1 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation not less than ten (10) days prior to the imposition of sanctions.

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

XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS, OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Section 4.2 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Property or until such time as Developer notifies the Association that Developer relinquishes its rights hereunder to the Association, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.

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

12.3 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be

affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

12.4 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

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

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

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

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

12.9 Interpretation. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

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

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

12.12 **Standards for Review.** Whenever in this Declaration Developer, the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the ARC or the Association, as the case may be.

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

12.14 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Property.

12.15 **Assignment.** Developer and the ARC shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer and the ARC, respectively.

12.16 **Further Assurances.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Developer, the ARC or the Association for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

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

12.18 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

12.19 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 George Herbert Walker Bush, former President of the United States.

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

CRIMSON DEVELOPMENT COMPANY,
L.L.C., an Alabama limited liability company

By: _____

Its: MJR.

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County in said State, hereby certify that GASTON LORIND, whose name as Member of CRIMSON DEVELOPMENT COMPANY, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Member and with full authority executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 6th day of September, 1995.

Mary P. Thornton
Notary Public

My Commission Expires: 5/24/99

This instrument prepared by:
Mary P. Thornton
Dominick, Fletcher, Yeilding,
Wood & Lloyd, P.A.
2121 Highland Avenue South
Birmingham, Alabama 35205

**ARTICLES OF INCORPORATION
OF
VERNON HILL OWNERS ASSOCIATION, INC.**

The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Act (Code of Alabama (1975), Sections 10-3A-1, et seq.) hereby adopts the following Articles of Incorporation and certifies as follows:

1. **NAME.** The name of the corporation is "Vernon Hill Owners Association, Inc." (hereinafter referred to as the "Association").

2. **DURATION.** The period of duration of the Association shall be perpetual.

3. **PURPOSES.** The purposes for which the Association is organized are:

(a) To provide for the efficient preservation of the appearance, value and amenities of the Development which is subject to the Vernon Hill Declaration of Covenants, Conditions and Restrictions (the "Declaration") recorded or to be recorded in the Probate Office of Jefferson County, Alabama. Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Declaration.

(b) To own, operate, maintain, manage, repair and replace Common Areas of the Development.

(c) To the extent provided in the Declaration, to control the specifications, architecture, design, appearance, siting and landscaping of all Improvements to be constructed, placed or permitted to remain on any Lot or Dwelling in the Development and all alterations, changes and additions thereto.

(d) To perform and carry out the acts, duties, responsibilities and conditions delegated to the Association in the Declaration, these Articles of Incorporation, the Bylaws of this Association and all amendments thereto.

(e) To own, lease, license, operate, purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, exchange, release and dispose of, either alone or in conjunction with others, real and personal property, tangible and intangible, of every kind, character and description.

(f) To enforce all of the terms and provisions of the Declaration and to make, establish and enforce reasonable rules and regulations governing the administration, operation and management of the Development.

(g) To make, levy, collect and enforce Assessments, as defined in the Declaration, and to use and expend such Assessments in the manner set forth in the Declaration.

(h) To employ personnel and contract for services, material and labor, including contracting for the management of the Common Areas and all other portions of the Development.

(i) To purchase and maintain insurance for such coverages, with such insurance carriers, in such amounts, at such rates and with such deductibles as may be necessary for the protection of the Association, its officers, directors and members or as may be otherwise required in the Declaration.

(j) To enforce any of the provisions of the Declaration, these Articles and the Bylaws by legal and equitable actions as may from time to time be necessary.

(k) To enter into, make and perform contracts of every kind for any lawful purpose without limit as to amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body politic.

(l) To operate without profit for the sole and exclusive benefit of its members.

(m) To carry on any other business in connection with the foregoing, to transact any or all lawful business for which corporations may be incorporated under the Alabama Nonprofit Corporation Act, as amended, and to have and exercise all powers necessary or convenient to effect the purpose of the Association in accordance with and subject to the terms and provisions of the Declaration.

THIS ASSOCIATION DOES NOT CONTEMPLATE PECUNIARY GAIN OR PROFIT FOR THE MEMBERS THEREOF AND THE FUNDS OF THE ASSOCIATION, WHETHER RECEIVED BY GIFT OR OTHERWISE, REGARDLESS OF THE SOURCE THEREOF, SHALL BE EXCLUSIVELY USED

IN THE PROMOTION OF THE BUSINESS OF THE ASSOCIATION, AS THE BOARD OF DIRECTORS MAY FROM TIME TO TIME DETERMINE.

4. **INITIAL REGISTERED OFFICE AND AGENT.** The location and mailing address of the initial registered office of the Association, and the name of its initial registered agent at such address are as follows:

J. Michael Simpson
5467 Vicksburg Circle
Birmingham, Alabama 35210

5. **NONSTOCK AND NONPROFIT STATUS.** The Association shall have no capital stock, is not organized for profit, and does not contemplate pecuniary gain or profit to the members thereof. No part of the earnings of the Association shall inure to the benefit of any member, individual, officer, or director. The Association does not contemplate the distribution of gains, profits or dividends to the members thereof and is organized solely for nonprofit purposes.

6. **MEMBERS.** The members of the Association shall consist of all Owners. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Dwelling. Developer shall be entitled to all voting rights attributable to any Lots and Dwellings owned by Developer. Notwithstanding anything provided herein or in the Bylaws of the Association to the contrary, for so long as Developer owns any Lot or Dwelling in the Development, or until Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, (a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association, (ii) appoint the officers of the Association and the members of the ARC, as defined in the Declaration, (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association and the members of the ARC, (iv) amend these Articles of Incorporation and the Bylaws, (v) amend the Declaration (subject to the limitations set forth in Section 10.2 of the Declaration) and (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members of the Association are entitled to vote on the matters described in item (b) below of this Paragraph 6) and (b) the voting rights of the members of the Association shall be limited to (i) approving increases in the annual Assessments in excess of the amount set forth in Section 8.4(c) of the Declaration and any special Assessments as provided in Section 8.5 of the Declaration, (ii) approving amendments to the Declaration if such approval is required pursuant to Section 10.2 of the Declaration and (iii) voting on amendments to the Declaration as provided in Section 10.3 of the Declaration. As long as Developer is the Owner of any Lot or Dwelling in the Development or until Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, the members shall have no further voting rights or privileges in the Association. At such time as Developer no longer owns any Lot or Dwelling within the Development or until

Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, the members shall be entitled to vote on all of the foregoing matters subject to any restrictions set forth in the Declaration. The voting rights of any member who has violated the Declaration or who is in default in the payment of Assessments (as defined in the Declaration) may be limited and suspended in accordance with the provisions of the Declaration or any rules and regulations adopted by the Association.

7. **DIRECTORS.**

(a) **Number of Directors.** The affairs of the Association shall be managed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be three (3). Thereafter, the number of Directors shall be fixed in the manner provided in the Bylaws and may thereafter be increased or decreased from time to time by amendment to or in the manner provided in the Bylaws; provided, however, that (i) the number of Directors shall in no event consist of less than three (3) Directors, (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director, (iii) as provided in Sections 4.2 and 12.1 of the Declaration, Developer shall have the right to elect all members of the Board of Directors of the Association as long as Developer owns any Lot or Dwelling within the Development and (iv) at such time as Developer no longer owns any Lot or Dwelling within the Development or at such time as Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, the members of the Association shall elect a new Board of Directors of the Association as provided in Section 12.1 of the Declaration. Directors need not be Owners or residents of the State of Alabama. The names and addresses of each person who is to serve as an initial Director of the Association until their successors are elected and qualified or until such Directors are removed as provided in Paragraph 7(b) of these Articles are as follows:

Gaeton Lorino
1270 Parliament Lane
Birmingham, Alabama 35216

J. Michael Simpson
5467 Vicksburg Circle
Birmingham, Alabama 35210

Mary Richmond
9327 Parkway East
Birmingham, Alabama 35215

(b) **Removal.** For so long as Developer owns any Lot or Dwelling within the Development and has not relinquished to the Association Developer's right of

removal hereunder, Developer shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director or otherwise fill any vacancies on the Board, in each case without any consent or approval of any of the members. At such time as Developer no longer owns any Lot or Dwelling within the Development or Developer notifies the Association that Developer relinquishes Developer's rights hereunder to the Association, the members of the Association shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director. Any vacancies which may thereafter arise on the Board shall be filled as provided in the Bylaws.

(c) **Powers.** Except as may be otherwise provided to the contrary in the Declaration, these Articles of Incorporation or the Bylaws of the Association, all powers of the Association shall be exercised by or under authority of, and the business and affairs of the Association shall be managed under the direction of, the Board of Directors.

(d) **Conflicts of Interest.** No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its Directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest. Any Director of the Association or any corporation, firm, association or entity of which any Director of the Association is a director or officer or is financially interested may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that such relationship or interest in such contract or transaction shall be disclosed or known to the Board of Directors at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction and, if such fact shall be disclosed or known, any Director so related or interested may be counted in determining a quorum at such meeting and may vote on such matter or action with the same force and effect as if he were not so related or interested. Any Director of the Association may vote on any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation. Notwithstanding anything provided to the contrary in these Articles of Incorporation or the Bylaws, Developer or an affiliate of Developer shall be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Development.

8. **INCORPORATOR.** The name and address of the incorporator is as follows:

J. Michael Simpson
5467 Vicksburg Circle
Birmingham, Alabama 35210

9. **DISTRIBUTION OF ASSETS UPON DISSOLUTION.**

(a) Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

(i) Real property contributed to the Association without the receipt of other than nominal consideration by Developer shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part); and

(ii) Unless otherwise agreed to the contrary in the plan of distribution, all remaining assets shall be distributed among the members of the Association, as tenants in common, with each member's share of the assets to be determined in accordance with its voting rights.

(b) Dissolution of the Association shall be accomplished as set forth in the Alabama Nonprofit Corporation Act.

10. **POWER OF PRESIDENT AND VICE PRESIDENTS TO EXECUTE DOCUMENTS.** The President and each Vice President of the Association shall each have authority to execute all instruments, documents and contracts on behalf of the Association.

11. **INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS AND AGENTS.**

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee, member manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not

opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for willful, deliberate or wanton misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite that adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a director, officer, employee, member, manager or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraphs 11(a) and (b) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

(d) Any indemnification under Paragraphs 11(a) and (b) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, member, manager or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraphs 11(a) or (b) above. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the members of the Association.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner

provided in Paragraph 11(d) above upon receipt of an undertaking by or on behalf of the director, officer, employee, member, manager or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Paragraph 11.

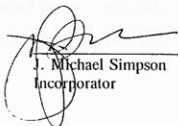
(f) The indemnification authorized by this Paragraph 11 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provisions of these Articles of Incorporation, Bylaws, agreement, vote of members or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, member, manager or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Paragraph 11.

12. **AMENDMENT.** For so long as Developer owns any Lot or Dwelling within the Development, these Articles of Incorporation may be amended at any time and from time to time by Developer or by the vote of the Board of Directors of the Association, without the consent or approval of any of the members of the Association. At such time as Developer no longer owns any Lot or Dwelling within the Development, then these Articles of Incorporation may be amended, subject to the terms and provisions of the Declaration, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association (i.e., two-thirds (2/3) of all Owners).

13. **INCORPORATION BY REFERENCE.** All of the terms, provisions, definitions, covenants and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in these Articles of Incorporation and the Declaration, then the provisions of the Declaration shall at all times control.

IN WITNESS WHEREOF, the undersigned Incorporator has hereunto subscribed his name to these Articles of Incorporation as of this the ____ day of September, 1995.



J. Michael Simpson
Incorporator