



Mill Creek

Dear Builders / Homeowners;

I am grateful and happy you have decided to build in Mill Creek. I am looking forward to assisting you in any way possible to make your building experiences here a great one. I have taken the liberty to outline a schedule of items that must be presented to the ACC for approval before that certain construction can proceed. The turn around time on most items is only a day or so, and most of the time it is possible to get the information back to you the same day. Please let me know if you have any questions about anything.

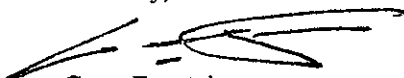
Items that need to be submitted to ACC for procedural approval before construction of that certain area proceeds:

- * House Plan: The actual full set of plans to be constructed on site. Any deck or patio plans should also be submitted before construction.
- * Site Plan: Including front, side, and back measurements.
- * Exterior Materials:
 - Main Materials, Color, (i.e. brick).
 - Detail Materials: eaves, soffets, trim, windows, roofing, garage doors, and all other exterior materials, paint, (all should include in detail color and materials proposed for use along with location of use.
- * Landscape Plan: Should include name, number of, and location of plant and grass material.

The location of the mail box should be on either side of driveway as close as possible to actual driveway.

Any other information you feel you have a question on, please ask me as soon as possible. I usually can be reached at 703-6461. Thank you and good luck.

Sincerely;



Grant Fountain
General Manager
Mill Creek Development

MILL CREEK DEVELOPMENT

ARCHITECTURAL AND CONSTRUCTION STANDARDS

INTRODUCTION

Mill Creek Development is designed to be a unique community of single-family homes. Great care has been taken in the planning, design, and construction phases to insure aesthetic harmony.

An Architectural Control Committee ("ACC") has been established to review all construction, designs, and plans for all dwellings and other improvement to be made within the Mill Creek Development community.

ARCHITECTURAL CONTROL COMMITTEE

The ACC is initially composed of three (3) members who may or may not be members of the Board of Directors of the Mill Creek Development Homeowners' Association, Inc. (the "Association") which has been formed as the entity to govern the affairs of all property owners within the Mill Creek Development.

Additionally, a professional architect or designer, who may or may not be an owner, may serve on the ACC and aid in the review of building and landscaping plans.

The ACC will provide property owners, architects, landscape architects, and contractors with a set of guidelines for the preparation of the drawings and specifications and the construction of all detached single-family homes within the development.

ARCHITECTURAL CONTROL GOALS

In order to insure the quality of the community, a plan review process has been established pursuant to the Declaration to review individual building and landscape plans. The authority to approve or disapprove building and landscape plans is provided in the recorded Declaration and provides that broad latitude and broad discretionary powers are vested in the ACC regarding approval of:

- the aesthetic impact of design, construction, and development.
- the architectural style and design.
- colors, textures, materials.
- height, bulk, proportions.
- landscaping.
- overall impact on surrounding property.

It is not the intent of the ACC to impose a uniform appearance within the Mill Creek

- b. Floor plan (not for review) which provides finish floor elevations, site plan, and includes total finish square footage of home.
2. Exterior material, finish, and color schedule indicating:
 - a. Roofing material and the materials and finishes for each building elevation (i.e., stucco, stone, brick, etc.).
 - b. Roofing color, brick and mortar selection, siding and/or trim colors, and any other proposed exterior colors. This schedule may be submitted as notes on the Architectural Plans.
 - c. The ACC will require finish and/or color samples.
3. Site Plan at a scale of 1" = 20' indicating:
 - a. Footprint and finish floor elevations of the unit and garage on the site as well as locations of driveways, walks, patios, decks, and site walls.
 - b. Setback lines, easements, and clearing limits.
 - c. Existing and proposed grades by contour lines with existing trees or tree masses to remain.
 - d. Location of site accessories such as mailboxes, fencing, trash container pads, lighting, play equipment; also locations of air conditioning compressors and power and gas meters.

Step Two: Staking and Permit Approval

Before clearing or construction can commence on any lot the applicant must:

1. Stake and string the outline of the dwelling in its proposed location, and establish the proposed elevation of the first floor.
2. Flag property corner pins and string property line.
3. Arrange a site inspection with the ACC representative to verify that the staking is in conformance with the approved site plan. If, after staking, the applicant or ACC representative wishes to alter the foundation location as presented in the approved site plan, alternates can be discussed at the staking meeting.

Special effort should be made to field adjust, if necessary, the unit location to

g. Location of all existing trees over four (4) inches in diameter and all flowering trees over two (2) inches in diameter not in natural tree masses. Existing tree masses and areas to remain in a natural condition (generally undisturbed except for minor understory clearance).

h. Areas to be sodded.

Step Five: Final Review & Approval

A final review on-site must be scheduled for the approval of the architecture and landscape architecture requirements. Upon giving the final review and approval, the ACC, upon request, shall provide the Owner with a "Letter of Compliance."

Inspection and Enforcement

1. Inspection

The ACC shall have the right to enter upon and inspect any property at any time before, during, and immediately upon completion of any work.

2. Enforcement

All Owners and the builders of all Owners should review the Declaration in order to ascertain the road discretionary rights and remedies provided to the ACC and the Association in the event of any noncompliance with any of the provisions of the Declaration or these Standards.

Failure to obtain ACC approval of all plans and specifications shall be subject to injunctive relief as well as the recovery of damages by the ACC and the Association.

If the ACC determines that any improvement was not constructed in substantial compliance with the approved plans and specifications for the same, the ACC or the Association may remedy or remove the improvement and all costs incurred in connection therewith shall be charged to the owner of such lot.

The ACC intends to enforce each and every rule and regulation set forth herein and in the Declaration. Notice of any violation of the same will be sent to the responsible party and property owner specifying those items not in compliance with these rules and regulations or any of the provisions of the Declaration. The responsible party shall have five (5) working days to correct such situation. If such situation is not corrected to the satisfaction of the ACC, the ACC shall have the right to exercise any and all of the rights and remedies afforded to it in the Declaration. Such action may include charging the property owner for the corrections done by the

f. Windows, Window Treatments, and Doors:

- Reflective glass shall not be permitted. No foil or reflective material shall be used on windows or as sun-screens, blinds, shades, or for other purposes.
- Cantilevered bay windows shall be approved by the ACC (and may be subject to additional landscaping requirements).
- Burglar bars or doors, including wrought iron doors, are not permitted.
- No aluminum or metal doors (storm doors) shall be allowed on the front of any dwelling. Screen doors shall not be used on the front or side of any dwelling.
- Appropriate window treatments shall be utilized on all windows.

g. Roof stacks and plumbing vents shall be placed on the rear slopes of roofs.

h. Chimneys shall be framed to receive prefabricated fireplaces and flues and shall not appear cantilevered from the unit. They shall be continuous to finish grade unless waived by the ACC. Chimneys shall be constructed of brick, stone, stucco, or dryvit. Prefabricated chimney flues shall be concealed by a metal surround at the top of the chimney.

i. Vertical supports for wood decks shall be a minimum 6" wood post or painted metal poles, preferably boxed in as to appear to be a 6" x 6" wood post.

j. Wooden steps or stoops shall not be allowed on the front or side of a dwelling.

k. Building materials:

- approved exterior wall materials may incorporate brick, stone, stucco, synthetic plaster (e.g., "dryvit"), solid wood siding, hardboard siding, and such other materials as approved by the ACC.
- Siding, in combination with brick, stone, stucco, or "dryvit," shall be limited to the greatest extent possible.

c. **Easements**

Landscaping and the building of driveways and the installation of mailboxes within utility easements is permissible but is the responsibility of the property owner if in the future there is a need to remove the same for access to such utilities. All portions of the development, including the homesites, are subject to the various easements described in the Declaration.

d. **Temporary Improvements**

No temporary building or structure shall be permitted on any homesite. If construction trailers will be utilized during construction of the primary residence, ACC approval must be obtained concerning design, appearance, and location of the same.

e. **Signage**

During construction, two (2) signs, not to exceed six (6) square feet in area each, may be posted at a height not to exceed three feet (3') from ground level, advertising the home site for sale or identifying the building. The location, color, and shape of any such signage shall be subject to approval of the ACC. No other signage, banners, flags, or advertising posters shall be allowed.

3. **Site Specific Guidelines**

- a. Fences for rear yards where permitted must be four (4) feet minimum and six (6) feet maximum height. No chain link, vinyl coated, or wire fences shall be permitted unless approved by the ACC. Fencing in front yards is prohibited; locate privacy fence even with back corner of the house. (See drawing #9-A.)
- b. A solid privacy screen may be used to screen decks and patios from view, and the proposed height shall be approved by the ACC.
- c. Swimming pools will be permitted only with the approval by the ACC. No swimming pools may be placed on any lots fronting the golf course.
- d. Compressors for central air conditioning units shall be sited, to the extent practicable, at the rear of the home and in a location which will not cause a nuisance to neighbors or to the use of active areas on site. No window mounted heating or air conditioning units shall be allowed.

- m. Outside clotheslines or other facilities for drying or airing clothes are prohibited. Barbecue grills and other types of outdoor cooking equipment shall be located out of view from any street. Bird feeders, wood carvings, plaques, and other types of homecraft are prohibited in the front or side yards, but may be located in the rear yards so long as the same are not visible from the street.
- n. Trash containers shall be located at the rear of the dwelling and must not be visible from a street.
- o. Remodeling and additions to existing improvements shall follow the same criteria as new construction.
- p. Any accessory structures, shall be approved by the ACC in the manner set forth above.

4. Landscape Design Guidelines

All Owners or Owner's builder, to the extent practicable, shall preserve existing trees, plant life, wildflowers, and the natural environment which exist on each homesite. All front and side yards shall be landscaped pursuant to a landscaping plan approved by the ACC.

- a. Front yards shall be sodded. Grass may not exceed six (6) inches in height.
- b. All areas not covered with pavement, buildings, shrubs, groundcover, or sod shall be covered with pine straw, bark or other materials approved by the ACC. Groundcover shall be used to prevent erosion and for ease of maintenance on steep slopes.
- c. Landscaping must be completely installed within sixty (60) days after occupancy.
- d. Bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, and/or artificial plants, shall not be placed within the front or side yards of any lot.
- e. Vegetable, herb, and similar gardens shall not be planted or maintained with visibility from any street front.
- f. All landscape material, shrubs, trees, and grass shall be well maintained. Any landscaping, plant life, trees, or shrubbery which dies or becomes diseased must be promptly replaced with comparable plant

first be obtained from the ACC and the City of Auburn. No burning shall be allowed in the front yard areas of a dwelling. In no event shall construction materials, whether used or new, be buried on or beneath any portion of the homesite or on any other portion of the development. If trash or debris on a job site becomes a noticeable problem, in the sole discretion of the ACC, the ACC may, if the same is not removed within five (5) days after written notice thereof, remove the same and the cost thereof charged to the property owner.

Each Owner or Owner's builder shall be responsible for the acts of his employees, all subcontractors, suppliers and other persons or parties involved in the construction or operation of a homesite. Such responsibility shall include:

- Prohibiting the consumption of alcoholic beverages, the use of illegal drugs or other intoxicants that can hamper the safety or well-being of other personnel on the site or affect the quality of workmanship.
 - Insuring that the construction site is kept clean and free of debris and waste materials.
 - Insuring that mud, dirt, gravel and other construction materials are not left on, deposited on, or accidentally dropped onto any of the roadways within the development.
 - Insuring that all of the terms and provisions of these Architectural Standards are fully complied with in all respects.
- c. Proper erosion control is the responsibility of the contractor. Adequate silt fencing and gravel at the entry drive must be properly installed and maintained. All streets shall be kept free of mud, silt, and debris from erosion and construction traffic. Natural drainage channels should be maintained undisturbed, to the extent possible, and remain free of trash or debris.
- d. Portable toilets are the responsibility of the Owner or Owner's builder. Owner or Owner's builder shall require all employees and subcontractors to utilize the same.
- e. Washing of trucks, vehicles, and other machinery and equipment on the streets are not permitted. The washing of concrete delivery trucks must be on the construction site. The established speed limit within the entire development is twenty-five (25) miles per hour for all vehicles

- e. Construction should be planned and executed in such a manner as to minimize the amount of area disturbed on any lot at any one time. To the extent possible, disturbed areas left inactive for more than twenty-one (21) days should be stabilized by grassing or mulching.

Soil piles shall be placed as far away from impervious areas as possible and stabilized by covering or seeding if the same will be left in place for more than twenty-one (21) days.

- f. If any lot being developed is adjacent to a lake or stream, additional measures shall be used to eliminate the possibility of sheet flow from disturbed areas into the lake or stream.
- g. Drain inlets within or adjacent to disturbed areas of construction shall be protected with hay bales if doing so will not create a hazard to motorists. Silt fences and other erosion control devices should be inspected at least monthly and, after all severe rains, replaced or repaired if necessary. All off-site water shall be routed around areas to be disturbed or graded. Silt fences and/or hay bales are required on the downstream side of all disturbed or graded areas. All disturbed areas shall be stabilized by mulching, seeding, or sodding as soon as practicable.
- h. Soil piles shall be located as far as practicable from storm water inlets. Such piles shall be stabilized or covered if to be left in place for more than twenty-one (21) days.
- i. Each Owner and each Owner's builder shall employ such best management practices as set forth in the Best Management Practices for Controlling Erosion from Construction Activities. Such practices shall be employed as site conditions warrant.
- j. The main construction access drive to each residential lot shall be graveled to reduce tracking.
- k. Any lot which is adjacent to any natural drainage channel, stream, creek, or other waterway shall employ such active erosion control measures as installing silt fences, hay bales, grass swale drainage ways, and prompt re-vegetation of any filter areas as may be practicable.

The Aforementioned Standards Are Subject To Modifications By The ACC Without Notice To Any Owner Or Builder.

1.01 Additional Property. The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Development) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

1.02 ACC. The term or letters "ACC" shall mean the architectural control committee appointed pursuant to Section 5.02 hereof with the rights and obligations conferred upon such architectural control committee pursuant to this Declaration.

1.03 Architectural Standards. The term "Architectural Standards" shall mean the standards prepared, issued, and amended from time to time by the ACC pursuant to Section 5.04 below for the purpose of reviewing and approving all exterior improvements, landscaping, and any other Improvements which may be made to any Lot, Dwelling, or Common Area.

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

1.05 Assessment. The term "Assessment" shall mean the annual and special assessments and any other charges assessed against an Owner by the Association pursuant to Article VIII hereof.

1.06 Association. The term "Association" shall mean Mill Creek Homeowners' Association, Inc., an Alabama nonprofit corporation.

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

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

1.09 Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include areas or Improvements on or within the Development which are designated as Common Areas by Developer from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses, or benefits therein or to the use thereof. **THE GOLF COURSE AND GOLF COURSE PROPERTY ARE NOT PART OF THE COMMON AREAS.**

1.18 Lot. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by Developer pursuant to the provisions of Section 2.05 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

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

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

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

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

1.23 Property. The term "Property," with an initial capital letter, shall mean and refer to that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof. The Property does not include the golf course or the golf course property.

1.24 THE GOLF COURSE IS NOT PART OF THE COMMON AREAS NOR IS IT TO BE GOVERNED BY THE PROVISIONS OF THIS DECLARATION

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 not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

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

2.04 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Development, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Developer, including without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Developer or of the Common Areas, (iii) installation and maintenance of any water, sewer, and any other utility systems and facilities within the Common Areas, and (iv) installation of security and trash and refuse facilities.

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

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 provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.03 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.03 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

3.04 Reservation of Easements for Signs, Walks and Trails.

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

3.05 Reservation of Maintenance Easement. Subject to the terms and provisions of Section 7.02(b) below, Developer does hereby establish and reserve for the Association and its agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance with 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, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.02.

4.03 Voting Rights. Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

4.04 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity, or inconsistency between the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the *Code of*

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 specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation, or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

4.06 Management by Developer or its Affiliates. Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Development, at such compensation and on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality, and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

4.07 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings, and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board and such other matters. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled, or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, cancelled, or modified unless such action is also approved by Developer for so long as Developer owns any Lot or Dwelling in the Development.

4.08 Indemnification. The Association shall and does hereby indemnify, defend, and agree to hold each and every officer, agent, representative, and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid, or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit, or other proceedings (including the settlement of any suit or proceedings if approved by the Board)

Section 5.02(a) above, then the members of the ACC shall be appointed by the Board of the Association.

(c) Any member of the ACC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 5.02(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.02(b) above are in effect. In the event of death or resignation of a member of the ACC, then Developer, in the event the provisions of Section 5.02(a) above are applicable, or the Board, in the event the provisions of Section 5.02(b) above are applicable, as the case may be, shall appoint a substitute member of the ACC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.03 Procedure and Meetings. The ACC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ACC. The ACC shall meet on a regular basis as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ACC shall constitute a quorum of the ACC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ACC shall constitute the action of the ACC on any matter which comes before it. The ACC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys in order to advise and assist the ACC in performing its functions set forth herein. Each member of the ACC may be paid a stipend or honorarium as may from time to time be determined by the Board of the Association and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ACC, subject to the approval of such expenses by the Board of the Association. The ACC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings, and all other matters concerning the conduct of the business of the ACC.

5.04 Architectural Standards. The ACC is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines, and minimum requirements to be satisfied with respect to the construction, location, landscaping, and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot are to be submitted to and approved by the ACC, and any other matters affecting the construction, repair, or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the ACC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

(iii) Two (2) copies of written specifications and, if requested by the ACC, samples indicating the nature, color, type, shape, height, and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing, and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves, and cornices on the exterior of such Dwelling.

(iv) Three (3) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below.

(vi) Such other plans, specifications, or other information or documentation as may be required by the Architectural Standards.

(c) The ACC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications, and related data so submitted to the ACC shall be retained in the records of the ACC and the other copy shall be returned to the Owner submitting the same marked "approved," "approved as noted," or "disapproved." The ACC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, any Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance without the necessity or requirement that ACC approval or consent be obtained.

(d) The ACC shall have the right to disapprove any plans and specifications upon any ground which is inconsistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any Improvement or any other matter which, in the sole judgment of the ACC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ACC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be

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 ACC.

5.09 Subsurface Conditions. The approval of plans and specifications by the ACC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the ACC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

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

5.11 Commencement and Completion of Construction. Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities.

5.12 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors, and assigns, shall have the right and option to maintain and carry on such facilities and

ARTICLE VI

Use and Development Restrictions

6.01 **Use Restrictions.** Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.01, each Lot and Dwelling shall be used for single-family residential purposes only allowing only one unrelated person to the Owner to live in the Dwelling, and no trade or business of any kind may be carried on in or from any Lot or Dwelling; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, cooperatives, duplexes, zero-lot-line homes, and cluster or patio homes for residential dwelling purposes. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, and (b) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas, single-family residential purposes, or any of the residential uses authorized above for Additional Property, then such use must be approved in writing by the ACC.

6.02 **ACC Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling and/or Improvements have been approved by the ACC in the manner set forth in Article V above.

6.03 **Underground Utilities.** All utility lines, pipes, conduits, and wiring for electrical, gas, telephone, water, sewer, cable television, security, and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.04 **Building Setbacks.**

(a) Subject to the provisions of Section 6.05 below, minimum building setback lines for all Dwellings shall be established either (i) by the ACC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (iii) in the deed from Developer to the Owner of such Lot.

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above. Steps, stoops and porches shall not be

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

(d) No hedge or shrubbery planting which obstructs sight-lines of streets, golf course, and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for roadways within the Development. The determination of whether any such obstruction exists shall be made by the ACC, whose determination shall be final, conclusive, and binding on all Owners.

(e) No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses, or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling.

(f) No vegetable, herb, or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any street.

(g) The ACC may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot or Dwelling, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot or Dwelling.

(h) No Owner shall allow the grass on his Lot or Dwelling to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(i) Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling as soon as such holiday passes.

6.10 Roofing.

(a) The ACC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling.

(b) No solar or other energy collection panel, equipment, or device shall be installed or maintained on any Lot or Dwelling, including, without limitation, the roof of any Dwelling if the same would be visible from any street.

(c) No plumbing or heating vents, stacks, and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks, and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and shall (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, not be visible from any street.

6.14. Garages.

(a) A minimum of a two (2) car attached garage with doors will be required by each Dwelling. Garage doors shall be constructed of such materials as are approved by the ACC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ACC.

(b) All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein. No on-street parking of vehicles for more than 24 hours will be permitted.

6.15 Fences. No chain link, vinyl coated, or wire fences shall be permitted within the Development except within the Common Areas, and those fences erected by Developer or approved by the ACC. No fences will be allowed on any portion of a lot bordering the golf course. No fences shall be allowed in front yards and no fences shall be allowed in any side yard nearer the street beyond a line projected from the plane of the rear wall of the Dwelling. Electric fences shall not be permitted. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ACC. The Developer encourages the use of solid wall extrude plastic fencing and has currently approved the use of the products of Nebraska Plastics, Inc. and may approve comparable fencing products. Specifications for approved fencing may be obtained from the ACC.

6.16 Windows, Window Treatments, and Doors.

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

(b) Aluminum or metal windows shall not be utilized on the front or sides of any Dwelling. Cantilevered bay windows must be approved by the ACC (which may require additional landscaping in front of such bay windows). Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling.

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

6.17 Mailboxes. Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color, and location as may be established in the Architectural Standards or as approved by the ACC. Mailboxes shall contain only the house

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

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

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling. No clothing, rugs, or other items shall be hung, placed, or allowed to remain on any railing, fence, or wall.

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from the street.

(h) Bird feeders, wood carvings, plaques, and other types of homecrafts shall not be permitted in the front yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques, and other types of homecrafts shall be located so as to not be visible from any street.

6.22 Pets and Animals. No animals, livestock, birds, or poultry of any kind shall be kept, raised, or bred by any Owner upon any Lot, Dwelling, or other portion of the Development; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas; all such structures or areas shall be located at the rear of a Dwelling, shall not be visible from any street, and shall be constructed of materials and of a size approved by the ACC. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ACC, or otherwise under leash. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Development, including the right to assess fines for violations of such rules and regulations.

6.23 Trash, Rubbish, and Nuisances.

(a) No trash, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots or Dwellings within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a

(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 mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts, and other forms of transportation.

6.25 Signage. No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ACC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ACC. Notwithstanding the foregoing (a) the restrictions set forth in this Section 6.25 shall not be applicable to Developer or to any signs erected pursuant to Section 6.28(c) below and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 3.05 above.

6.26 Above Ground Tanks and Wells. No exposed above-ground tanks for the storage of fuel, water, or any other substances shall be located on any Lot or Dwelling or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwelling.

6.27 Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, tree house, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board of the Association, (b) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all streets and adjacent Lots or Dwellings, and/or golf course; and (c) construction trailers and/or sales offices erected or placed on any part of the Property by Developer pursuant to Section 5.12 above.

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 ACC; provided, however, that the provisions of this Section 6.29 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval, or similar right-to-use programs.

6.30 Swimming Pools and Tennis Courts. Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, and tennis courts may be constructed, installed, and maintained on any Lot or Dwelling subject to the prior written approval of the plans for the same by the ACC and the restrictions contained herein. Above-ground pools shall not be permitted. The ACC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities, and tennis courts within the Development.

6.31 Lots Fronting on Golf Course.

(a) Owners and Occupants of Lots and Dwellings adjacent to the golf course fairways abutting the Development, as well as their family members, guests, agents and invitees shall be obligated to refrain from any actions or activities which would distract the playing qualities on the golf course or which would create a nuisance. Such prohibited activities shall include, without limitation, burning materials where the smoke would cross the golf course, maintenance of dogs or other pets which would interfere with golf course play due to their loud barking or odors, entrance onto the golf course property, passage over and along the golf cart pathways, playing of loud radios, televisions, stereos or musical instruments, running or walking on the fairways, picking up golf balls or similar interference with play or allowing trash, rubbish, weeds or underground undergrowth to remain or grow on any Lot or Dwelling which is unsightly.

(b) The Owner of any Lot or Dwelling situated adjacent to any golf course property, together with their respective family members, guests, agents and invitees, do, by acceptance of a deed to such Lot or Dwelling or by their entrance onto such Lot or Dwelling, hereby waive and release Developer, its employees, golf course employees, the ACC, the Board, shareholders, members and partners, from any and all liability of any nature whatsoever arising out of or in connection with any damage or injury (including death) to their person or property caused by any golf balls entering onto such Lot or Dwelling.

(c) No landscaping or plantings which would interrupt or interfere with the natural flow of the visual and actual play of the golf course will be permitted.

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 ACC.

(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 ACC 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 upon 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 materials shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Development.

(c) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the ACC as provided in Sections 5.05 and 5.06 above or (ii) do any work which, in the reasonable opinion of the ACC, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every case obtaining the prior written approval of the ACC.

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 his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.09(a) below, court costs, and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution, or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Areas, or any other portion of the Development or any other cause or reason of any nature.

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 pro rata 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.

The limitations on increases in the amount of annual assessments provided in this Section 8.04(c) shall not be applicable to the Base Year; accordingly, the actual annual Assessments for each Lot and Dwelling for the Base Year may exceed \$250.00 per annum increased by the greater of (1) ten percent (10%) or (2) the percentage increase in CPI from the preceding calendar year.

(d) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.05 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

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

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

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 Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided for in this Section 8.06 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.06 shall apply, without limitation, to any individual Assessments levied pursuant to any other provision hereof.

8.07 Notice of Meetings and Quorum.

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 8.04(c) above.

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.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.09(a) above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

(i) The name of the delinquent Owner;

(ii) The legal description and street address of the Lot or Dwelling upon which the lien claim is made;

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 Assessment 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 necessary to repair, replace, or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such special Assessments shall be levied against each Owner equally 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 completion of any such repair, replacement, or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 Damage or Destruction to Lots and Dwellings. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or

(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 or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition.

9.05 Insurance.

(a) The Board of the Association shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate for the benefit of the Association insuring all insurable Improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may determine.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association, its Board, and all members, officers, agents, and employees thereof, in such amounts, with such insurance carriers, at such costs,

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 company to issue title insurance coverage with respect to any Lots or Dwellings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

10.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.02 above, shall be proposed and adopted by the Association in the following manner:

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

ARTICLE XII

Miscellaneous Provisions

12.01 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any Lot or Dwelling within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

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 ACC, 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.

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

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

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

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

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

SPIRIT OF AUBURN, INC.

By: 

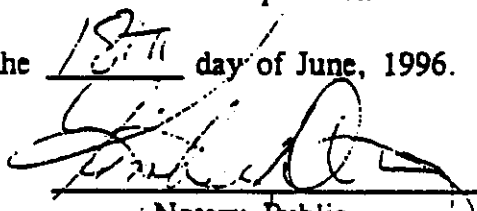
Its Vice President

STATE OF ALABAMA

COUNTY OF LEE

I, the undersigned, a notary public in and for said County in said state hereby certify that Grant Fountain, whose name as Vice President of Spirit of Auburn, Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on for and as the act of said corporation.

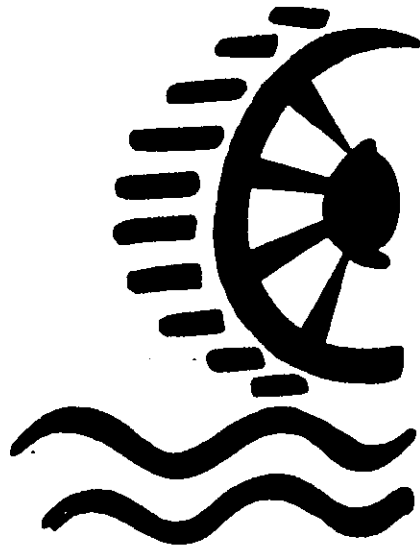
Given under my hand and official seal, this the 18th day of June, 1996.



Notary Public
Kimberly D. May
My Commission Expires April 21, 1999

(NOTARY SEAL)

MY COMMISSION EXPIRES:



Mill Creek

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
MILL CREEK DEVELOPMENT

Whereas, heretofore on June 18, 1996, SPIRIT OF AUBURN, INC., as developer, did cause to be executed and filed for record on November 6, 1996, as recorded in Deed Book 2095, at Page 159, in the Office of the Judge of Probate of Lee county, Alabama, certain covenants, conditions and restrictions applicable to property described therein known as MILL CREEK DEVELOPMENT; and

Whereas, it is the desire of the Developer, SPIRIT OF AUBURN, INC., to make certain changes in said covenants, conditions and restrictions.

Now therefore, the Developer, SPIRIT OF AUBURN, INC., does hereby declare that the Declaration of Covenants, Conditions and Restrictions of Mill Creek Development be and the same are hereby amended in the following respects ONLY AS TO LOTS UNSOLD AS OF THE DATE HEREOF, the lots excluded from these amendments being known as:

Lots 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, and 20, Block A, and Lots
1, 8, 9, 14, and 16, Block B, as shown by subdivision plat recorded in Town
Plat Book 18, Page 124, in the Office of the Judge of Probate of Lee County,
Alabama.

Section 6.16 Window, Window Treatments, and Doors. Subparagraph (b) is amended by the deletion of the last line and substituting therefor: Aluminum or metal doors with glass fronts (e.g. storm doors) shall not be allowed on any dwelling.

Section 6.9 Landscaping. Subparagraph (e) is amended by adding the following to the last sentence: or in the rear (back) yard of any lot or dwelling if the same would be visible from any street.

FILED IN OFFICE THIS
27th day of April 1998
Hal Smith
Judge of Probate

Section 6.9 Landscaping. Shall be emended by the addition of the following numbered subparagraphs (j) through (p).

- (j) All sides including front, sides, and back of each dwelling shall be required to be landscaped with plants.
- (k) The minimum size of plants used in landscaping a dwelling shall be three gallon plants.
- (l) A minimum of Four (4) five gallon size plants not including trees shall be required for each dwelling's landscape plan.
- (m) A minimum of three (3) trees with a caliper of three inches at the base (from outside to outside measurements) shall be planted for each dwelling. Dwellings that already have existing trees on site will be able to count those trees as a part or a whole of the required number trees to be planted, provided however, each dwelling must have at least two trees in the front of the dwelling.
- (n) A pre-emergent application to kill and control weeds in both the complete yard and plant beds shall be required for each dwelling before laying of sod or any planting may occur.
- (o) All dwellings yards, trees, and beds shall be properly maintained, mulched, and kept free of weeds at all times. Dead or decaying plants shall be removed and replaced promptly so as to not cause an unsightly view.
- (p) Landscaping plans shall include and incorporate plantings in order to block the view of air conditioning units, and all other electrical boxes that may be visible from any street.

Section 6.13.1 Decks. This section shall be added as: All plans for decking shall be submitted for ACC approval before construction begins.

Section 6.15 Fences. Shall be amended by deleting the third line (No fences will be allowed on any portion of a lot bordering the golf course) and substituting therefor: All fencing proposals must be submitted to the ACC for review and approval before any construction or installation occurs.

IN WITNESS WHEREOF, Developer has caused this Amendment to Declaration to be duly executed as of the 07 day of April, 1998.

SPIRIT OF AUBURN, INC.

By: [Signature]
Its Vice President

STATE OF ALABAMA

LEE COUNTY

I, _____, a Notary Public in and for said County in said State, hereby certify that Grant Fountain, whose name as Vice President of Spirit of Auburn, Inc., a corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the _____ day of April, 1998.

(NOTARY SEAL)

MY COMMISSION EXPIRES:

Notary Public, State at Large