

HILLBROOK SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS HILLBROOK SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 8th day of November, 1996, by JIM W. CLEVELAND III and WILLIAM A. CLEVELAND ("Developer").

RECITALS:

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

Developer has heretofore caused the Association, as defined in Section 1.06 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.09 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.05 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, covenants, conditions, restrictions, charges, liens, and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any portion of the Property described in *Exhibit A* attached hereto and any of the Additional Property, as described in Section 1.01 below (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE I

Definitions

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

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limitation, those expenses described in Section 8.04(e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.11 Declaration. The term "Declaration" shall mean and refer to this Grove Hill Subdivision — Declaration of Covenants, Conditions, and Restrictions and all amendments thereto.

1.12 Developer. The term "Developer" shall mean Jim W. Cleveland III and William A. Cleveland and their heirs and assigns.

1.13 Development. The term "Development," with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.02 hereof.

1.14 Dwelling. The term "Dwelling," with an initial capital letter, shall mean and refer to any improved Lot.

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

1.16 Improvement. The term "Improvement," with an initial capital letter, shall mean and refer to all Dwellings, any building, structure, or device constructed, erected, or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling. "Improvements" shall also mean any grading, any excavation, or fill, the volume of which exceeds eight (8) cubic yards.

1.17 Institutional Mortgagee. The term "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust, or other recognized lending institution which normally and customarily engages in the business of making Mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Probate Office of Lee County, Alabama.

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

ARTICLE II

Property Subject to the Declaration

2.01 General Declaration. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area thereof.

2.02 Additional Property. Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Lee County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions, and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy, and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Lee County, Alabama, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions, or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.02 shall

and Occupants. The easement and rights granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot and Dwelling.

3.02 Reservation of Easements With Respect to Common Areas.

(a) *Easement Upon Common Areas.* Developer does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees, heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots and Dwellings, (ii) installing, maintaining, repairing, and replacing any other Improvements to the Property or to the Common areas, and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Dwelling within the Development, Developer hereby establishes and reserves for itself and its heirs and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to, and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

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

3.03 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and the Association and their respective heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining, and operating master television and/or cable systems, security and similar systems, and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to

cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance with the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.06 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the ARC, the Association, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.06 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

ARTICLE IV

Association

4.01 Membership. The Owner of each Lot or Dwelling shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot shall, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner, and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separate and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration,

and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same, (ii) subject to the provisions of this Section 4.04, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining, or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.04, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the ARC, the Association, and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided in Section 9.03 below, the dedication or transfer of title to any of the Common Areas must be approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association called for such purpose, and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell, or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.05 Agreements. Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties

reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives, and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall and does hereby indemnify, defend, and agree to forever hold each such officer, agent, representative, and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative, or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

ARTICLE V

Architectural Review Committee Development and Architectural Standards

5.01 Committee Composition. The ARC shall consist of not less than two (2) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below. The members of the ARC may, but shall not be required to be, members of the Association or Owners of any Lot or Dwelling. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.02 below may be removed with or without cause in the manner provided in Section 5.02 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Dwelling, shall be deemed to ratify the provisions of Section 5.02 below.

5.02 Appointment and Removal of ARC Members.

(a) For so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as Developer is no longer the Owner of any Lot or Dwelling within the Development or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 5.02(a) above, then the members of the ARC shall be appointed by the Board of the Association.

5.05 Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE DEVELOPMENT, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE DEVELOPMENT, AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS, AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING BY ANY OWNER, OTHER THAN DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT'S QUARTERS, OR ANY OTHER OUTBUILDINGS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05 (b) BELOW.

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

(i) Two (2) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios, and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling.

(ii) Two (2) copies of a foundation plan, floor plans, and exterior elevation drawings of the front, back, and sides of the Dwelling to be constructed on the Lot.

Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Development.

(e) In the event the ARC fails to approve in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been approved.

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

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

5.06 Landscaping Approval. In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation, or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefor have been submitted to and approved by the ARC. The provisions of Section 5.05 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same, and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

5.07 Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced, or relocated on any Lot or Dwelling without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.13 below.

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

Common Areas, and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs, and model Dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 5.12 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

5.13 Enforcement and Remedies. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the ARC and the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of nonconforming work, the completion of uncompleted work, or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

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

be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.04.

6.05 Siting of Dwellings. Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.05 above. Notwithstanding anything provided in Section 6.04 above to the contrary, the ARC may require building setback requirements different from those described in Section 6.04, including building setbacks which are greater than those specified in Section 6.04 above.

6.06 Trees. Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner, other than Developer, shall cut, remove, or mutilate any tree, shrub, bush, or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the ARC nor shall the foregoing be deemed to release any Owner from the provisions of Sections 6.09 and 7.01 below.

6.07 Height Limitations. The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed three and one-half (3¹/₂) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

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

6.09 Landscaping.

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 5.06 above. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers, and natural environment, including natural drainage channels, which exist on such Lot.

(b) All front and side yards of each Lot shall, unless approved by the ARC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(c) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC no later than thirty (30) days following the issuance of a certificate of occupancy for the Dwelling situated thereon.

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

6.12 Exterior Materials and Finishes.

(a) Approved exterior building material finishes for any Dwelling shall include brick, stone, stucco, synthetic plaster (e.g., dryvit), solid wood siding, hardboard siding, and such other materials as may be approved by the ARC. All wood surfaces utilized on the exterior of any Dwelling shall be painted; stained wood shall not be permitted unless approved by the ARC; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors. Prohibited exterior finish materials shall include particle board, plywood, vertical siding, simulated brick, and any other materials as the ARC may from time to time determine.

(b) All brick, stonework, and mortar, as to type, size, color, and application, must be approved by the ARC. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g., dryvit), wood, trim, cornices, eaves, railings, doors, and shutters shall be subject to ARC approval.

(c) No wooden steps or stoops shall be allowed on the front or sides of any Dwellings, unless approved by the ARC.

(d) No concrete, concrete block, or cinder block shall be used as an exposed building surface; any concrete, concrete block, or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.).

(e) Metal flashing, valleys, vents, and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

6.13 Chimneys. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

either walls or landscaping to be approved by the ARC. No window mounted heating or air conditioning units or window fans shall be permitted.

6.19 Satellite Dishes and Antennae. No satellite dishes shall be allowed on any Lot or Dwelling. No radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Development unless the same is contained entirely within the interior of a building or other structure, is not visible from any street or adjacent Lot or Dwelling, and is approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Development.

6.20 Driveways and Sidewalks. All driveways and sidewalks for each Lot or Dwelling shall be constructed of asphalt or concrete. Other materials may be used but only if approved by the ARC. All driveways and sidewalks shall be paved; chert, gravel, and loose stone driveways and sidewalks are prohibited. Provided, however, that the foregoing shall not be applicable to any of the roadways within the Development which may constitute Common Areas.

6.21 Outdoor Furniture, Recreational Facilities, and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained, or located in or on the front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained, or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear or side of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots and Dwellings.

(c) Children's toys, swing sets, jungle gyms, trampolines, and other outdoor and recreational equipment and appurtenances shall be allowed only at the side or rear of a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street.

(d) Free-standing playhouses and tree houses shall be permitted but only after ARC approval of the same.

(e) Basketball backboards shall be located in a location approved by the ARC.

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from any street and from any adjacent Lot or Dwelling. No clothing, rugs, or other items shall be hung, placed, or allowed to remain on any railing, fence, or wall.

Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees, or contractors of such Owner or Occupation who dumps, places, or allows trash or debris to accumulate on his Lot, Dwelling, or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage, and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from streets and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers can be moved to the front or side yard of any Dwelling on trash collection days for such Lot or Dwelling.

(c) Except as otherwise provided in Section 6.28(a) below, no outdoor burning of trash, garbage, leaves, wood, shrubbery, or other materials shall be permitted on any Lot, Dwelling, or other portion of the Development.

6.24 Recreational Vehicles and Machinery and Equipment.

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be permitted stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored, and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ARC. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery, or equipment.

(b) Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 6.20 above or in garages constructed in accordance with the provisions of Section 6.14 above. Vehicles shall not be parked on any landscaped or natural areas of a Lot or Dwelling.

(c) Any vehicle which is inoperable shall be immediately removed from the Development. No Owner or Occupant shall repair or restore any vehicle, machinery, or equipment of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for minor service work or emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Development.

(d) The Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use, or maintenance of

ordinances, codes, statutes, rules, or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling, or any other portion of the Development. No Owner shall allow dirt, mud, gravel, or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers, and suppliers shall cause all such dirt, mud, gravel, and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any streets within the Development.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, material-men, and suppliers shall (i) utilize off-street parking only, and (ii) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.06 above, are to be preserved.

(c) Up to two (2) signs, in size and color approved by the ARC, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ARC approval. The location of such signage shall be established by the ARC but in no event shall any signage authorized by this Section 6.28 or which may be approved by the ARC be attached, nailed, or otherwise adhered to any tree or other plant life on a Lot.

(d) No construction trucks, equipment, or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within the Development. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials, and all trash, debris, and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

(e) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county, and local laws, ordinances, rules, regulations, and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion, and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

6.29 Subdivision and Interval Ownership. No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of

costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

ARTICLE VII

Maintenance Responsibilities

7.01 Responsibilities of Owners.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein, and all lawns, landscaping, and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or its Lot or Dwelling, as the case may be, in a neat, clean, and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations, or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot or Dwelling, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ARC pursuant to Section 5.06 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of any roadway abutting such Lot or Dwelling and shall be binding on the Owner of each Lot or Dwelling at all times, either prior, during, or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines, and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe, and attractive condition. Trees, shrubs, vines, plants, and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage, and waste

repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair, or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees, or contractors, and the costs of such maintenance, cleaning, repair, or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.09 below.

ARTICLE VIII

Common Area Assessments

8.01 Assessments and Creation of Lien. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in Section 8.04 below, (b) special Assessments, to be established and collected as provided in Section 8.05 below, and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 8.09(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Dwelling and

8.04 Computation of Annual Assessments.

(a) Notwithstanding anything provided to the contrary in this Declaration, the annual Assessment for each Lot and Dwelling in the Development (including any Lot or Dwelling forming any part of the Additional Property) for the approximate three (3) year period commencing on the date hereof and continuing until and including December 31, 1999, shall not exceed One Hundred and No/100 Dollars (\$100.00) per annum per Lot or Dwelling in the Development. The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 8.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 8.06 below.

(b) Commencing with the fiscal year of the Association which begins on January 1, 1997 (i.e., from January 1, 1997, through December 31, 1997, which period is hereinafter referred to as the "Base Year"), and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorata share of the same as provided in Section 8.03 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner. The provisions of Section 8.04(a) above shall not apply to the Base Year or any subsequent year thereafter.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Assessments the increase of which exceed (without regard to proration or adjustment as provided in Section 8.08 below) the greater of either (i) ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in the United States Consumer Price Index or any successor index thereto for January of the current year over the index for January of the Base Year (i.e., January 1997) then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments.

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

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

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

(ix) The costs and expenses for conducting recreational, culture, or other related programs for the benefit of the Owners and Occupants;

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

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

8.05 Special Assessments. In addition to the annual Assessments authorized in Section 8.04 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a) (i) below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 9.01(b) and 9.03(a) (i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 8.07 below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.03 above.

8.06 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees, or contractors of any Owner or

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

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

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

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

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.09(a) above, together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.01 above in the manner hereinafter provided.

8.10 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot or Dwelling.

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

ARTICLE IX

Casualty, Condemnation, and Insurance

9.01 Damage or Destruction to Common Areas.

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

(b) Notwithstanding anything provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace, and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special

against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.05 and 8.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration, or reconstruction. Such special Assessments shall be levied against each Owner as provided in Section 8.03 above. Further special Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement, or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

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

general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

ARTICLE X

Term and Amendments

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

10.02 Amendment by Developer. For so long as Developer owns any Lot or Dwelling within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 10.04 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Dwelling or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance

ARTICLE XI

Enforcement

11.01 Authority and Enforcement. In addition to the provisions of Sections 5.13, 6.22, 6.23(a), 6.34, 7.02(b), and 8.09 above, in the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling and shall be a personal obligation of such Owner which is guilty of such violation, (ii) suspend an Owner's right to vote in the Association, or (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests, and tenants) to use any of the recreational facilities located in or upon the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

11.02 Procedure. In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors, or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

11.03 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement, and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

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

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

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

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

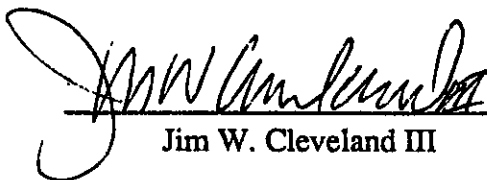
12.09 Interpretation. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property.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

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

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

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

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


Jim W. Cleveland III



William A. Cleveland

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U.S. DEPARTMENT OF JUSTICE

STATE OF ALABAMA)
COUNTY OF LEE)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jim W. Cleveland III and William A. Cleveland whose names are signed to the foregoing agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the agreement, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 8th day of November, 1996.


DEBRA P. MADDOX, NOTARY PUBLIC NOTARY PUBLIC
STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES FEB. 6, 2000

**ARTICLES OF INCORPORATION
OF
HILLBROOK HOMEOWNERS' ASSOCIATION, INC.**

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

1. **NAME.** The name of the corporation is "Hillbrook Homeowners' Association, Inc." (hereinafter referred to as the "Association").
2. **DURATION.** The period of duration of the Association shall be perpetual.
3. **PURPOSES.** The purposes for which the Association is organized are:
 - (a) To provide for the efficient preservation of the appearance, value, and amenities of the property which is subject to the Hillbrook Declaration of Covenants, Conditions, and Restrictions (the "Declaration") recorded or to be recorded in the Probate Office of Lee County, Alabama. Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Declaration.
 - (b) To own, operate, maintain, manage, repair, and replace Common Areas of the Development.
 - (c) To the extent provided in the Declaration, to control the specifications, architecture, design, appearance, siting, and landscaping of all Improvements to be constructed, placed, or permitted to remain on any Lot or Dwelling in the Development and all alterations, changes, and additions thereto.
 - (d) To perform and carry out the acts, duties, responsibilities, and conditions delegated to the Association in the Declaration, these Articles of Incorporation, the Bylaws of this Association, and all amendments thereto.
 - (e) To own, lease, license, operate, purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, exchange, release, and dispose of, either alone or in conjunction with others, real and personal property, tangible and intangible, of every kind, character, and description.
 - (f) To enforce all of the terms and provisions of the Declaration and to make, establish, and enforce reasonable rules and regulations governing the administration, operation, and management of the Development.
 - (g) To make, levy, collect, and enforce Assessments, as defined in the Declaration, and to use and expend such Assessments in the manner set forth in the Declaration.

Sec. State Fee	0.00
PJ Fee	25.00
Name Res. Fee	0.00
Clocking Fee	1.00
SPJ Fee	4.00
TOTAL	30.00

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- (h) To employ personnel and contract for services, material, and labor, including contracting for the management of the Common Areas and all other portions of the Development.
- (i) To purchase and maintain insurance for such coverages, with such insurance carriers, in such amounts, at such rates, and with such deductibles as may be necessary for the protection of the Association, its officers, directors, and members.
- (j) To enforce any of the provisions of the Declaration by legal and equitable actions as may from time to time be necessary.
- (k) To enter into, make, and perform contracts of every kind for any lawful purpose without limit as to the amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body politic.
- (l) To operate without profit for the sole and exclusive benefit of its members.
- (m) To carry on any other business in connection with the foregoing, to transact any or all lawful business for which corporations may be incorporated under the Alabama Nonprofit Corporation Act, as amended, and to have and exercise all powers necessary or convenient to effect the purposes of the Association in accordance with and subject to the terms and provisions of the Declaration.

THIS ASSOCIATION DOES NOT CONTEMPLATE PECUNIARY GAIN OR PROFIT FOR THE MEMBERS THEREOF AND THE FUNDS OF THE ASSOCIATION, WHETHER RECEIVED BY GIFT OR OTHERWISE, REGARDLESS OF THE SOURCE THEREOF, SHALL BE EXCLUSIVELY USED IN THE PROMOTION OF THE BUSINESS OF THE ASSOCIATION, AS THE BOARD OF DIRECTORS MAY FROM TIME TO TIME DETERMINE.

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

William A. Cleveland
455 Brookside Drive
Auburn, Alabama 36830

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

6. MEMBERS. The members of the Association shall consist of all Owners. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Dwelling. Developer shall be entitled to all voting rights attributable to any Lots and Dwellings owned by

Developer. Notwithstanding anything provided herein or in the Bylaws of the Association to the contrary, for so long as Developer owns any Lot or Dwelling in the Development, (a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association, (ii) appoint the officers of the Association and the members of the ARC, as defined in the Declaration, (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association, and the members of the ARC, (iv) amend these Articles of Incorporation and the Bylaws, (v) amend the Declaration (subject to the limitations set forth in Section 10.02 of the Declaration), and (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members of the Association are entitled to vote on the matters described in item (b) below of this Paragraph 6 and (b) the voting rights of the members of the Association shall be limited to (i) approving increases in the annual Assessments in excess of the amount set forth in Section 8.04(c) of the Declaration and any special Assessments as provided in Section 8.05 of the Declaration, (ii) approving amendments to the Declaration if such approval is required pursuant to Section 10.02 of the Declaration, and (iii) voting on amendments to the Declaration as provided in Section 10.03 of the Declaration. As long as Developer is the Owner of any Lot or Dwelling in the Development, the members shall have no further voting rights or privileges in the Association. At such time as Developer no longer owns any Lot or Dwelling within the Development, the members shall be entitled to vote on all of the foregoing matters subject to any restrictions set forth in the Declaration. The voting rights of any member may be limited and suspended in accordance with the provisions of the Declaration.

7. DIRECTORS.

(a) **Number of Directors.** The affairs of the Association shall be managed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be three (3). Thereafter, the number of Directors shall be fixed in the manner provided in the Bylaws and may thereafter be increased or decreased from time to time by amendment to or in the manner provided in the Bylaws; provided, however, that (i) the number of Directors shall in no event consist of less than three (3) Directors, (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director, (iii) as provided in Sections 4.02 and 12.01 of the Declaration, Developer shall have the right to elect all members of the Board of Directors of the Association as long as Developer owns any Lot or Dwelling in the Development, and (iv) at such time as Developer no longer owns any Lot or Dwelling in the Development, the members of the Association shall elect a new Board of Directors of the Association as provided in Section 12.01 of the Declaration. Directors need not be Owners or residents of the State of Alabama. The names and addresses of each person who is to serve as an initial Director of the Association until their successors are elected and qualified or until such Directors are removed as provided in Paragraph 7(b) of these Articles are as follows:

William A. Cleveland
455 Brookside Drive
Auburn, Alabama 36830

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Jim W. Cleveland, III
1666 Lauren Lane
Auburn, Alabama 36830

Patrick J. Salatto, III
2131 Heather Place
Auburn, Alabama 36830

(b) **Removal.** For so long as Developer owns any Lot or Dwelling within the Development, Developer shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director or otherwise fill any vacancies on the Board, in each case without any consent or approve of any of the members. At such time as Developer no longer owns any Lot or Dwelling within the Development, the members of the Association shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director. Any vacancies which may thereafter arise on the Board shall be filled as provided in the Bylaws.

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

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

8. **INCORPORATORS.** The name and address of each incorporator is as follows:

William A. Cleveland
455 Brookside Drive
Auburn, Alabama 36830

9. DISTRIBUTION OF ASSETS UPON DISSOLUTION.

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

- (i) Real property contributed to the Association without the receipt of other than nominal consideration by Developer shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part); and
- (ii) Unless otherwise agreed to the contrary in the plan of distribution, all remaining assets shall be distributed among the members of the Association, as tenants in common, with each member's share of the assets to be determined in accordance with its voting rights.

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

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

11. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS.

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

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed claim, action, or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred

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by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for willful, deliberate, or wanton misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which court shall deem proper.

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

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

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit, or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit, or proceeding as authorized in the manner provided in Paragraph 11(d) above upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Paragraph 11.

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

(g) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and

incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Paragraph 11.

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

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

IN WITNESS WHEREOF, the undersigned Incorporator has hereunto subscribed his name to these Articles of Incorporation as of this the 9th day of October, 2000.



WILLIAM A. CLEVELAND

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**BYLAWS
OF
HILLBROOK HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE I

The Association

Section 1.10. **Name.** The name of this Association shall be "Hillbrook Homeowners' Association, Inc.," an Alabama nonprofit corporation (the "Association"), which has been formed pursuant to Articles of Incorporation of the Association (the "Articles of Incorporation") which have been filed with the Probate Office of Lee County, Alabama. The provisions of these Bylaws are expressly subject to the terms and provisions of the Hillbrook Declaration of Covenants, Conditions, and Restrictions dated November 8, 1996, which has been recorded in Book 2097, Page 64, in the Probate Office of Lee County, Alabama (which, together with all subsequent amendments thereto, is hereinafter referred to as the "Declaration"). Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Declaration.

Section 1.02. **Principal Office.** The principal office of the Association in the State of Alabama shall be located at 455 Brookside Drive, Auburn, Alabama 36830. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate from time to time.

Section 1.03. **Registered Office.** The registered office of the Association required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama shall be at 455 Brookside Drive, Auburn, AL 36830.

ARTICLE II

Members

Section 2.01. **Membership.** Each person who is the Owner of any Lot or Dwelling in the Development shall be a member of the Association. Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer. If a Lot or Dwelling is owned by more than one person and if only one of those persons is present at a meeting of the Association, that person shall be entitled to cast the vote appertaining to such Lot or Dwelling; provided, however, that if more than one of those persons is present, the vote appertaining thereto shall be cast only in accordance with their unanimous agreement, and, if no unanimous agreement is reached, the vote appurtenant to such Lot or Dwelling shall be suspended. No Owner, whether one or more persons, shall be entitled to more than one vote per Lot or Dwelling owned. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Dwelling. As used in these Bylaws, "member" shall mean an Owner, as defined in the Declaration. Notwithstanding anything provided herein or in the Articles of Incorporation to the contrary, for so

long as Developer owns any Lot or Dwelling in the Development, (a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association, (ii) appoint the officers of the Association and the members of the ARC as defined in the Declaration, (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association, and the members of the ARC, (iv) amend these Bylaws and the Articles of Incorporation, (v) amend the Declaration (subject to the limitations set forth in Section 10.02 of the Declaration), and (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members of the Association are entitled to vote on the matters described in item (b) below of this Section 2.01) and (b) the voting rights of the members of the Association shall be limited to (i) approving increases in the annual Assessments in excess of the amounts set forth in Section 8.04(c) of the Declaration, (ii) approving amendments to the Declaration if such approval is required pursuant to Section 10.02 of the Declaration, and (iii) voting on amendments to the Declaration as provided in Section 10.03 of the Declaration. As long as Developer is the Owner of any Lot or Dwelling in the Development, the members shall have no further voting rights or privileges in the Association. The voting rights of any member may be limited and suspended in accordance with the provisions of the Declaration.

Section 2.02. Annual Meeting. The annual meeting of the members of the Association shall be held at 7:00 p.m. on the last day of January of each year or at such other time or such other day within such month as shall be fixed by the Board of Directors. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. At the annual meeting, the members of the Association shall, subject to the terms of Sections 2.01 and 3.03 of these Bylaws, elect the Board of Directors of the Association, review the annual budget for the Association as provided in the Declaration, and otherwise transact such other business as may come before such meeting. If the election of Directors shall not be held on the day designated herein for any annual meeting of the members of the Association, or any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members of the Association as soon thereafter as may be convenient.

Section 2.03. Special Meetings. Special meetings of Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or the Board of Directors of the Association and shall be called by the President or Secretary of the Association upon the petition of at least one-half (1/2) or more of the total votes in the Association.

Section 2.04. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Alabama, as the place of meeting for any annual or special meeting. In the absence of any designation, all meetings shall be held at the principal office of the Association in the State of Alabama.

Section 2.05. Notice of Meeting. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of any annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Board of Directors, the President, the Secretary,

or the officer of persons calling the meeting, to each member of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the books of the Association, with postage thereon prepaid. If given personally, such notice shall be deemed to have been delivered to the member upon delivery of the same to the Lot or Dwelling of such member.

Section 2.06. Quorum. The provisions of Section 8.07 of the Declaration shall be applicable in determining whether a quorum exists for any meeting of the Association. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 2.07. Proxies. At all meetings of the members of the Association, a member may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Section 2.08. Voting by Members. Subject to the provisions of Sections 2.01 and 3.03 of these Bylaws, each member of the Association shall be entitled to one (1) vote for each Lot or Dwelling owned by such member. Developer shall be entitled to one (1) vote for each Lot or Dwelling in the Development owned by Developer. No fractional voting shall be permitted. When more than one person is the owner of a Lot or Dwelling, the provisions of Section 2.01 of these Bylaws shall be applicable to the exercise of such voting rights. For purposes of these Bylaws, the Articles of Incorporation, and the Declaration, the vote of a "majority" of the members of the Association shall mean the vote of more than fifty percent (50%) of the total number of votes represented at a meeting, whether in person or by proxy. Unless a greater proportion is specified in these Bylaws, the Articles of Incorporation, or the Declaration and, subject to the terms and provisions of Sections 2.01 and 3.03 of these Bylaws, any matter which requires the vote of, approval, disapproval, or consent of the members of the Association shall be deemed to have been given if a "majority" of the members of the Association represented at a meeting, either in person or by proxy, affirmatively vote for, approve, disapprove, or consent to the same.

Section 2.09. Informal Action by Members. Any action required or permitted to be taken at a meeting of the members of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE III

Board of Directors

Section 3.01. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 3.02. Number, Tenure, and Qualifications. The number of Directors of the Association shall be three (3). Each Director shall hold office until his successor shall have been elected and qualified. Directors need not be residents of the State of Alabama or members of the Association.

Section 3.03. Election, Removal, and Replacement of Directors.

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

(b) At such time as Developer no longer owns any Lot or Dwelling within the Development, the members of the Association shall elect, by majority vote of the members of the Association, new members of the Board of Directors of the Association as provided in Section 12.01 of the Declaration. Thereafter, the members of the Association, by affirmative vote of a majority of the members, shall (i) elect the members of the Board of Directors at the annual meeting of members of the Association and (ii) have the right to remove, either with or without cause, at any time or from time to time, any of the members of the Board and appoint a successor to such removed Director. There shall be no cumulative voting by the members.

Section 3.04. Regular Meetings. A regular meeting of the Board of Directors shall be held, without further notice other than this bylaw, immediately after, and at the same place as, the annual meeting of the members of the Association; provided, however, that any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Directors. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 3.05. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President, any Vice President, or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Alabama, as the place for holding any special meeting of the Board of Directors called by them.

Section 3.06. Notice. Notice of any special meeting shall be given either (a) by written notice at least 48 hours in advance of such meeting, delivered in person or by leaving such notice at the place of business or residence of each Director, or by depositing such notice in the United States mail, postage prepaid, addressed to the Director at his address as it appears on the records of the Association; (b) verbally in person or by telephone at least 24 hours in advance of such meeting by communication with the Director in person or by telephone; or (c) by telegram delivered to the telegraph company at least 24 hours in advance of such meeting. Any Director may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.07. Quorum. A majority of the number of Directors fixed by Section 3.02 of these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors,

but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. If a quorum is present when the meeting is convened, the Directors present may continue to do business, taking action by a vote of a majority of quorum as fixed above, until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum as fixed above, or the refusal of any Director present to vote.

Section 3.08. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number if required by statute, the Articles of Incorporation, or these Bylaws.

Section 3.09. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

Section 3.10. Vacancies. For so long as Developer is the Owner of any Lot or Dwelling in the Development, any vacancy occurring in the Board of Directors shall be filled by Developer as provided in Section 3.03(a) above. At such time as Developer no longer owns any Lot or Dwelling in the Development, any vacancy occurring in the Board of Directors, other than a vacancy occurring by reason of a Director's removal pursuant to Section 3.03(b) of these Bylaws, may be filled by the affirmative vote of a majority of the remaining Directors. In the event that there are no remaining Directors, then the vacancy or vacancies occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the members of the Association. A Director elected or appointed to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

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

Section 3.12. Committees.

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

(b) Notwithstanding anything provided to the contrary in Section 3.12(a) above, at such time as Developer no longer owns any Lot or Dwelling in the Development or, upon Developer's written notice to the Association that it no longer desires to exercise the rights to appoint and remove members of the ARC as provided in Section 5.02(a) of the Declaration, then the Board of Directors

shall appoint all members of the ARC in accordance with the provisions of Article V of the Declaration.

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

Section 3.14. **Participation in Meetings by Conference Telephone.** Members of the Board of Directors or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at such meeting.

ARTICLE IV

Officers

Section 4.01. **Principal Officers.** The principal officers of the Association shall be elected by the Board of Directors and shall include a President, one or more Vice Presidents, a Secretary, and a Treasurer and may, at the discretion of the Board of Directors, also include a Chairman of the Board and such other officers as may be designated from time to time. Any number of offices may be held by the same person, except the offices of President and Secretary. None of the principal officers need be Directors of the Association.

Section. 4.02. **Election of Principal Officers; Term of Office.** The principal officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the members. If the election of principal officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each principal officer shall hold office until his successor shall have been duly elected and qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. If the Board of Directors shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board of Directors.

Section 4.03. **Subordinate Officers, Agents, and Employees.** In addition to the principal officers, the Association may have such other subordinate officers, agents, and employees as the Board of Directors may deem advisable each of whom shall hold office for such period and have such authority and perform such duties as the Board of Directors, the Chairman of the Board, the President, or any officer designated by the Board of Directors, may from time to time determine. The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any subordinate officer, agent, or employee of the Association.

Section 4.04. Delegation of Duties of Officers. The Board of Directors may delegate the duties and powers of any officer of the Association to any other officer or to any Director for a specified period of time for any reason that the Board of Directors may deem sufficient.

Section 4.05. Removal of Officers or Agents. Any officer or agent of the Association may be removed by the Board of Directors at any time, either with or without cause, and the Board of Directors may appoint a successor to such removed officer and agent. Election or appointment of any officer or agent shall not of itself create contract rights.

Section 4.06. Resignations. Any officer may resign at any time by giving written notice of resignation to the Board of Directors, to the Chairman of the Board, to the President, or to the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of a resignation shall not be necessary to make the resignation effective.

Section 4.07. Vacancies. A vacancy in any office, the holder of which is elected or appointed by the Board of Directors, because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term of such office. A vacancy in any other office for any reason shall be filled by the Board of Directors, or any committee, or officer to whom authority for the appointment, removal, or filling of vacancies may have been delegated by these Bylaws or by resolution of the Board of Directors.

Section 4.08. Chairman of the Board. The Chairman of the Board, who must be a member of the Board of Directors, shall preside at all meetings of the members of the Association and of the Board of Directors at which he is present. The Chairman of the Board shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors.

Section 4.09. President. The President shall, in the absence of the Chairman of the Board, preside at all meetings of the members of the Association and of the Board of Directors at which he is present. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall have general supervision over the business and affairs of the Association. The President shall have all powers and duties usually incident to the office of the President except as specifically limited by resolution of the Board of Directors. The President shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors.

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

Section 4.11. **Secretary.** The Secretary shall act as Secretary of all meetings of the members of the Association and of the Board of Directors at which he is present, shall record all the proceedings of all such meetings in a minute book to be kept for that purpose, shall have supervision over the giving and service of notices of the Association, and shall have supervision over the care and custody of the records and seal of the Association. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Association under its seal is duly authorized, and when so affixed may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board of Directors. The Secretary shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board of Directors or the President.

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

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

ARTICLE V

Fiscal Matters and Books and Records

Section 5.01. **Fidelity Bonds.** The Board of Directors may require that any contractor or employee of the Association handling or responsible for Association funds furnish an adequate fidelity bond. The premium for any such bond shall be paid by the Association and shall constitute a Common Expense.

Section 5.02. **Books and Records Kept by Association.** The Association shall keep detailed, complete, and accurate financial records, including itemized records of all receipts and disbursements, shall keep detailed minutes of the proceeds of all meetings of the members and of the Board of Directors and committees having any of the authority of the Board of Directors, and shall keep such other books and records as may be required by law or necessary to reflect accurately the affairs and activities of the Association. The Association shall keep at the office of the Association a record giving the names and addresses of the Directors and all members of the Association, which shall be furnished by each Owner pursuant to Section 5.10 of these Bylaws.

Section 5.03. **Inspections.** The books, records, and papers of the Association shall at all times during reasonable business hours be subject to inspection by any member or his agent or attorney for any proper purpose. True and correct copies of the Articles of Incorporation, these Bylaws, the Declaration, and all rules and regulations of the Association with all amendments thereto, shall be

maintained at the principal registered offices of the Association and copies thereof shall be furnished to any member on request on payment of a reasonable charge therefor.

Section 5.04. Contracts. The Board of Directors may authorize any officer or officers, or agent or agents of the Association, in addition to the officers so authorized by the Declaration and these Bylaws, to enter into any contract or execute and deliver any instrument in the name of, or on behalf of the Association, and such authority may be general or confined to specific instances.

Section 5.05. Checks, Drafts, etc.. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer of the Association.

Section 5.06. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 5.07. Gifts. The Board of Directors may accept, on behalf of the Association, any contribution, gift, bequest, or devise for the general purposes, or for any special purpose, of the Association.

Section 5.08. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 5.09. Annual Statements. Not later than four (4) months after the close of each fiscal year, the Board of Directors shall prepare or cause to be prepared a balance sheet showing in reasonable detail the financial condition of the Association as of the close of its fiscal year and an income and expense statement showing the results of its operations during its fiscal year. Such statements may, in the discretion of the Board, be audited statements. Upon receipt of written request, the Treasurer promptly shall mail to any member copies of the most recent such balance sheet and income and expense statement on payment of a reasonable charge therefor.

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

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

ARTICLE VI

Insurance

Section 6.01. **Types of Coverage.** The Association shall maintain in effect at all times as a Common Expense the types of insurance coverage required by the Declaration, any workmen's compensation, or other insurance required by law, and such other insurance as the Board may from time to time deem appropriate. The Board shall review the amount and terms of such insurance annually.

Section 6.02. **Damage or Destruction to Common Areas.** Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Association shall promptly commence and complete the repair and restoration of any portions of the Common Areas damaged by any such fire or other casualty. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all members, without the necessity of a vote or the consent or approval of any of the members, as provided in the Declaration, to provide funds to pay such excess costs of repair or reconstruction. Such a special Assessment shall be levied against the members equally in the same manner as annual Assessments are levied, and additional special Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such special Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined by the Board of Directors that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

Section 6.03. **Condemnation of Common Areas.** Whenever all or any part of the Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board, the award made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which Improvements have been constructed, then the Association shall restore or replace such Improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors and the ARC (as defined in the Declaration). If the award is not sufficient to defray the cost of such

repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all members, without the necessity of a vote or the consent or approval of any of the members, as provided in the Declaration, to provide funds to pay such excess costs of repair or reconstruction. Such a special Assessment shall be levied against the members equally in the same manner as annual Assessments are levied, and additional special Assessments may be made at any time during or following the completion of any repair or reconstruction. If the Board of Directors determine that such Improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association to be used as provided in the Declaration.

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

ARTICLE VII

Indemnification

Section 7.01. Indemnification. The Association shall, to the fullest extent permitted by applicable law, indemnify any person (and the heirs, executors, and administrators of such person), who, by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, was or is a party or is threatened to be made a party to:

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

(b) any threatened, pending, or completed claim, action, suit, or proceeding by or in the right of the Association to procure a judgment in its favor, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action, suit, or proceeding. Any indemnification by the Association pursuant hereto shall be made only in the manner and to the extent authorized by the Articles of Incorporation and applicable law, and any such indemnification shall not be deemed exclusive of any other rights to which those seeking indemnification may otherwise be entitled.

Section 7.02. Indemnification Insurance. The Association shall have the power and authority to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under applicable law.

ARTICLE VIII


General Provisions


Section 8.01. **Waiver of Notice.** Whenever any notice is required to be given under any provision of law, the Articles of Incorporation, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, the Board of Directors, or members of a committee of Directors need be specified in any written waiver of notice unless otherwise required by these Bylaws. Attendance of a Director at a meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 8.02. **Incorporation by Reference.** All of the terms, provisions, definitions, covenants, and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants, and conditions set forth herein in these Bylaws and in the Declaration, then the provisions of the Declaration shall at all times control.

Section 8.03. **Power of Directors to Amend.** The Board of Directors shall have the right, power, and authority to alter, amend, or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any regular or special meeting of the Board. Furthermore, at such time as Developer no longer owns any Lot or Dwelling in the Development, the members of the Association, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association, may alter, amend, or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any annual meeting or at a special meeting called for such purposes.

Section 8.04. **Seal.** The Board of Directors may, but shall not be obligated to, provide a corporate seal which shall be circular in form and have inscribed thereon the name of the Association, the state of incorporation, and such other words as the Board of Directors may prescribe; provided, however, that the use of the seal of the Association on any contract or agreement shall not be required to evidence the validity, authenticity, or approval of such contract or agreement.


William A. Cleveland


Jim W. Cleveland, III


Patrick J. Salatto, III