STATE OF ALABAMA)
COUNTY OF JEFFERSON)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TYLER LOOP COVE, A RESIDENTIAL SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made as of this 10th day of May, 2004, by **TYLER LOOP COVE, LLC,** an Alabama limited liability company ("Developer"), which declares that the real property hereinafter described, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants"); and

WHEREAS, the Developer is presently the owner of all of the real property described in the Plat of Tyler Loop Cove, Sector One, prepared by Carr & Associates and recorded contemporaneously herewith in Office of the Judge of Probate of Jefferson County, Alabama, in Map Book 277, Page 010 (such property, together with any other property which may become subject to the Protective Covenants as hereinafter property, being collectively referred to herein as the "Property");and

WHEREAS, the Developer intends to develop the Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community (collectively, the "Subdivision"); and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefit all Owners of the Property and, to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the Property and each Owner thereof; and

WHEREAS, the Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Development and of levying assessments against the Owners of Lots within the Subdivision to enable the Association to perform such obligations.

NOW, THEREFORE, the Developer declares that the Property and such additions thereto as may hereafter be made pursuant to Section 2.2 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said Property, as well as their heirs, successors and assigns.

ARTICLE I
DEFINITIONS

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

1.1 **"Additional Property"** shall mean any additional property, which may hereafter be subjected to the Protective Covenants as set forth in Section 2.2 hereof.

1.2 **"Architectural Committee"** shall mean the architectural review committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.3 **"Architectural Committee Rules"** shall mean the rules, if any, adopted by the Architectural Committee.

1.4 "**Articles"** shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

1.5 **"Assessment"** shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include annual assessments, special assessments, individual assessments, and Common Area Assessments, all as described in Article VI hereof.

1.6 "**Association"** shall mean and refer to Tyler Loop Cove Homeowners Association, Inc., an Alabama non-profit corporation, formed or to be formed at or about the same time as the filing of this Declaration under the Alabama Nonprofit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association make reference.

1.7 **"Board"** or **"Board of Directors"** shall mean the Board of Directors of the Association.

1.8 **"By-laws"** shall mean the By-laws of the Association, as such by-laws may be amended from time to time.

1.9 "**Common Area"** or **"Commons Areas,"** as the case may be, shall mean and refer to all real and/or personal property, including property which the Association owns, leases, or otherwise maintains for the use or enjoyment of the members of the Association, and which shall be responsibility of the Association to maintain, and which shall include, without limitation, the following:

(a) approximately three (3) acres of park areas, as designated on the Subdivision Record Map as "Park" (or similar designation);

(b) all detention ponds;

(c) the entrance area for the Subdivision which is subject to the Entrance Easement;

(d) and those certain private drives which are known as Fairmont Drive and Fairfax Lane northeasterly from Lot line between Lots 5 and 6;

(e) all installations for the furnishing of electricity, telephone, natural gas, sanitary sewer, water service and television cable not immediately appurtenant to any Dwelling;

(f) all outdoor exterior lighting not situated within the boundaries of any Lot;

(g) landscaping, trees, and walkways not situated within the boundaries of any Lot (which shall include the main entrance, median, and any landscaping within the Entrance Easement);

(h) all storm sewer located anywhere on the Property;

(i) that certain six (6) foot tall wood fence located along Goodwin Road; and

(i) and any and all other areas designated on the Subdivision Record Map as a "Common Area."

1.10 **"Control Period"** shall have the meaning ascribed to it in Section 11.1 hereof.

1.11 **"Declaration"** shall mean this entire document, as same may from time to time be amended.

1.12 **"Developer"** shall mean Tyler Loop Cove, LLC, an Alabama limited liability company, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

1.13 **"Dwelling"** shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof.

1.14 **"Entrance Easement"** shall have the meaning ascribed to it m Section 3.1 hereof.

1.15 **"Living Area"** shall mean enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditions equipment, exclusive porches, garages, basements, carports, or attics.

1.16 **"Lots"** shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

1.17 **"Member"** shall mean any person who is a member of the Association. Every Owner shall be a Member.

1.18 **"Mortgage"** shall mean any mortgage or. other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Jefferson County, Alabama.

1.19 **"Mortgagee"** shall mean the holder of any Mortgage.

1.20 **"Occupant"** shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, 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.

1.21 **"Owner"** shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwe1ling, 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.

1.22 **"Property"** shall mean and refer to all the Lots within the Subdivision and all easements as reflected on the Subdivision Record Map.

1.23 **"Protective Covenants"** shaII mean all of those covenants, conditions and restrictions contained in this Declaration.

1.24 **"Purchaser"** shall mean any person who acquires any Lot.

1.25 **"Single Family Unit"** shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

1.26 **"Subdivision"** shall mean all sectors or phases of Tyler Loop Cove, collectively, and any amendments or supplements thereof

1.27 **"Subdivision Record Map⁰** shall mean the recorded map or plat for Tyler Loop Cove, prepared by Carr & Associates and recorded in the Office of the Judge of Probate of Jefferson County, Alabama in Map Book **Z.ll.** Page **Ob** contemporaneously herewith, and any amendments or supplements thereof.

ARTICLE II
PROPERTY SUBJECT TO RESTRICTIONS

2.1 **General Declaration.** The Property which presently is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration is located in Jefferson County, Alabama. Any part of such Property and each Lot or Dwelling thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise

used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof.

2.2 **Additional Property.** Developer reserves the right, in its sole and absolute discretion and without the consent of the Association or its Members or by an Owner, Occupant, or Mortgagee of any Lot or Dwelling, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Jefferson County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office of Jefferson County, Alabama where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain an exact descrip6on of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. 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 2.2 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 2.2 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 2.2 of this Declaration.

2.3 **Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Dwelling.

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

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

2.6 **Subdivision Plat.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the subdivision plat of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, 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 contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by Developer.

ARTICLE III
EASEMENTS

3.1 **Grant of Nonexclusive Easements to Owners:**

(a) Common Areas. Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.l(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

(b) Entrance Easement. Developer hereby declares an easement across the Common Area shown on the Subdivision Record Map for a landscaped entrance area into the Subdivision (the "Entrance Easement"). The Entrance Easement shall constitute a Common Area and shall be subject to all terms and conditions set forth in this Declaration with respect to Common Areas.

3.2 **Utility Easements.** Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter appear on any plat of record of Property subject to these Protective Covenants. Without limitation upon the foregoing,

Developer specifically reserves a ten (10) foot easement on the rear property line and a five (5) foot easement on the side of each Lot for surface water drainage, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary.

3.3 **Additional** Easements and Uses. For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office of Jefferson County, Alabama. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

3.4 Reservation **of** General Access Easement. Developer does hereby establish and reserve for the Association and its respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any improvements thereon in order to determine compliance with the provisions of this Declaration and/or other applicable regulations or covenants, and (b) the performance of the duties of the Association hereunder, including, without limitation, taking any action required or permitted to be taken by the Association pursuant to any of the terms or provisions of this Declaration and/or other applicable regulations or covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner of such Lot directly affected thereby.

3.5 **Additional Documents.** All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

3.6 **Limitations.** Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

(a) All provisions of this Declaration and the Articles and By-Laws of the Association;

(b) All the rules and regulations governing the use and enjoyment of the Common Areas which may or may have been or may hereafter be adopted by the Association; and

(c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

ARTICLE IV
ARCHITECTURAL CONTROL

4.1 **Design Criteria for the Property.** The general architectural objective of the Developer for the Property is to create a neighborhood of Dwellings constructed in high quality styles, design, materials, and colors. The Developer has adopted certain Design C1iteria in furtherance of this objective which Design Criteria are in Article V hereof. All Dwellings shall be constructed in conformity with the Design Criteria and in accordance with the provisions of this Declaration. The Developer, by the terms of this Declaration, has charged the Architectural Committee with the approval of all Dwellings, prior to construction, so as to determine that all Dwellings meet the Design Criteria. In appropriate cases, the Architectural Committee shall be entitled to grant variances from the Design Criteria, as described in Section 4.6 hereof.

4.2 **Method of Architectural Control.** So as to establish and maintain the Design Criteria set forth in this Declaration, no improvement or structure of any kind, including, without limitation, any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed, or maintained upon a Lot, nor shall any addition, change, or alteration therein, thereof, or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, elevation, materials and location of the same, together with such information as the Architectural Committee may require, shall have been submitted to and approved in writing by the Architectural Committee.

4.3 **Architectural Committee Membership.** The Architectural Committee shall consist of three (3) members and the initial members shall be appointed by the Developer. In the event of the death, resignation or other termination of any members, the Developer during the Control Stage (as hereafter defined) shall have full authority to appoint successor members. The Developer's appointed members shall serve until all Lots are sold by the Developer whereupon, the Developer's control and authority and Developer's appointed members to the Architectural Committee shall cease. Upon the sale and closing of the last Lot in the subject subdivision, the Association shall assume full control and authority over the Architectural Committee. Developer (as long as it owns any Lots in the subdivision) and the Association (from and after the time that it has assumed control of the Architectural Committee) reserve the right to remove any member

from the Architectural Committee at any time with or without cause, m such parties' sole discretion.

4.4 **Release.** Neither the Architectural Committee nor any member thereof shall be liable to any Owner, Occupant or to any other party for any damage, loss, or prejudice suffered on account of the approval or disapproval of any plans, drawings, or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition, or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. Neither the Architectural Committee nor any member thereof shall have any liability for structural defects, building code compliance, or similar issues, the sole responsibilities of the Architectural Committee being limited to aesthetic approvals and compliance with this Declaration.

4.5 **Powers and Duties.** The Architectural Committee shall have the following powers and duties:

(a) To require submission to the Architectural Committee of plans and specifications for any improvement or structure of any kind, and any change, modification, or alteration thereof, including, without limitation, any such improvement or change to any Dwelling, fence, wall, sign, lighting system, site paving, grading, screened enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or is proposed upon any Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Committee and shall include but not necessarily be limited to:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks;

(ii) A foundation plan, floor plan, and exterior elevations of the Dwellings as they will actually appear after all back filling and landscaping is done from finished ground up;

(iii) All plans must include a specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the Architectural Committee is unfamiliar; and

(iv) The name and address of the Lot Owner's General Contractor who will construct the residence and all other improvements to the Lot.

The Architectural Committee may also require such additional infom1ation as reasonably may be necessary for the Architectural Committee to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the Architectural Committee shall be delivered to the office of Tyler Loop Cove, LLC, 2086A Valleydale Terrace, Birmingham, Alabama 35244, or such other address as may be reflected by the Architectural Committee in a duly recorded instrument filed in the Probate Court of Jefferson County.

(b) To approve or disapprove the submitted plans and specification for any Dwelling, improvement, structure as herein above described prior to commencement of construction or such Dwelling, improvement, or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted. In the event that the Architectural Committee shall fail, for a period of thirty (30) days from the date of receipt of such submission, to approve or disapprove any plans or specifications submitted to it for approval, the same shall be deemed to have been approved. The approval by the Architectural Committee of any plans and specifications for any Dwelling, improvement, or structure shall not be deemed a waiver of the right to object to any of the features or elements embodied in any subsequent plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any Dwelling, improvement, or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the Architectural Committee, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the Architectural Committee, then the Owner shall, upon and in accordance with a demand by the Architectural Committee, cause the Dwelling, improvement, or structure either to be restored to its original condition or to comply with the plans and specification as approved by the Architectural Committee, and shall bear all costs and reasonable attorneys' fees of the Architectural Committee. Notwithstanding the aforesaid, after the expiration of one (I) year from the date of final completion of any such Dwelling, improvement or structure, such Dwelling, improvement, or structure shall be deemed to comply with all of the provisions hereof unless prior to the expiration of said one (1) year period either notice to the contrary shall have been recorded in the Probate Court of Jefferson County, Alabama, or written notification shall have been forwarded to the Owner by the Archite.ctural Committee. Any agent or member of the Architectural Committee may at any reasonable time enter any building or property subject to the jurisdiction of the Architectural Committee which is under construction or on or in which the agent or member may believe that a violation of these Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any Dwelling, improvement, or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the Architectural Committee that the construction thereof has been completed in accordance with the plans and specifications approved by the Architectural Committee. In the event that the Architectural Committee shall fail, for a period of thirty (30) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The Architectural Committee, may from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

(c) To adopt fees which may be designed to reimburse the Architectural Committee for the necessary and reasonable costs incurred by it in processing requests for Architectural Committee approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the Architectural Committee, in cash, at the time that any application for approval is sought from the Architectural Committee.

(d) Neither the Architectural Committee nor any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

(e) The initial three members of the Architectural Committee appointed by the Developer are as follows: Charles G. Arcara, Michael R. Inman, and William Lane Hollis.

4.6 **Variances.** The Architectural Committee, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the Committee grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the Committee, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

4.7 **Additional Remedies.** In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the Architectural Committee or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall have the right, at its option, (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the Architectural Committee and the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling until any work in place which does not comply with the plans and specifications approved by the Architectural Committee and the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Architectural Committee or the Association may exercise at law or in equity or any other enforcement rights specified in this Declaration.

ARTICLE V
RESTRICTIONS

5.1 **Use Restrictions.** The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the Architectural Committee and subject to any restrictions and limitations as the Architectural Committee may reasonably request), including all types of home industry, will be permitted. No building or

structure other than a Dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners;

(b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs (2) and/or cats as domestic pets on a single Lot and provided further that the Architectural Committee may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the Architectural Committee;

(c) exploring, mining, boring, quarrying, drilling or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas; and

(d) use of a Dwelling by more than a Single Family Unit.

Any Owner may request from the Architectural Committee at any time a determination of whether a prospective use of a Lot is permitted. A certificate to that effect signed by a member of the Architectural Committee shall be deemed to be dispositive of this issue.

5.2 **Storm Drains.** Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets and other structures necessary for proper control of storm drainage and runoff. Owners shall not alter, modify, or in any way interfere with the functionality of these structures. Additionally, Owners shall not allow debris, grass clippings, or any other items to impede the function of the drainage structure and shall maintain the same.

5.3 **Limitation on Size and Location of Structures.**

(a) No structure shall be erected, altered, placed or permitted to remain on any Lot other than a Dwelling not to exceed two (2) stories and a private garage for not more than three (3) cars. No detached building other than the Dwelling shall be constructed or permitted on any Lot unless previously approved by the Architectural Committee. The Dwelling shall be located on each Lot in conformity classification for the Property with the Jefferson County, Alabama. No Dwelling, or any other improvement on a Lot, may be constructed within any easement area shown on the Subdivision Record Map.

(b) The minimum heated and/or cooled floor area for each Dwelling located on any Lot shall be as follows:

(i) 1,400 square feet for a one (1) story Dwelling;

(ii) 1,600 square feet for a one and one-half (1-1/2) story Dwelling; and

(iii) 1,600 square feet for a two (2) story Dwelling.

(c) The minimum heated and/or cooled square footage requirements set forth in subsections (b) and (c) above may be modified by the Architectural Committee, subject to

zoning requirements, and at the sole discretion of the Architectural Committee, following review of the final construction plans of a proposed residence to be built on a specific lot.

(d) The maximum building height for Dwellings shall be thirty-five (35) feet.

5.4 **Design Criteria.** All Dwellings and Lots shall be subject to the following Design Criteria:

(a) The front roof pitch on any Dwelling shall not be less than 6' x 12" unless first approved in writing by the Architectural Committee.

(b) All porches on the front and sides of any Dwelling shall either be supported by the foundation of the structure or shall have brick column supports which match the brick used in the foundation of the structure.

(c) No exposed block shall be visible on any portion of the foundation of any Dwelling.

(d) No cantilevered chimney chases shall be allowed on the front of any structure. All chimney chases on the front of the structure shall be supported by the foundation of the structure.

(e) Either wood frame, vinyl, or aluminum windows may be used on any portion of the Dwellings constructed. Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials or bright colors shall be installed on any windows or used for sun screens, blinds, shades, or other purposes.

(f) No concrete block walls, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted, stuccoed or otherwise, shall show from the exterior of any building.

(g) All Dwellings must be brick on at least the front of each such Dwelling, provided that siding accents will be allowed as long as the same are first approved by the Architectural Committee. Approved exterior building material finishes for the side and rear of any Dwelling located on the Lots shall include brick, stone, stucco, solid wood siding (e.g., cypress or other solid wood), composite wood siding, single siding, vinyl siding, and any other materials as may be approved by the Architectural Committee.

(h) Exterior painting will be in soft tones not to include high gloss finishes or pure red. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors and shutters shall be subject to the approval of the Architectural Committee.

(i) All front and side yards of each Lot shall be sodded with grass, unless otherwise approved by the Architectural Committee as a natural area or unless the same is landscaped in accordance with plans approved by the Architectural Committee. All other disturbed areas must be seeded and strawed or have an approved ground cover or landscape treatment.

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

5.5 **Maintenance.** All Dwellings, landscaping and other improvements upon individual Lots shall be continuously maintained by the Owner thereof so as to preserve a well-kept appearance, especially along the perimeters of any Lot.

(a) No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Architectural Committee so as not to be visible from any road or within sight distance of any other Lot at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted, except during the construction period, or except as specifically approved by the Architectural Committee.

(b) No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of a Lot, including vacant parcels. No Owner shall allow the grass on its Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground .This provision shall not apply to the Developer until the last Lot is sold to an Owner other than the Developer.

5.6 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as residence either temporarily or permanently with the exception of a sales trailer during sale of homes under construction. No storage building of any type shall be permitted unless such building is designed as part of the main residential structure and approved by the Architectural Committee.

5.7 **Lighting.** All exterior lighting of Dwellings shall be in character and keeping with the general Subdivision. Yard lighting shall be such that it does not shine toward and/or disturb adjoining land Owners.

5.8 **Mailboxes.** Each Lot shall have a mailbox which shall be of a design as shall be proscribed by the Architectural Committee (all such mailboxes shall match throughout the Subdivision). Each Owner will be required to keep such mailbox in working order and repair.

5.9 **Common Area.** The Developer shall deed to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The conveyance to the Association is made upon the condition that the Association takes control of the Common Areas, assesses the Common Areas in the name of the Association for tax purposes, improves and maintains the Common Areas and obtains and maintains liability insurance coverage on the Common Areas in the name of the Association.

5.10 **Swimming Pools.** No swimming pool shall be constructed, placed, altered or maintained upon any Lot without the prior written approval of the Architectural Committee of the type, design and location thereof. Any such swimming pool must be also constructed, equipped and maintained in accordance with the county and state authorities. All swimming pools must be properly screened for safety and privacy from adjoining Dwellings.

5.11 **Satellite Receiving Dish.** No satellite receiving dish or antenna system of any kind shall be located on any Lot, home or building within the Subdivision except that a satellite receiving dish not greater than 18" in diameter may be installed in a location not visible from any street with the prior express, written permission of the Architectural Committee.

5.12 **Signs.** No sign of any kind shall be displayed to the public view on any Lot or Dwelling except the temporary professional sign of not more than six (6) square feet, advertising the Lot or Dwelling for sale or rent, or signs used by a General Contractor to advertise during the construction and sales period. All signs shall comply with any design specifications adopted by the Architectural Committee. No signs shall be nailed to trees. This provision shall not apply to the Developer so long as it owns any Lots within the Property.

5.13 **HVAC Equipment.**

(a) Outside air conditioning units may not be located in the front yard or any required side yard or corner lots. No window air conditioning units shall be permitted.

(b) No plumbing or heating vent shall be placed on the front side of the roof.

5.14 **Storage of Boats, Trailers and Other Vehicles.** No motor homes, boats or other water vehicles of any kind, trailers, or service trucks or service vans can be parked or stored in any location that can be seen from the street for a period in excess of 48 hours. No wrecked automobiles, disabled automobiles or vehicles other than operating vehicles shall be stored or located on any Lot.

5.15 **Tenants.** It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by him receives a copy of these Protective Covenants and that every lease utilized by such Owner contains a provision therein stating that every tenancy is subject to all of the tenns and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs of enforcing the same.

5.16 **Enforcement.** If a determination is made by the Architectural Committee that any of the restrictions in this Article V are being or have been violated upon any Lot, then the Architectural Committee shall so notify the Owner in writing, specifying the violation. If within thirty (30) days from such notification, the Architectural Committee shall make a second determination that sufficient progress has not been made to remedy the violation, the Architectural Committee may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the Architectural Committee may treat all such costs and expenses therefor as a charge which shall become an appropriate proceeding at law or in equity.

5.17 **Model Homes.** The Developer reserves the right to construct or allow others to construct and maintain one or more model homes on the Property during the Control Period (as herein defined), and to furnish and decorate same to show it and hold open houses as it in its discretion may determine.

5.18 **Fences.** The only fencing permitted shall be wooded, decorative wrought iron, or vinyl not greater than six feet (6) in height on interior lots, except with regard to maintenance areas within the Common Area and fences (if any) erected by Developer. No fences shall be allowed in front yards. Electric fences shall not be permitted (other than invisible pet fencing). The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the Architectural Committee. No fence shall be closer to the street than the rear wall of the home without Architectural Committee approval. All fencing on comer lots must be specifically approved by the Architectural Committee prior to installation.

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

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

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

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

(d) Free-standing playhouses and treehouses shall be permitted but only after Architectural Committee approval of the same.

(e) The location of basketball backboards must be approved by the Architectural Committee. Basketball goal backboards should be of clear plexiglass or acrylic.

(t) 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} Except as otherwise approved by the Architectural Committee, bird feeders, wood carvings, plaques and other types ofhomecraft shall not or be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. Except as otherwise approved by the Architectural Committee, all bird feeders, wood

carvings, plaques and other types of homecrafts shall be located only at the rear of a Dwelling and shall not be visible from any street.

(i) No bird baths, fountains, reflectors, statutes, law sculptures, lawn furnishings, artificial plants, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling without the prior approval of the Architectural Committee.

5.20 **Buffer Areas.** Any Owner who accepts title to its Lot subject to a landscape or planted "buffer area" as shown on the recorded plat for such Lot, will maintain such area solely as a planted buffer area as intended by the Plat and as prescribed by the Architectural Committee. No buffered area may be altered without the approval of the Architecture Committee (routine maintenance of such buffer area excluded). The Owner of such Lot shall be responsible for the maintenance of such buffer area, at such Owner's sole cost and expense.

5.21 **Stormwater System Maintenance Plan.** A portion of the roads and the stormwater system within the Property constitute Common Areas and, as such, will be owned and maintained by the Association. Certain maintenance items are required to prevent the malfunctioning of this stonnwater system. At a minimum, the maintenance and inspection listed below shall be performed by the Association (or its designated representative):

(a) **Daily Operations:**

(i) No Owner or Occupant shall deposit or place by any means into the stormwater system any item that would tend to block or obstruct the stormwater system. No Owner or Occupant shall place items **in** gutters, streets, ditches, or swales that could wash into the stormwater system.

(ii) Blockage of inlets can cause local flooding which would be a safety hazard. Common items that cause this type of problem are, blowing or raking leaves or other landscaping debris into inlets or gutters where the debris can wash into inlets, and placing garbage bags or can in gutters where flowing water can wash these items downstream and into inlets or block inlets. The foregoing are strictly prohibited.

(iii) The outlet structure for all detention ponds shall be kept free of debris and trash at all times. The outlet structures for all detention ponds shall be inspected before and after each rainfall event, with all trash and debris removed.

(b) **Monthly inspection and Maintenance Items:**

(i) Inspect all inlets, manholes, junction boxes, headwalls, ditches, swales and other drainage structures and features. Remove any debris, rocks, silt, etc. found during inspection. WARNING: MANHOLES, JUNCTION BOXES, PIPES, ETC. ARE CONSIDERED CONFINED SPACES AND MAY CONTAIN CERTAIN GASSES OR OTHER DANGERS WHICH COULD CAUSE INJURY OR DEATH. ONLY PERSONS PROPERLY TRAINED AND EQUIPPED TO WORK IN CONFINED SPACES SHALL ENTER THESE AREAS AND SHALL COMPLY WITH ALL LAWS AND INDUSTRY STANDARDS WHEN DOING SO.

(ii) Inspect the riprap at the emergency spillway of the detention pond.

(iii) Inspect the outlet of the detention/retention pond for any cracks, settlement, damage or erosion. In the event any cracks, settlement, damage or erosion is detected, the Homeowner's Association shall retain a Professional Engineer to inspect and make recommendations for repair of these structures.

(iv) Inspect the detention/retention pond basin for excessive sedimentation. Sediment shall be removed to approximately the original ground level. Care should be taken not to disturb any part of the pond basis not impacted by silt deposits. Erosion control shall be required per current ADEM standards while performing this work.

(v) Inspect the site for any erosion or washes, especially slopes around the site which may be prone to erosion if the vegetation cover is lost or in exceptionally heavy rainfall events.

(c) **Further Maintenance Items:**

(i) Inspection of the detention/retention ponds shall not only occur at the monthly intervals, but also after any major rainfall event. Inspection shall be as stated above under "Monthly Inspections and Maintenance Items" with the same course of action taken if cracks, settlement, damage or erosion is detected.

ARTICLE VI
COVENANT FOR ASSESSMENTS

6.1 **Affirmative Covenant to Pay Assessments.** Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of these Protective Covenants. Lots owned by the Developer shall not be subject to any Assessment by the Association, be it Annual, Special or Individual Assessments. The Annual, Special and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due, but shall not constitute a charge or lien upon the Lot against which the Assessment is made.

6.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII

below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

6.3 **Individual Assessment.** Any expenses incurred by the Association in enforcing any of the provisions of these Protective Covenants against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

6.4 **Annual Assessments.** The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board of Directors of the Association may deem appropriate. The Annual Assessment for the Development shall commence on January 1 of each year, and shall be paid in advance.

6.5 **Special Assessments.** In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at anytime, one or more Special Assessments for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such Assessment must have the assent and approval of (a) at least fifty-one percent (51%) of the Owners who are voting in person or by proxy at a meeting duly called for this purpose, and (b) to the extent Developer is the Owner of any Lot in the Development, the approval of Developer.

6.6 **Special Meeting.** Written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 above shall be sent to all Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners, either in person or by proxy, entitled to cast fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half(½) of the required quorum at the preceding meeting.

6.7 **Amount of Assessments.** Both Annual and Special Assessments must be fixed at a uniform rate for all Lots, shall commence when such Lot is improved with a completed Dwelling, and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice).

6.8 **Certificate.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessment