

DECLARATION OF PROTECTIVE COVENANTS

FOR

HERMITAGE

(2022 edition)

This edition merges all amendments filed in 2006, 2008, 2019, and 2022 into the original Declaration of Protective Covenants for Hermitage Phase I filed 2003 Aug 29 with the Probate Court of Madison County, Alabama. In the event of a conflict between this document and the individual documents, the individual documents filed with the Probate Court take precedent.

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>SECTION</u>	<u>PAGE</u>
I	DEFINITIONS	2
II	PROPERTY SUBJECT TO THIS DECLARATION	2
	1. Property Hereby Subjected to this Declaration.....	2
	2. Other Property	2
III	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	2
	1. Membership.....	2
	2. Voting.....	2
IV	ASSESSMENTS	3
	1. Purpose of Assessment.....	3
	2. Creation of the Lien and Personal Obligation for Assessments	3
	3. Computation	4
	4. Special Assessments.....	4
	5. Lien for Assessments	4
	6. Effect of Nonpayment of Assessments: Remedies of the Association	4
	7. Date of Commencement of Assessments	5
	8. Specific Assessments.....	5
	9. Budget Deficits During Declarant Control.....	5
V	MAINTENANCE: CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION	6
	1. Association’s Responsibility.....	6
	2. Owner’s Responsibility	6
	3. Party Walls and Party Fences	7
	4. Conveyance of Common Property by Declarant to Association.....	7
VI	USE RESTRICTIONS AND RULES	8
	1. General.....	8
	2. Residential Use.....	8
	3. Signs.....	8
	4. Vehicles	8
	5. Leasing	9
	6. Occupants Bound	9
	7. Animals and Pets.....	9
	8. Nuisance.....	10
	9. Unsightly or Unkempt Conditions	10

10.	Architectural Standards	10
11.	Antennas.....	11
12.	Energy Conservation Equipment.....	12
13.	Drainage	12
14.	Sight Lines at Intersections	12
15.	Clotheslines, Garbage, Etc.....	12
16.	Subdivision of Lot	12
17.	Guns	12
18.	Fences.....	12
19.	Utility Lines	13
20.	Air Conditioning Units	13
21.	Swimming Pools	13
22.	Lighting	13
23.	Minimum Building Size	13
24.	Setback Lines	13
25.	Mailboxes.....	14
26.	Gardens.....	14
27.	Landscaping	14
28.	Oil	14
29.	Brick.....	14
30.	Sidewalks.....	14
31.	Driveways	15
32.	Outbuildings.....	15
33.	Pool and Clubhouse	15
34.	Exterior design.....	15
35.	Garages.....	16
36.	Construction.....	16
37.	Suppliers and Subcontractors	16
38.	Flags.....	16
VII	INSURANCE AND CASUALTY LOSSES	17
1.	Insurance or Common Property.....	17
2.	Individual Insurance.....	18
3.	Damage and Destruction – Insured by Association.....	19
4.	Damage and Destruction – Insured by Owners.....	19
5.	Insurance Deductible	20
VIII	CONDEMNATION	20
IX	ANNEXATION OF ADDITIONAL PROPERTY	20
1.	Unilateral Annexation by Declarant	20
2.	Other Annexation.....	21

X	MORTGAGEE PROVISIONS	21
	1. Notices of Action.....	21
	2. Special FHLMC Provision.....	22
	3. No Priority	22
	4. Notice to Association	22
	5. Amendments by Board	22
	6. VA/HUD Approval	23
	7. Applicability of Article X	23
	8. Failure of Mortgagee to Respond	23
XI	EASEMENTS	23
	1. Easements for Encroachment and Overhang	23
	2. Easements for Use and Enjoyment	23
	3. Easements for Utilities	24
	4. Easement for Entry	24
	5. Easement for Maintenance.....	25
XII	GENERAL PROVISIONS	25
	1. Enforcement	25
	2. Self-Help	25
	3. Duration	25
	4. Amendment	26
	5. Partition.....	26
	6. Gender and Grammar.....	26
	7. Severability	27
	8. Captions.....	27
	9. Perpetuities.....	27
	10. Indemnification.....	27
	11. Construction and Sale Period	27
	12. Contracts Executed During Declarant Control.....	28
	13. Books and Records	28
	14. Financial Review.....	28
	15. Notice of Sale of Lease	29
	16. Agreements	29
	17. Implied Rights.....	29
	18. Variances.....	29

DECLARATION OF PROTECTIVE COVENANTS

FOR

HERMITAGE

THIS DECLARATION is made on the date hereinafter set forth by Hermitage Land Development, Inc., an Alabama Corporation (hereinafter sometimes called “Declarant”);

WITNESSETH

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

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

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

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

Article I

Definitions

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

Article II

Property Subject to This Declaration

Section 1. Property Hereby Subjected to This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B1, B2 and C and C2", attached hereto and by reference made a part hereof.

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

Article III

Association Membership and Voting Rights

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

Section 2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

Article IV

Assessments

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of the Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

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

Assessments shall be ~~two hundred fifty (\$250.00*)~~ per year. Additionally, the Board of Directors may from time to time levy assessments equally on all lots which shall be paid in such manner and on such dates as the Board may establish. The Assessments are due on the first day of January each year; all of the Assessments should be paid in full by January 31st. However, if the Assessments are not paid by January 31st of each year, an additional \$25.00 late charge per month will be added until the dues are paid in full for that year. All sums assessed against any lot pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a Lien on such lot in favor of the Association.

NOTE: The above provision is authorized by and reflects the further provision set out under **ARTICLE IV**, Sections 3 through 9.

* *Assessments may be adjusted yearly by the Board of Directors. 2026 assessments were \$500. The provisions set out in ARTICLE IV require the Board to determine the assessments required to cover the estimated operating costs of the Association, including a reserve.*

Section 3. Computation. It shall be the duty of the Board to prepare a yearly budget covering the estimated costs of operating the Association, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (the first budget to be submitted will be for the fiscal year 2003). The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by two-thirds (2/3) of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxed; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

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

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any Assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to

foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

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

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

Section 7. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot subject to this Declaration upon conveyance of such Lot to a person other than the Declarant. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. Lots which have not been so conveyed and are still titled to the Declarant shall be subject to assessment on the same "per lot" basis as Lots titled to others. The first annual assessment shall be adjusted according to the number of months remaining in that fiscal year.

Section 8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Sections 1 and 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

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

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

Section 9. Budget Deficits During Declarant Control. The Declarant shall be solely responsible for a period of one (1) year from the day and date first above written to satisfy the deficit if any, between the actual operating expenses of the Association (but specifically not including an

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

Article V

Maintenance: Conveyance of Common Property to Association

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall maintain the entry features at the main entrance of the Community and shall maintain and pay the expenses for water or electricity, if any, provided to all such entry features. The Association shall also maintain all medians located in the Community; and the property outside of Lots located within the Community which was originally maintained by Declarant, as well as the swimming pool and club house shall be maintained by the Association.

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

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

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

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance repair, or replacement of items for which he is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's attempt to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice

shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Party Walls and Party Fences.

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

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

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

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

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within the ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or

a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

Article VI

Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof).

Section 2. Residential Use. All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time. Leasing of a Lot shall not be considered a business or business activity. No structure of a temporary character including, without limitation, a trailer, camper, travel trailer, motorhome, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, whether temporarily or permanently.

Section 3. Signs. The term “sign” as used herein includes signs, posters, and banners. No sign of any kind shall be displayed to the public view without the prior express consent of the Architectural Control Committee with the exception that one (1) sign advertising a home for sale may be erected on a lot for sale provided it is no larger than nine (9) square feet, and is removed within seven (7) days of the closing date. No sign shall be illuminated or reflective. No sign shall be displayed that is political in nature. Notwithstanding the foregoing, the Board shall have the right to display reasonable and appropriate signs.

Section 4. Vehicles. The term “Vehicle” as used herein includes, without limitation, automobile, camper, motorhome, travel trailer, mobile home, boat, trailer, motorcycle, scooter, mini-bike, ATV, golf cart, go-kart, truck, bus, van, recreational vehicle, tractor, mower and any other towed or self propelled transportation type vehicle. Except as otherwise provided, all vehicles shall be parked or stored within garages or on driveways or other paved areas located on a Lot. Parking in yards or streets is prohibited. No vehicle shall be parked in such a way as to obstruct vision with respect to traffic line of sight or obstruct any driveway, street or sidewalk. No vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

No recreational vehicle, camper, motorhome, trailer, mobile home, bus, boat, ATV, golf cart, tractor, mower, or towed vehicle may be parked or stored within the Community for a period longer than three (3) days, except in a garage or behind a privacy fence, provided the vehicle is concealed from view from the street and neighboring properties from a viewing height of five feet (5) and in reasonable number as determined by the Board.

A truck with a mounted camper which is an owner's or occupant's primary means of transportation shall not be considered a recreational vehicle or camper, provided it is used on a regular basis for transportation and the camper is stored out of public view upon removal. No commercial vehicles or eighteen-wheel trucks, or the cabs of such trucks, shall be parked or stored within the Community. No passenger vehicle that is unlicensed or in a condition such that it is incapable of being operated upon the public highways may be left within the Community for a period longer than five (5) days, except in a garage. No ATV, golf cart, go-kart, dirt bike, moped, or similar vehicle may be driven on the streets of the Community unless registered and plated as a street-legal Low-Speed Vehicle (LSV) as per local and state law.

Any vehicle in violation of this Section will be cause for penalties, including, after reasonable notice, removal from the Community at the Owner's expense. Extensions to time period restrictions stated in this Section require prior express consent of the Board. Periodic movement of vehicles for the purpose of circumventing this Section does not comply with this Section.

Section 5. Leasing. Lots may be leased for residential purposes only. All leases must have a minimum term of six (6) months. All leases must require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease must also obligate the tenant to comply with the foregoing and must provide that in the event of noncompliance, the Board, in addition to any other remedies available to it may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. The Owner is responsible for any violations committed by the tenant. The Board reserves the right to require the Owner of a leased property that receives two (2) or more landscaping complaints to maintain both an active commercial weed control and landscape maintenance contract and provide the Board proof of contract(s). The landscape maintenance contract must include lawn, shrub and tree maintenance.

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

Section 7. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board. Pets that endanger health, make objectionable or excessive noise (including excessive barking) or constitute a nuisance must be removed by the Owner upon request of the Board. Dogs must be leashed at all times while not on their owner's property. When on their owner's property, dogs must be leashed or otherwise under their owner's control. No household pet that has caused damage or injury may be walked in the Community. No pets may be kept, bred or maintained for any commercial purpose. Animal Control authorities must be permitted to enter the Community to patrol and remove pets. All pets must be registered, licensed and vaccinated as required by law. Residents in control of a pet must promptly remove feces deposited by that pet on the private property of others or be subject to a fine.

Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsafe, unsightly, or unkempt condition on his or her property. No building shall be permitted to stand with its exterior in an unfinished condition for longer than ten (10) months after commencement of construction. No outbuilding or addition to an existing structure shall be permitted to stand with its exterior in an unfinished condition for longer than ninety (90) days.

No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be any plants, animals, devices, or things of any sort whose activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature that may diminish or destroy the enjoyment of the Community. Trash, garbage, debris, or other waste matter of any kind shall not be burned within the Community.

Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. No vehicle shall be operated with a muffler not in good working order or modified to decrease the sound-dampening effectiveness of the muffler. It is the responsibility of each Owner and Occupant to ensure they and their guests are not violating the local noise ordinance which limits noise outside to 50 dB (quiet conversation) from 10:00 PM to 7:00 AM.

Section 9. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner and Occupant to prevent the development of any unsightly or unkempt condition on his or her property. This includes, but is not limited to, ensuring that the exterior of the house, fence, outbuildings, landscaping, sidewalks, driveways, mailboxes, etc. are well kept and not deteriorating or overgrown. Activities such as auto repair or restoration which might tend to cause disorderly, unsightly, or unkempt conditions, shall be kept concealed from view from the street. This includes assembly and disassembly of vehicles and other mechanical devices.

Section 10. Architectural Standards. No exterior construction, alteration, addition or erection of any kind shall be made unless and until project plans and specifications showing at least the nature, kind, shape, height, materials and location have been submitted in writing to, reviewed by and approved by the Architectural Control Committee (ACC). These plans must contain a front elevation, rear elevation and plat plan to be kept on file by the Association.

Beginning work prior to receiving approval in writing from the ACC is cause for a fine to be determined by the Board and is cause for a cease order until approval is granted. Failure to comply with a cease order is cause for an additional fine. Changes to project plans or specifications already approved will nullify said approval and must be resubmitted for approval; beginning work prior to reapproval is cause for a fine. Approved projects must begin within one (1) year after the date of

approval, after which time that approval becomes invalid and plans and specifications must be resubmitted for approval.

The Board may employ architects, engineers, or other persons necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the ACC for all matters delegated. Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may provide for a review fee.

In the event that the ACC fails to approve or deny a submission within thirty (30) days after all requested plans and specifications have been submitted, approval will not be required and this Section will be deemed to have been compliant. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any change, modification, addition or alteration. In the discretion of the ACC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest.

The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for covenant compliance. Such Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Plans are not approved for engineering or structural design or quality of materials, and by approving such plans, neither the Architectural Control Committee, the members thereof, nor the Association assumes liability or responsibility for any defect in any structure constructed from such plans. Neither the Association, ACC, Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans. Owners are responsible for any adverse effects on rainwater drainage to neighboring properties resulting from alterations to their property; catch basins or other drainage solutions may be deemed a necessary addition.

Every Person who submits plans and every Owner agrees that he will not bring any action or suit against the Association, ACC, Board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 11. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community without the prior written consent of the Architectural Control Committee, with the exception of satellite dishes, not to exceed 1 meter (39.4 inches) in diameter.

Satellite dishes must be located or screened so as to be concealed from view from the street and neighboring properties, provided an acceptable quality signal can be received.

Section 12. Energy Conservation Equipment. No solar panels, solar collectors, attendant hardware, or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined by the Architectural Control Committee.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sale expense.

Section 14. Sight Lines at Intersections. Corner lots must maintain visibility with respect to traffic line of sight. Sight lines are defined as the triangular area formed by the street property lines and a line connecting them at twenty-five (25) feet from their intersection that extends into the street. No fence, wall, hedge or shrub within sight lines may be taller than thirty (30) inches above the ground. Shrub and tree limbs within sight lines must be kept trimmed so that even when weighed down by rain, they remain at least six (6) feet above the ground.

Section 15. Clotheslines, Garbage, Etc. All clotheslines, storage tanks, woodpiles, swimming pool pumps, filters and related equipment and other similar items must be located or screened so as to be concealed from view from the street and neighboring properties. Garbage and Recycling receptacles must be located or screened so as to be concealed from view from the street or placed neatly against the rear or side of the house, except on their respective collection day and the evening before.

Bulk Trash, to include limbs, bagged landscape clippings, appliances, home renovation waste, etc. must be concealed from view from the street until placed at the curb the day prior to collection for City residents or the Sunday prior to the week of collection for County residents. Receptacles and Bulk Trash must be placed for collection so as to minimize encroachment on the street and sidewalk.

Section 16. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision regulations.

Section 17. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns and pellet guns.

Section 18. Fences. No fence shall be constructed prior to receiving written approval from the Architectural Control Committee (ACC). Fences must be a minimum of seventy (70) inches in height and are not to exceed seventy-four (74) inches in height. In no case shall fences protrude any closer to the

street than the front of the house. No part of any fence shall be located any closer to the street than twenty-five (25) feet.

Fences must be constructed of wood, wood composite, or black wrought-iron or wrought-iron-look metal. No chain link, vinyl, or wire fencing is permitted regardless of proposed location. Fences must conform to an approved style as defined by the ACC. Wood fences must be stained, when properly dry, with an approved stain as defined by the ACC. Composite fences must conform to an approved color as defined by the ACC. Paint is not approved for use on wood or composite fences.

Fences must be uniform, being the same style, material and color on all sides, with the exception of any portion of the fence that is part of a connected neighboring fence. Any missing fence section or side must either be replaced to match the remaining fence, or the remaining fence, not shared with a neighbor, must be removed. Fences must be kept properly maintained and stained. In order to fulfill this covenant, Owners may need to occasionally gain limited access to neighboring properties for fence maintenance including staining; due to easements between properties, neighbors shall not restrict such access unless their yard is also fenced.

Section 19. Utility Lines. All utilities from the street to the house shall be installed underground.

Section 20. Air Conditioning Units. Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed. No air conditioning apparatus or unsightly projection shall be attached to the front of any residence.

Section 21. Swimming Pools. No swimming pool shall be constructed prior to receiving written approval from the Architectural Control Committee. Plans for swimming pools shall include installation of a compliant property perimeter fence, if one is not already installed. (See Section 18 regarding Fences) No above-ground pools are permitted, with the exception of kiddie pools shorter than two (2) feet and concealed from view from the street.

Section 22. Lighting. All exterior lighting visible from the street shall require approval from the Architectural Control Committee, except for replacement of existing lighting and seasonal decorative lights from November 15 to January 15.

Section 23. Minimum Building Size.

(a) All residences constructed in Phase I, which is described in Exhibit "B" attached hereto, shall contain a minimum of two thousand four hundred (2400) square feet of centrally heated living space which shall specifically exclude, without limitation, open porches, garage and unfinished storage areas.

(b) All residences constructed in Phase II, which is described in Exhibit "B2" attached hereto, shall contain a minimum of two thousand two hundred (2200) square feet of centrally heated living space which shall specifically exclude, without limitation, open porches, garage and unfinished storage areas.

(c) All residences constructed in the remaining property, which is described in Exhibit "C2" attached hereto less that property described in B, B2, and C, shall have its minimum size requirement determined when each phase is developed.

Section 24. Setback Lines. No building shall be located on any lot nearer to the front lot line nor nearer to the side street line than the minimum building setback lines as shown on the recorded plat,

except as hereinafter provided. In no event shall any building on any lot be located nearer than 35 feet to the front lot line, nor nearer than 5 feet to the side lot line. Twenty-five-foot side lot lines are required on all corner lots. No dwelling shall be located on any interior lot nearer than 30 feet to the rear lot line. Eaves, steps and open porches shall not be considered as a part of a building, provided however, that this shall not be construed to permit any portion of a building to encroach upon another lot. At intersections the front shall be designated by the front elevation of the house, and the restriction of distance on the remaining street shall be 35 feet.

The following additional restriction applies to Phase Four (as adopted on May 10, 2006): In no event shall any building on any Phase Four lot be located nearer than 10 feet to the side lot line on all one-story homes and 12 feet on all two-story homes.

Section 25. Mailboxes. All mailboxes must be iron and black in color. A design will be provided by the Architectural Control Committee and such design will be made available to the Owner at an additional charge to be installed by builder or Owner.

Section 26. Gardens. No vegetable gardens, compost gardens, greenhouses or other food source planting shall be allowed in the front or on the sides of any residence on any Lot.

Section 27. Landscaping. Landscaping is to be maintained so as not to appear unsightly or unkempt. Grass must never reach a height of greater than six (6) inches. All sidewalks and driveways must be edged to not have grass overhang these surfaces. Any tree stump visible from the street must be ground, then sodded or mulched. Lots must be sodded within six (6) months after purchase on front and sides. Owners are responsible for maintaining a weed free lawn. Failure to maintain one's yard is cause for fines and eventually enactment of the self-help clause whereby landscaping services may be imposed by the Board at the Owner's expense.

Shrub and tree limbs must be kept trimmed so as not to obstruct the proper spread of light along the street and sidewalk from a street light. Full visibility of traffic signs must be maintained for approaching motorists. Shrub and tree limbs that overhang the sidewalk must be kept trimmed so that even when weighed down by rain, they remain at least six (6) feet above the sidewalk. Plants must be kept trimmed back no less than even with the edge of the sidewalk up to a height of six (6) feet so as not to encroach on the sidewalk. The area between the curb and sidewalk must remain grass, except for mulched areas bordering driveways, mailboxes or utility boxes; plants within this area must be shorter than two (2) feet.

Section 28. Oil. No oil drilling, development operations, oil refining, quarry or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, mineral excavations or shafts be permitted upon or in any lot.

Section 29. Brick. All structures must be all brick. No vinyl or aluminum siding is allowed. Any deviation requesting Dryvit or stone will be considered on a case-by-case basis by the Architectural Control Committee.

Section 30. Sidewalks. All builders shall be required to install four (4) foot wide sidewalks on all street frontages as required by the Architectural Control Committee.

Section 31. Driveways. All driveways must be concrete from garage to asphalt in street. Driveway extensions visible from the street or neighboring properties must be concrete.

Section 32. Outbuildings. The term “Outbuilding” as used herein includes, without limitation, detached garage, greenhouse, shed, pavilion, pergola, gazebo, playset and playhouse. No outbuilding shall be erected, placed or altered on any lot prior to receiving written approval from the Architectural Control Committee. All outbuildings must be built on-site and have the quality of workmanship, materials and harmony of exterior design consistent with the existing structures. Location with respect to topography and finish grade elevation must be compatible with existing structures. All outbuildings must be located in the backyard. There shall be no more than three (3) total outbuildings per lot. The Architectural Control Committee may withhold approval for any reason, including location, number or size of outbuildings already located on the lot.

Section 33. Pool and Clubhouse. The Hermitage pool is a private amenity for use only by Hermitage residents and their guests. Guests must be accompanied by an adult resident at all times and the resident is responsible for their guests actions. The board may limit the number of guests. Each Owner is entitled to a pool key. Replacement keys and extra keys will be available for a fee determined by the Board. Residents are responsible for the actions of individuals they allow into the pool facility, as well as anyone that those individuals may allow; violations or losses incurred as the result of actions taken by these individuals will be the responsibility of the resident who originally allowed access. Damage determined to be deliberate or by negligence is cause for additional penalties. For this reason, lost or stolen pool keys must be reported immediately. Pool rules are posted at the pool. Violation of pool rules, by residents or their guests, is cause for fines as well as suspension or revocation of pool facility access. To avoid major liability for the Association, pool facility gates must remain securely closed at all times, except when entering and exiting the facility.

The Hermitage clubhouse is a private amenity available for use only by Hermitage residents and their guests. The clubhouse may only be reserved by a resident in good standing. The resident will be charged a Rental fee determined by the Board for use of the clubhouse. The resident, or Renter, will be responsible for any damage or excessive cleaning. Damage determined to be deliberate or by negligence is cause for additional penalties. The Renter is required to be on the premises for the duration of their event. An adult resident must remain in the clubhouse when any nonresident is present. The Renter is responsible for their guests and any guests of their guests. Everyone must abide by the posted clubhouse rules. The local noise ordinance must be observed, which limits noise outside to 50 dB (quiet conversation) after 10:00 PM. Any misconduct or failure to abide by the clubhouse rules is cause for guests to be directed to vacate the property and the Renter’s clubhouse privileges to be suspended or revoked. To avoid major liability for the Association, the clubhouse front door must remain locked when no adult resident is present in the clubhouse to prevent unsupervised pool access via the clubhouse. The Renter and their guests may use the pool on a limited basis provided that an adult resident associated with the clubhouse event is monitoring the pool and that Hermitage residents are not restricted in any way from access to pool amenities. Swimmers must use the pool room to dry off and change; wet swimsuits are not allowed in the clubhouse.

Section 34. Exterior design. The authority of the Architectural Control Committee shall include the approval of exterior design, exterior paint color, brick type and color, roof type and color of shingles. All windows must be approved. No aluminum windows allowed. Minimum roof pitch will be 8/12. Roofs

must use architectural grade asphalt shingles. The builder and subsequent Owner of a residence shall not change or deviate from those selections approved by the Architectural Control Committee unless such deviation or change is approved in writing by the Committee.

Section 35. Garages. All houses must contain at minimum a two-car side entry garage; front entry is prohibited. Carports are prohibited. On corner lots, the house must face the predominant direction of houses on the street. No garage shall be converted to dwelling space or enclosed, modified, or otherwise used so as to reduce its capacity for storing vehicles below that originally designed. With Architectural Control Committee written approval, one (1) detached garage is allowed per lot and counts toward the three (3) total outbuildings allowed per lot. (See Section 32 regarding Outbuildings) Any detached garage must have the quality of workmanship, materials and harmony of exterior design consistent with the house. Detached garages may be front entry.

Section 36. Construction. Before, during and upon completion of construction, all building materials, debris, temporary storage and portable toilets must either be maintained on the property in an orderly fashion, disposed of in expedient fashion or hidden away from view of street easements and other homes. At no time should any debris, garbage, portable toilet or waste bin be placed in a fashion so as to be unsightly or in the street. All Lot Owners, prior to commencing framing of the dwelling, should place an adequate size refuse container at the rear or side of the dwelling for the purpose of removing construction debris and shall police the construction site as needed to ensure the debris and surplus materials is not cluttering the Lot. (In the event placement at the rear or side should result in an unnecessary hardship, the Owner may apply for a waiver with the Committee.) In the event that the builder or homeowner violates any of these rules, the Board of Directors shall have the right to assess the Owner for any costs that may have been incurred to correct the problem in the event the homeowner does not. The homeowner is considered to be ultimately responsible for the builder's actions.

Section 37. Suppliers and Subcontractors. Each Lot Owner shall be responsible for all subcontractors and suppliers who provide material or services to the builder/owner during construction. Consequently, all Lot Owners shall ensure that their suppliers and subcontractors limit their activities to the Lot upon which construction is in process. No supplier or subcontractor shall use driveways or lawns belonging to another Lot Owner to turn around vehicles, dump excess concrete or other materials, store materials, park vehicles or for any other purpose. The Lot Owner who is having a home constructed in Hermitage shall be responsible for the actions of their subcontractors and suppliers and should advise them prior to entering into a subcontractor/supplier relationship that the above policy is in effect. Violators of this policy shall be subject to a fine imposed by the Board of Directors.

Section 38. Flags. Flags must be displayed only on flagpoles. Flagpoles must be constructed of quality materials that are harmonious with the home. Flags and flagpoles must be maintained in good condition. Freestanding flagpoles require approval from the Architectural Control Committee, must be no higher than twenty-five (25) feet, and may only be used to display in a respectful manner, one official United States flag, no longer than six (6) feet, and may additionally display one official flag of the State of Alabama, branch of the US Armed Forces, or POW-MIA, provided such additional flag be below and no larger than the US flag. Up to two (2) flagpoles no longer than four (4) feet may be attached to the outside wall of a dwelling and may only be used to display a United States, State of Alabama, branch of the US Armed Forces, POW-MIA, sports team or holiday themed flag, provided it is not political in nature.

Article VII

Insurance and Casualty Losses

Section 1. Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and the entry features, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire, and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

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

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

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

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

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

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

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

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by

one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

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

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

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

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

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

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

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

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available, shall be determined in the Directors' best business judgement, and, if available, shall at least equal three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled, subjected to nonrenewal or substantially modified without at least thirty (30) day's prior written notice to the Association. The Associations shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain,

at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the owner, to provide or acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt on or before the expiration of any policy. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Unit as a specific assessment.

Section 3. Damage and Destruction – Insured by Association.

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

(b) Repair and Reconstruction. Any damage or destruction covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article VX hereof) otherwise agrees. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

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

Section 4. Damage and Destruction – Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be

complete within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration.

Section 5. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

Article VIII **Condemnation**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five (75%) percent of the total Association vote other than Declarant and the Declarant (so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX hereof) shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Article VII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX **Annexation of Additional Property**

Section 1. Unilateral Annexation By Declarant.

(a) As the Owner thereof or, if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject any property or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof to the provision of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record or such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto the Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this

Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restriction similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the Owner thereof and the consent of the Declarant (so long as the Declarant has an option to subject additional property to this Declaration as provided above) upon the affirmative vote of a majority of the Association vote present or represented by proxy at a meeting duly called for such purpose, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

Article X

Mortgage Provisions

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

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

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

(b) any delinquency in the payment of assessments or charges owed by an Owner of Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

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

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

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Manager Corporation (The Mortgage Corporation), the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

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

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

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

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

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

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

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

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

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

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

Section 6. VA/HUD Approval. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX, the following actions shall require the prior approval of the Veterans Administration (“VA”) so long as the VA is guaranteeing any Mortgage in the Community, and the Department of Housing and Urban Development (“HUD”) is insuring any mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and HUD; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

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

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

Article XI

Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the Adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall any easements for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for Use and Enjoyment.

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

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

(ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use recreational facilities available for use by the Community, if any, for any period

during which any assessment against his Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

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

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association vote present, or represented by proxy, at a meeting duly called for such purpose and by the Declaration (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof).

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

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

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency

personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request of the Board.

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

Article XII

General Provisions

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

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter limit the period during which covenants restricting lands to certain uses may run, any provision of this Declaration

affected thereby shall run with and bind land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total Association vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

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

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

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

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

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

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

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

Section 10. Indemnification. The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

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

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

Section 12. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the By-Laws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon no more than ninety (90) days' written notice.

Section 13. Books and Records.

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

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

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

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

Section 14. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of

a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 15. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

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

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

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

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 28th day of AUGUST, 2003.

HERMITAGE DEVELOPMENT CORPORATION

BY: Joe Bob Whitt

TITLE: PRESIDENT

EXHIBIT "A"

DEFINITIONS

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

- (a) "**Association**" shall mean Hermitage Homeowners Association, Inc., a nonprofit Alabama corporation, its successors and assigns. The "**Board of Directors**" or "**Board**" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Alabama Corporate law.
- (b) "**By-Laws**" shall refer to the By-Laws of Hermitage Homeowners Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.
- (e) "**Common Property**" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (d) "**Community**" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration of all or any portion of the real property described in Exhibit "C", attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.
- (e) "**Community-Wide Standard**" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.
- (f) "**Declarant**" shall mean and refer to Hermitage Development Corporation, Inc., an Alabama corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.
- (g) "**Lot**" shall mean any plat of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded or to be recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each

Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

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

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

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

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

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

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

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

Exhibit "B"/"B1", "B2", "C"/"C1" and "C2" surveys attached to the original document filed 2003 Aug 29 are not included in this document.

Exhibit "D" By-Laws of Hermitage Homeowners Association, Inc. attached to the original document filed 2003 Aug 29 is not included in this document.