on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

6.9 Effect **of Non-Payment of Assessments; Liens; Remedies.** Any Assessments (whether Annual, Special or Individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any Assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. 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 of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

(a) The Association may commence and maintain a suit at law against the Owner for a personal money judgment to enforce all such charges and obligations for Assessments and other amounts, including the late charge and interest specified above, as well as all attorneys' fees, court costs, and all other costs and expenses paid or incurred by the Association in connection therewith; and/or

(b) The Association may enforce the lien created pursuant to Section 6.1 above as hereinafter provided. The lien created pursuant to Section 6.1 above shall secure the payment of any and all Assessments (Annual, Special and Individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the Assessments and in maintaining any legal action in connection therewith. If any Assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on the defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Association may file a claim of lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Directors of the Association or any officer of the Association and shall be filed for record in the Probate Office of Jefferson County, Alabama. The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amount due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner (other than Developer) may waive or otherwise be exempt from the liability to pay the Assessments provided herein.

6.10 Lien Subordinate to Mortgages. The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot. No Mortgagee shall be required to collect Assessments on behalf of any Owner. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due more than six (6) months prior to such sale or transfer.

6.11 **Damages.** In addition to the rights and remedies set forth above, if any Owner or Occupant, or any Owner's or Occupant's contractor, family members, guests or invitees, shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association, the Architectural Committee, or any Member thereof, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or to maintain a proceeding in equity against such Owner to enjoin such violation. The rights and remedies set forth herein shall be deemed cumulative of all other rights and remedies available at law or in equity. In any such proceeding, Developer, the Association, and the Architectural Committee, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceeding, as well as interest on all unpaid amounts as specified in Section 6.9(b) above. The failure of Developer, the Association or the Architectural Committee to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

6.12 **Exempt Property.** The Board shall have the right to exempt any portion of the Property from the Assessment and liens created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

(a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) As a Common Area;

(c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

ARTICLE VII
COMMON AREA EXPENSES

The following are certain expenses with respect to the Common Areas that are hereby declared to be Common Expenses. The Association is obligated to collect these expenses by Assessment, and Owners are obligated to pay them as provided in Article VI hereof. The enumeration below shall in no way limit the Association from considering other expenses incurred in managing the Association, any part of the Common Areas, and/or the Property as expenses subject to collection by Assessment.

7.1 **Maintenance and Repair of Common Areas.** The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean and attractive

condition, if any, including the charges m Section 5.5 of this Declaration, as well as the following charges:

(a) Any electrical costs to run all common lighting and any other electrical device necessary to the Common Areas;

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

(c) Sanitary sewer and storm sewer lines within private drives;

(d) Gas bills of the Association, if any, to run any gas operated lamps;

(e) Water bills and sprinkler systems for use on the Common Areas;

(f) Maintenance of the six (6) foot high wood fence along Goodwin Road;

(g) Any insurance for the Common Areas;

(h) Any management fees, accounting fees, and legal expenses incurred by the Association; and

(i) Any and all other property deeded to the Association by the Developer; and

(j) Such other matters which involve the use of the Common Areas as determined by the Association.

7.2 **Management.** The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

7.3 **Property Taxes.** All ad valorem taxes and other Assessments relating and connected to the Common Areas, if any.

7.4 **Reserves.** The Association may establish reserves for the payment of Common Expenses in the future.

7.5 **Insurance.**

(a) Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

(b) Adequate property and casualty insurance 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 Association may determine.

(c) Public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and all members, directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine.

(d) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine.

(e) All insurance coverage authorized hereunder shall be written in the name of the Association. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

7.6 **Interested Transactions.** The Association may obtain materials and/or services from the Developer and/or any of its Affiliates in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party providing similar materials and/or services which can be reasonably made available to the Association.

7.7 **Enforcement of Declaration and Rules and Regulations.** All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, by the By-Laws or this Declaration.

ARTICLE VIII
NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES

8.1 **Protective Covenants Running with the Land.** The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with the Property and inure to the benefit of and be enforceable by the Developer, its designated successors and assigns, or by any Owner and its respective heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive period of ten (10) years, unless an agreement which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Probate Court of Jefferson County, Alabama.

8.2 **Remedies for Default.** The existence of any default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give the Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation

or breach of any of them; provided, this Declaration shall be recorded for the benefit of the Developer, the Architectural Committee, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property 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.

8.3 **Nature of Remedies: Waiver.** All rights, remedies and privileges granted to the Developer, the Architectural Committee, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed cumulative. The exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

8.4 **No Reverter**. No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter.

ARTICLE IX
FUNCTION OF ASSOCIATION

9.1 **Name.** The name of the Association for the Property is Tyler Loop Cove Homeowners Association, Inc., which shall be incorporated as a nonprofit corporation.

9.2 **Maintenance Responsibilities.** The Association may, at any time, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct and repair all of the improvements within the Common Areas, to include plantings and shrubbery, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain and manage the Common Areas shown on the Subdivision Record Map so as to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity to be conducted thereon;

(c) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(d) Do all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

9.3 **Other Rights of Association.** The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII hereof, and adopt rules, regulations, procedures and policies with respect to:

(a) garbage and trash collection and removal;

(b) motor vehicle operation;

(c) parking of motor vehicles on streets or roads in the Property; and

(d) such other matters including the general welfare of the Property as a whole.

ARTICLEX
AMENDMENT OF DECLARATION

10.1 **Amendment by Association.** An amendment to this Declaration may be proposed by written instruction signed by the Owners of not less than one-fourth (1/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten (10) days nor more than thirty (30) days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent *to* the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two- thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the Architectural Committee as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Court of Jefferson County, Alabama, within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered at or prior to such meeting.

10.2 **Scrivener's Error.** Notwithstanding the foregoing amendment provisions, any scrivener's error omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any Owners or Mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by the Developer without the consent of any other party.

ARTICLE XI
PERIOD OF DEVELOPER CONTROL

11.1 **Developer Control.** In view of the Developer's financial commitment to the Subdivision, Developer's obligations as an initial owner of the Lots to pay the expenses of the Subdivision, and Developer's need to ensure the success of the Subdivision, Developer hereby reserves unto itself, its successors and assigns, the right to manage all of the affairs of the Subdivision and all decisions of the Association; the exclusive right to elect the directors of the Association and members of the Architectural Committee, who need not be Owners; and the right to amend the By-Laws of the Association until the sale of all Lots within the Subdivision or until the Developer elects to terminate its control of the Subdivision, whichever first occurs. This period of time shall be known as the "Control Period." Developer may terminate its management rights and responsibilities, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time prior to the expiration of the Control Period. The Developer shall have the sole and exclusive right to take all actions and do all things on behalf of the Association. During the Control Period, Developer shall pay all expenses otherwise payable by the Association and, as reimbursement therefor and compensation for its management services, Developer shall be entitled to receive and retain all Assessments payable by the Owners during the Control Period. Developer shall have all rights of the Association to levy and enforce payment of Assessments. During the Control Period, Developer shall not be required to assess or create any reserves. At the termination of the Control Period and the assumption of the operation of the Association by the Members, Developer shall not be required to render an accounting of income and expenses incurred during the Control Period. In the event of any conflict between the provisions of this Article and the other provisions contained in this Declaration, the Articles or the Bylaws, the provisions of this Article shall govern and prevail.

ARTICLE XII
GENERAL PROVISIONS

12.1 **Jefferson County Obligations.** Notice is hereby given that Jefferson County, Alabama has advised Declarant that it will not maintain any private roads or private sewer systems now or in the future and will not honor a request to do so.

12.2 **Deeds to Reference Covenants.** Each deed for the sale of a Lot in the Subdivision will contain a statement that acknowledges the existence of these Covenants and that, notwithstanding any provision herein to the contrary, the provisions of Sections 1.9, 2.1, and 12.1 contained herein cannot be and will not be amended by action of the Association.

12.3 **Obligation of Owner to Build or Restore.**

(a) Each Owner of an unimproved Lot shall commence construction of a Dwelling in accordance with the requirements herein set forth on or before the expiration of two (2) years from the date of conveyance of such Lot to the Owner, and shall complete the construction of such Dwelling on or before the expiration of one (1) year from the commencement of construction, but in no event later than three (3) years from the date of conveyance of said Lot, except by written approval of the Architectural Committee.

(b) In the event a Dwelling on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace said structure within one (1) year from the date of such damage or destruction. The repair or replacement of such structure shall comply with the covenants and restrictions set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed, and the Lot must be restored to a sightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

12.4 **Indemnity for Damages.** Each and every Owner and future Owner, in accepting a deed or contract for any lot subject *to* this Declaration, agrees to indemnify Developer for any damage caused by such Owner, or the contractor, agent or employee or such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water drainage or storm sewer lines, or sanitary sewer lines owned by the Developer, or for which Developer has responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by any said land owner, said owner accepts his/her knowledge of this Declaration, and ratifies the covenants contained herein and thus releases his/her right to prosecute Developer for the conveniences said lot owner deems inadequate or unbecoming of said lot owner's needs.

12.5 **No Trespass.** Whenever the Association, Developer, the Architectural Committee 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.

12.6 **Notices.** Any notice required to be sent to any Owner under the provisions of this declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, return receipt requested, to the street address of the Lot owned by such Owner.

12.7 **Severability.** Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

12.8 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

12.9 **Captions.** The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

12.10 **Usage.** Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

12.11 **Conflict.** If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.

12.12 **Effective Date.** This Declaration shall become effective upon its recordation in the Probate Court of Jefferson County, Alabama.

IN WITNESS WHEREOF, the Developer has executed this Declaration on the rof\., day of May, 2004.

DEVELOPER:

TYLER LOOP COVE, LLC
an Alabama limited liability company

B[illegible]

Name: Pa/1/ e TZ.r:k[illegible]
Title: 11? <§¥1.b-e-r- /.mtl:([illegible]

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, Notary Public, in and for said County, in said State, hereby certify that\)., ""•c 7" ..IL.,. whose name as I\'\[illegible].-\:..... / !"1\.....-"l .. .... of TYLER LOOP COVE, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me acknowledged before me on this day, that, being informed of the contents of the instrument, he, as such manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this .W...[illegible] day of May, 2004.

Notary Public

My commission expires: ..<' 1 & 9

THJS INSTRUMENT PREPARED BY:
Gail Livingston Mills, Esq.
Burr & Forman LLP
420 North 20th Street
3100 SouthTrust Tower
Birmingham, Alabama 35203
(205) 251-3000

EXHIBIT A

Legal Description

Lots / TNA.orx>ll -flJ , according to the Map of Tyler Loop Cove, Sector One, recorded in Map Book Z13 , Page ob in the Office of the Judge of Probate of Jefferson County, Alabama.

AGREEMENT

TYLER LOOP COVE, LLC, hereby agrees that it shall be responsible for the private streets, detention facilities, and common areas within its subdivision of TYLER LOOP COVE and shall be responsible for the maintenance thereof. This shall be a binding agreement on TYLER LOOP COVE, LLC, and TYLER LOOP COVE HOMEOWNERS ASSOCIATION, INC., at the time the streets and other common areas are turned over to said Association. This shall also be binding upon any successors or assigns.

TYLER LOOP COVE, LLC

Donnie Tucker
Member/Manager

ATTACH CONSENT OF DEVELOPER'S LENDER IF NECESSARY

CONSENT OF LENDER

Regions Bank, as the holder and owner of the m01igage securing the property made subject to the above and foregoing Declaration of Covenants, Conditions and Restrictions for TYLER LOOP COVE, a Residential Subdivision, and recorded as Instrument # **MB 2.1.3 o&e:t** in the Probate Office of Jefferson County, Alabama, does hereby consent to the filing of the Declaration and does hereby agree that said property shall remain subject to the terms and conditions of the Declaration if Regions Bank should succeed to the interest of the Developer of the Property by foreclosure of his mortgage or by accepting a deed in lieu of **the** foreclosure.

IN WITNESS WHEREOF, the undersigned has duly executed this consent on this the_ day of mA?; / o ,2004.

LENDER:

REGIONS BANK,
an Alabama banking corporation

By: _(1_,)"'- _C- >r--_J_ _
Name: _J:y,:_:.... A:--J-w--"-M-A-M-J iJ
Its: _____ v ---------

STATE OF ALABAMA)
JEFFERSON COUNTY)

:iw un<Jfr:!:d, aNotary Public in and for:. s/d Cou:?n sgi;j te, hereby ce ify that /4 l{, , whose name as B:: of Regions Bank, an Alabama banking corporation, is signed to the above and foregoing consent, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing consent, he executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal oi 6 d d•;ff}J:· 2004.

Notary Pubhe Mi. c;N;,,s;:;S\i.i,d iv,A:'o. i;CQ.1
My Commission Expires:"····'

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TYLER LOOP COVE, LLC

B

Donnie Tucker
Member/Manager