

**CERTIFICATE OF FORMATION**  
**OF**  
**HIGHLANDS COVE OWNERS ASSOCIATION, INC.**

In order to form a nonprofit corporation under Sections 10A-1-3.05 and 10A-3-3.02, CODE OF ALABAMA (1975), the undersigned incorporator does hereby certify:

**ARTICLE ONE**

The name of the corporation shall be **HIGHLANDS COVE OWNERS ASSOCIATION, INC.**

**ARTICLE TWO**

The duration of the corporation shall be perpetual.

**ARTICLE THREE**

(A) The Corporation shall have Members. The qualifications for membership in the Corporation and the voting rights of such Members shall be set forth in the By-Laws of the Corporation and the Declaration of Covenants, Conditions and Restrictions for Highlands Cove Subdivision filed in the Office of the Judge of Probate of Houston County, Alabama, on June 5, 2018, in Miscellaneous Book 348, Pages 605.

(B) The corporation shall have no capital stock.

**ARTICLE FOUR**

(A) The location of the principal office of the corporation shall be 1501 Honeysuckle Road, Suite 2, Dothan, Alabama 36305.

(B) The address of the initial registered office of the corporation is 1501 Honeysuckle Road, Suite 2, Dothan, Alabama 36305, and the name of the initial registered agent as such address is Hugh W. Wheelless, Jr.

**ARTICLE FIVE**

The number of directors constituting the initial Board of Directors is three (3). The names and addresses of the persons who are to serve as the initial directors are:

Hugh W. Wheelless, Jr.  
P.O. Box 189  
Dothan, Alabama 36302

Joseph B. Meyers  
1501 Honeysuckle Road  
Suite 2  
Dothan, Alabama 36305

Jonathan Meyers  
1501 Honeysuckle Road  
Suite 2  
Dothan, Alabama 36305

**ARTICLE SIX**

The name and address of the incorporator is Hugh W. Wheelless, Jr., P.O. Box 189, Dothan, Alabama 36302.

IN WITNESS WHEREOF, the undersigned incorporator has hereunto set his hand and seal this the 5th day of June, 2018.



**Hugh W. Wheelless, Jr., Incorporator**

Prepared by:

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**BY-LAWS**  
**OF**  
**HIGHLANDS COVE OWNERS ASSOCIATION, INC.**

**Article 1. Name, Principal Office, and Definitions**

- 1.1. Name. The name of the corporation is the Highlands Cove Owners Association, Inc.
- 1.2. Principal Office. The principal office of the Association shall be located in Houston County, Alabama. The Association may have such other offices, either within or outside the State of Alabama, as the Board of Directors may determine or as the affairs of the Association may require.
- 1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Highlands Cove Subdivision filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

**Article 2. Association: Membership, Meetings, Quorum, Voting, Proxies**

- 2.1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.
- 2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as conveniently as possible and practical.
- 2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the first quarter of the Association's fiscal year on a date and at a time set by the Board.
- 2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least twenty-five percent (25%) of the total Class "A" votes of the Association.
- 2.5. Notice of Meetings. Written notice stating the place, day, and time of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the address of the Member as it appears on the records of the Association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of any objection as to notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than ten (10) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings. The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in the By-Laws and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies. At all meeting of Members, each Member entitled to cast the vote for his or her Lot pursuant to Section 4.2 of the Declaration may vote in person (if a corporation, partnership, limited liability corporation or trust, through any officer, director, partner, member, duly authorized manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Alabama law and any specific provision to the contrary in the Declaration of these By-Laws. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or a duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written

revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing twenty-five percent (25%) of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

2.11. Conduct of Meetings. The President shall preside over all meeting of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.12. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Each consent shall be signed within sixty (60) days after receipt of the earliest dated consent delivered to the Association at its principal place of business in the State of Alabama, and shall be filed with the minutes of the Association. Thereafter, the consent shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members summarizing the material features of the authorized action.

### **Article 3. Board of Directors: Number, Powers, Meetings**

#### **A. Compositions and Selection**

3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be eligible Members or Residents (as hereinafter defined); provided, no Owner and Resident representing the same Lot may serve on the Board at the same time. No Owner or Resident shall be eligible to serve as director if any assessment for such Owner's or Resident's Lot is delinquent. A "Resident" for purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Lot within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member, duly authorized manager, employee or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member provided no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The Board shall consist of three (3) to five (5) directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three (3) directors and shall be appointed as provided in Section 3.3.

3.3. Directors During Class "B" Membership. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the Class "B" membership is terminated pursuant

to Section 4.2(b) of the Declaration. Directors appointed by the Class "B" Member shall not be subject to the qualifications for directors set forth in Section 3.1.

### 3.4. Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors may be made by a Nominating Committee or by nomination from the floor at a meeting of the Members. If nominees for director are to be chosen by a Nominating Committee, the Nominating Committee shall consist of a chairperson, who shall be a member of the Board of Directors, and three (3) or more Class "A" Members or representatives of Class "A" Members. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each election to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for each election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.5 below. Nominations shall also be permitted from the floor. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" votes. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Owner may cast all votes assigned to the Lot which it represents for each position to be filled from the slate of candidates on which such Owner is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

### 3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within thirty (30) days after the time that the Class "A" Members, other than Builders, own one hundred (100%) percent of the total number of Lots with completed residences constructed thereon, or whenever the Class "B" Member earlier determines, the Association shall hold an election at which the Class "A" Members shall elect one (1) of the three (3) directors, who shall be an at-large director and shall serve a term of two (2) years or until the occurrence of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the occurrence of the event described in subsection (b), a successor shall be elected for a like term. The remaining two (2) directors shall be appointees of the Class "B" Member.

(b) Not later than the first (1<sup>st</sup>) annual meeting after the termination of the Class "B" membership, the Board shall be increased to five (5) directors and the Association shall hold an election at which the Class "A" Members shall be entitled to elect all five (5) directors, with three (3) directors receiving the largest number of Class "A" votes being elected for a term of two (2) years, and the remaining two (2) directors shall serve a term of one (1) year.

Upon the expiration of the term of office of each director elected by the Class "A" Members, the Class "A" Members entitled to elect such director shall be entitled to elect a

successor to serve a term of two (2) years. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by members holding a Majority of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the Resident of a Lot that is delinquent or is the representative of a Member who is delinquent) in the payment of any assessment or other charge due to the Association, may be removed by a Majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting at which time the Class "A" Members shall elect a successor for the remainder of the term.

## **B. Meetings.**

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as the Board shall determine.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine.

3.9. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two (2) directors.

3.10. Notice. Notice of the time and place of a regular meeting shall be communicated to directors not less than four (4) calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of a meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (iv) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (v) telegram, charges prepaid; or (vi) overnight or same day delivery service, charges prepaid. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal overnight or courier delivery, telephone, telecopier or telegraph shall be deemed communicated when delivered, telephoned, telecopied or given to the telegraph company.

3.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.13. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than ten (10) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association and subject to the approval of the Class "B" Member until such membership is terminated. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering such contract and such contract was approved by a Majority of the Board of Directors, excluding the interested director.

3.15. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.16. Open Meetings. Subject to the provisions of Section 3.17, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board, reconvene in executive session, and exclude persons other than directors to discuss matters of a sensitive nature.



3.17. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

### **C. Powers and Duties**

3.18. Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-laws, the Certification of Formation, and as provided by law. The Board may do or cause to be done all acts and things unless the Declaration, Certification of Formation, these By-Laws, or Alabama law direct certain acts or things to be done and exercised exclusively by the membership generally.

3.19. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Area;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by the Board and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration, the Certification of Formation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operations of the Properties;
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under Alabama law, the Certification of Formation or Declaration; and
- (p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.20. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board of Directors and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development of or construction on any portion of the Properties, or diminish the level of services being provided by the Association. No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of the following subsections (a) and (b) have been met.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board of Directors or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, shall comply with Section 3.10 and shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at the meeting. The Class "B" Member may waive its right to receive notice in the same manner as provided in Section 3.11; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in the discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Class "B" Member, its representatives or agents may make its concerns, thoughts and suggestions known to the Board and/or the Members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of proposed action. This right to disapprove may be used to block proposed actions but, shall not include a right to require any

action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.21. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.19(a), 3.19(b), 3.19(f), 3.19(g) and 3.19(i); provided that, the manager may assist the Board with respect to the foregoing duties. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Directors may delegate to one (1) of its Members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.22. Accounts and Reports. The following management standards of performance shall be followed unless the Board of Directors by resolution specifically determines otherwise;

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value shall benefit the Association.

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association at least annually (such financial statements shall include an income statement reflecting all income and expense activity for the preceding period on an accrual basis and may include such other reports as deemed necessary by the Board); and

(g) an annual financial report shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided, upon written request of any holder, guarantor or insurer of any first mortgage on a Lot, the Association shall provide an audited financial statement.

3.23 Borrowing. Subject to the terms of the Declaration regarding the granting of security interests in the property of the Association, the Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same matter provided for Special Assessments in Section 8.4 of the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period,

exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

3.24. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a Majority of the total number of directors of the Association.

3.25. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with the procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 5 herein, within fifteen (15) days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board or Covenants Committee may, but not shall be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or Covenants Committee may impose a sanction without notice to the violator.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the office, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within fifteen (15) days after the date of the Covenants Committee hearing.

#### **Article 4. Officers**

4.1. Officers. The officers of the Association shall be President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board;

other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpected portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Secretary shall be responsible for preparing minutes of meetings of the Members and the Board, and for authenticating records of the Association.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolutions.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.14.

## **Article 5. Committees**

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1 herein, the Board may appoint a Covenants Committee consisting of at least three (3) and no more than five (5) Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.25 of these By-Laws.

## Article 6. Miscellaneous

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolutions, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of the Association proceedings when not in conflict with Alabama law, the Certificate of Formation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Alabama law, the Certificate of Formation, the Declaration, and these By-Laws, the provisions of Alabama law, the Declaration, the Certificate of Formation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgages. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, any prospective purchaser of a Lot or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Certificate of Formation, any amendments to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

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

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

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

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage paid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such address as shall be designated by notice in writing to the Members pursuant to this Section.

#### 6.6. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. In addition, so long as the Declarant owns any property which is subject to the Declaration or which may be unilaterally subjected to the Declaration by Declarant, it may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven (67%) of the total Class "A" votes in the Association, and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which Declarant may unilaterally submit to the Declaration. If a meeting is called for the purpose of considering a proposed amendment hereunder, such meeting shall be called in accordance with Section 2.5. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon adoption by the Board, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its adoption or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

(d) HUD/VA Approval. As long as there is a Class "B" membership, the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Lot, or the U.S. Department of Housing and Urban Development, so long as it is insuring the mortgage on any Lot, shall have the right to disapprove any amendment to the By-Laws.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of HIGHLANDS COVE OWNERS ASSOCIATION, INC., an Alabama nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 5th day of June, 2018.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 5th day of June, 2018.

 [SEAL]

Secretary

Recording Fee 58.00  
TOTAL 58.00

*Ret: Hugh Wheelus*



**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF HIGHLANDS COVE SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, is made as of the date set forth on the signature page hereof by HIGHLANDS COVE, LLC, an Alabama limited liability company, the "Declarant", who constitutes the sole "Owner" of Highlands Cove Subdivision, as the same is recorded in the Office of the Judge of Probate of Houston County, Alabama in Plat Book 15, Page 21.

Declarant is the owner of the real property located in Houston County, which is described on the attached and incorporated by reference. This declaration imposes upon the Properties (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of Properties. In furtherance of such plan, Declarant has caused or intends to cause Highlands Cove Owners Association, Inc. to be formed as a non-profit corporation to own, operate and maintain the Common Area (as defined below) and to administer and enforce the provisions of this Declaration and the By-Laws (as these terms are defined below).

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

**ARTICLE I**

**DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1 "ARB": The Architectural Review Board, as described in Article II.
- 1.2 "Association": Highlands Cove Owners Association, Inc., an Alabama non-profit Corporation, its successors and assigns.
- 1.3 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Alabama corporate law.

Recorded In: MISC BK 348 PG 605, 06/05/2018 03:57:32 PM  
PATRICK H DAVENPORT, Judge of Probate, Houston County, Alabama

1.4 "Builder": Any person who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers.

Any person occupying or leasing a Lot(s) for Residential purposes shall cease to be considered a Builder immediately upon occupation of the Lot(s) for residential purposes, notwithstanding that such Person originally purchased the Lot(s) for the purpose of construction improvements for later sale to consumers.

1.5 "By-Laws": The By-Laws of Highlands Cove Owners Association, Inc., as they may be amended from time to time.

1.6 "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. Common Area shall also be deemed to include those areas including without limitation any rights-of-way, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any supplemental Declaration or other applicable covenant, contract or agreement. The two "STORM DRAINAGE EASMENT" areas as shown on the recorded plat shall be included as Common Area.

1.7 "Developer" or "Declarant": Highlands Cove, LLC, an Alabama limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibit "A" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediate preceding Declarant; provided, however, that there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.8 "Guidelines": The architectural and building guidelines as adopted by the Declarant, as further described in Articles II and III herein, as the same may be amended from time to time. Such guidelines shall initially be established by the Declarant and may be more specifically determined by Board of Directors and the Architectural Review Board.

1.9 "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall include vacant land intended for development, but shall not include Common Area or property dedicated to the public. In the case of an unplatted parcel of land, such parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth herein and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.10 "Member": A Person subject to membership in the Association pursuant to Articles IV - VIII. Every Owner shall be a member. Unless otherwise specified, and required vote of the members shall be computed by allowing each member the number of votes equal to the number of lots owned by such member.

1.11 “Owner”: One or more Persons who hold the recorded title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the Purchaser (rather than the fee owner) will be considered the Owner.

1.12 “Person”: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another Person, or any other legal entity.

1.13 “Properties”: The real property described on and comprising the real property depicted as Lots 1 through 13, Block “A” and Lots 1 through 40, Block “B”, along with all Common Areas, on the Plat of Highlands Cove Subdivision, a plat of which is recorded in Plat Book 15, Page 21, in the Office of the Judge of Probate of Houston County, Alabama, together with such additional property as may be subjected to this Declaration.

## ARTICLE II

### ARCHITECTURAL STANDARDS

2.1 General. No exterior structure shall be placed, erected, or installed upon any Lot, and no improvements (including, but not limited to, staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and approval of the ARB under this Article unless exempted from the application and approval requirements to Section 2.3 Any Owner may remodel, paint or redecorate the interior of structures on its Lot without approval; however, modification to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specification. This Article shall not apply to the activities of the Declarant. This Article may not be amended without the Declarant’s written consent so long as the Declarant owns any property subject to this to this Declaration or which Declarant may unilaterally subject to this Declaration.

2.2 Architectural Review. Responsibility for administration of the Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professional, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARB in having any application reviewed by architects, engineers or other professionals. The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. The Declarant shall have the right to appoint all members of the ARB who shall serve at the Declarant’s discretion. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant. Upon the surrender of such right as

set forth herein, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

2.3 General Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and a decision on approval. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the ARB may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARB members change over time. In the event that the ARB fails to approve or to disapprove any application within thirty (30) business days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Guidelines unless a variance has been granted in writing by the ARB pursuant to this Article. Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

2.4 Specific Guidelines and Restrictions. The following items are strictly regulated by the ARB, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt specific guidelines or rules and regulations which address these items.

(a) Tree Removal. Removal of trees and other natural resources without the prior written consent of the ARB is prohibited.

(b) Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) approved lighting as originally installed on a Unit; (ii) pathway lighting; (iii) seasonal decorative lights during the usual and common season and only pursuant to rules and regulations established by the Board from time to time.

(c) Exterior Structures. No exterior structure of any kind nor any artificial vegetation or sculpture shall be constructed, erected or placed on the outside portion of the Lot, whether such portion is improved or unimproved, except in strict compliance with the ARB. This shall include without limitation: mailboxes; basketball hoops; swing sets and similar sports play equipment; clotheslines; garbage cans; wood piles; swimming pools (whether above or below ground); docks; hot tubs; gazebos; playhouses; window air conditioning units or fans; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind; and hedges, walls, dog runs, animal pens or fences of any kind. Notwithstanding the foregoing, the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(d) Temporary or Detached Structures. Except as may be permitted by the Declarant during initial construction, or the ARB thereafter, no temporary or detached house, dwelling, or out building shall be placed or erected on any Lot. No mobile home, trailer home, travel trailer, camper or vehicle commonly known as a "recreational vehicle" shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(d) Utility Lines. Overhead utility lines are not permitted, including lines for cable television, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(e) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB except as provided in the Guidelines. Unless in compliance with this Article, no signs shall be posted or erected by an Owner or occupant within any portion of the properties, including the Common Area, any Lot, or any structure or dwelling located on the Common Area or any Lot if visible from the exterior of the structure or dwelling as determined in the ARB's sole discretion. All permitted signs must be professionally prepared. The ARB reserves the right to restrict the color, lettering and placement of all signs. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agents as may be necessary or convenient for the marketing and development of the Properties. In no event shall any Owner or occupant be permitted to display any sign promoting any local, state or national political candidate within one (1) day of the general election of said political candidate's race. After said race and/or election, said sign shall be removed within one (1) day thereafter.

(f) Window Treatment. Unless otherwise approved in writing by the ARB, all window treatments visible from outside such structure or dwelling shall be white or neutral in color. Likewise, approved window treatments shall be maintained to protect the appearance of the Lot(s) from the outside.

(g) Erosion Control. The plans for each Lot shall comply with easements, this Declaration and any City or County erosion control ordinances, if applicable.

(f) Drives and/or Driveways. No drive(s) and/or driveway(s) shall be constructed or erected on any Lot prior to the location thereof and materials to be used therein being expressly approved in writing by the ARB.

2.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specification, drawings, or other matters subsequently or additionally submitted for approval.

2.6 Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be contrary to this Declaration; or (b) estop the ARB from denying

a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

2.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARB shall bear no responsibility for ensuring the structural integrity or soundness of approval construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARB, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ARB, and its members shall be defended and indemnified by the Association.

2.8 Enforcement. Any member of the ARB or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether or not any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming, except to the extent that a variance has been granted. Upon written request from ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board may enforce the decisions of the ARB by any means of enforcement described in Article V. In addition, the ARB, the Association and authorized agents of the Association shall have the right, and a perpetual easement, to enter all portions of the Properties to remove the violation, and restore the property to substantially the same condition as previously existed. Entry by the ARB or its representatives onto a Lot for the purpose of inspecting or enforcing compliance with this Article shall not constitute a trespass. The aforementioned easement shall be exercised with a minimum of interference to the quiet enjoyment to Owner's property. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment which shall be subject to enforcement as set forth in Sections 6.4 and 9.6.

Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditions upon completion of all elements of the approved work and all work previously approved with respect to the same Lot in the manner approved, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment, which shall be subject to enforcement pursuant to Sections 6.4 and 9.6.

Neither the ARB, the Association, the Declarant, nor their officers, directors nor members shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee or other invitee of any Owner who fails to comply with the terms

and provisions of this Article or the Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

2.9 Initial Members. The initial members of the ARB shall be Hugh W. Wheelless, Jr., Jonathan Meyers and Joseph Meyers.

### ARTICLE III

#### GENERAL RESTRICTIONS

3.1 Restrictions. This Article sets out certain restrictions which must be complied with by all Owners and occupants of any Lot. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes and sales offices for Builders, an information center and/or a sales office for any real estate broker approved by the Declarant to assist in the sale of the property, offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

3.2 Residential Use. All Lots shall be used exclusively for residential purposes and shall not be used to conduct business or trade. An Owner or occupant residing in a Lot may conduct business activities within the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. The leaving of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

3.3 Leasing. Lots may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. Furthermore, any Owner who leases a Lot shall provide written notice to the Board of the full name(s), address(es), and contact information of any and all lessee(s), along with the forwarding address and contact information of the Owner, within ten (10) days of the effective date of the lease. The Board, in its sole discretion, reserves the right to make further requirements regarding any lease together with such additional information deemed necessary by the Board.

3.4 Rules and Regulations. In addition to the rules and regulations stated in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules and regulations shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, cancelled, or modified in a regular or special meeting by a Majority of the Members, and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration of which may be unilaterally subjected to this Declaration by the Declarant.

3.5 Vehicles. All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. In addition, the following shall apply:

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garage or in the driveway, if any, serving the Lot(s) unless otherwise approved by the ARB. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties.

(b) Recreational vehicles owned by Owners or occupants of Lots shall be parked only in the garages, if any, serving the Lot(s). Any recreational vehicle parked or stored in violation of this provision in excess of two (2) days shall be considered a nuisance and may be removed from the Properties. Recreational vehicles owned by guests of Owners or occupants shall be subject to reasonable parking and storage rules and regulations as the Board of Directors may adopt. The term "recreational vehicles", as used herein, shall include, without limitation, motor homes, mobile homes, boats, trailers, other towed vehicles, motorcycles, minibikes, scooters, golf carts, go-carts, campers, buses, commercial trucks, and commercial vans. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view.

3.6 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. As a matter of example, all Owners shall maintain their Lot and yard in a neat, clean and well landscaped manner and no lawn shall exceed a height of 6" inches. The Properties shall not be used, in whole or part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Properties, nor shall be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other



sound devices, except as may be used exclusively for security purpose or as approved by the ARB, shall be located, installed or maintained upon the exterior of any unit unless required by law.

Anything deemed illegal by law whether within the City of Dothan, Alabama, Houston County, Alabama, the State of Alabama or the by the Government of the United States shall not be permitted on any Lot.

### 3.7 Storage of Materials, Trash, Garbage, Dumping, Etc.

(a) No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Lot, except during the initial construction period of the improvements to the Lot, not to exceed one (1) year in duration, and then only during periods of actual construction. In addition, during construction the building materials on any Lot shall be placed and kept in an orderly fashion. Any Lot on which construction is in progress shall be policed prior to each weekend and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed.

(b) Firewood may be stacked on a Lot only in accordance with the rules or regulations adopted by the Board.

(c) All garbage cans shall be completely concealed from view of neighboring streets and property, excluding only that certain day of the week in which regular waste pick-up is performed on or about the Properties. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Owners and occupants may burn or bury biodegradable trash, leaves, debris or other materials only in accordance with rules established by the Board and applicable governmental laws and regulations.

3.8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exceptions of dogs, cats and other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes within the Lots. All pets shall be reasonably controlled by the owner whenever outside of a Lot and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pets shall be responsible for all of the pets actions. If, in the sole opinion of the Board, any animal becomes dangerous or any annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, they shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided by Section 6.4.

3.9 Fences. No fence erected or to be erected by the Declarant and/or the Association on any portion of a Lot shall be removed, altered, replaced, or moved in any manner without the Declarant's express written consent, so long as the Declarant owns any property subject to this to this Declaration or which Declarant may unilaterally subject to this Declaration, and the express written consent of the Board. This use restriction shall include, but not be limited to, any fence erected on the rear property line of any Lot and any fence erected on the side property line of any Lot. This use restriction, however, shall not affect any Owner's right to maintain any said fence. Upon the conveyance of any Lot to an Owner, the responsibility of maintenance, repair and

replacement of any said fence shall be the sole responsibility of the Owner and not of the Declarant and/or the Association.

3.10 General Prohibitions. The following are strictly prohibited:

(a) Guns. The discharge of firearms on the Properties. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board has no obligation to take action to prevent or stop such discharge.

(b) Combustible Liquid. Storage of gasoline, heating or other fuels, except a reasonable amount of fuel that may be stored on each Lot for emergency purposes and operation so lawn mowers and similar tools or equipment; provided that the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

(c) All mailboxes shall be of standard design as specified by the Declarant and/or the ARB.

(d) There shall be no outdoor drying of laundry or wash unless said drying is not visible to the public or adjoining Lot Owners.

3.11 Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner is responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas, and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas, drainage system, and/or Properties with excessive water flow from its Lot. If remedial action is necessary to correct an overburdening situation, an Owner shall be required to take whatever reasonable steps are necessary to remedy any overburdening situation.

(d) Use of the areas designated as "drainage easements" and "storm water detention ponds" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainages areas, and the right of the City and/or Declarant to go upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any Declaration of easements, notwithstanding approval of the landscaping as set forth in Article 2.

(e) No Person shall alter the grading of any Lot without prior approval of the ARB. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the Purpose of altering drainage and water flow. The exercise of such an easement shall not

materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

3.12 Common Areas. Owners of Lots, as well as their families, tenants, invitees, and pets shall refrain from any actions which deter from the enjoyment by other Owners of areas within the Properties designated as "Common Area". Prohibited activities shall include without limitation, maintenance of dogs or other pets under conditions which interfere with the use of the specified areas by other Owners, playing of loud radios or musical instruments, holding of large gatherings without advance approval of the Board, and use of outdoor grills, cooking facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board. The Board may promulgate other rules and restrictions for the use of these areas. This provision shall not apply to the Declarant.

3.13 Subdivision of Lot(s). No Lot shall be subdivided or its boundary lines changed after a subdivision plat depicting the Lot has been approved and filed in the Public Records. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it or any Builder owns, with the written prior consent of the owner of the Lot or Lots affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

3.14 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner. .

3.15 Zoning. The location and use of all improvements and/or structures built in upon any portion of the Properties shall conform with the provisions of the zoning regulations of the City of Dothan in Houston County, Alabama, then applicable at the time of construction.

## ARTICLE IV

### PROPERTY RIGHTS

4.1 Common Area. Every owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area which is appurtenant to and passes with title to each Lot, subject to:

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board to adopt, amend, and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to allow persons other than Owners, their families, lessees and guests to use any recreational or social facilities situated upon the Common Area upon payment of use fees established by the Board;

(e) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated on the Common Area;

(f) the right of the Board to suspend the right of an Owner to use recreational and social facilities within the Common Area pursuant to Section 6.4;

(g) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to such approval requirements as may be set forth in this Declaration, including without limitation the approval requirements set forth in Section 4.3 and 6.3;

(h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 4.4 and 12.4; and

(i) the right of the Declarant to conduct activities within the Common Area, such as charitable events, and promotional events, and promotional events and to restrict Members, from using the Common Area during such activities, provided such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area and shall not exceed seven (7) consecutive days.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invites, as applicable, subject to reasonable regulation by the Board. An Owner who leases his, her or their Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

4.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

4.3 Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) of the vote of the Class "A" Members in the Association and the written consent of the Declarant so long as the Declarant owns any property which is subject to this Declaration, or which the Declarant may unilaterally subject to the Declaration) each Owner shall be entitled to written

notice of such taking or conveyance prior to disbursement of the condemnation award or proceeds of conveyance. Any resulting award or proceeds shall be payable to the Association to be disbursed according to this Section. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, and Members representing at least sixty-seven (67%) percent of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provision of Section 8.1(c) regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purpose as the Board shall determine.

4.4 Actions Requiring Owner Approval. The conveyance or mortgaging of Common Area, except in accordance with Section 6.3, shall require the prior approval of Members representing at least sixty-seven (67%) percent of the total Class "A" votes held by Members other than Declarant, if the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Lot or The U.S. Department of Veteran Affairs is guaranteeing the Mortgage on any Lot. Notwithstanding anything to the contrary in this Article, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities, and drainage and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

## ARTICLE V

### MEMBERSHIP AND VOTING RIGHTS

5.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restriction on voting set forth in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by an officer, director, partner, member, authorized manager, or fiduciary acting on behalf of the Owner, or by an individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association.

5.2 Voting. The Association shall have two (2) classes of membership described in this Section as Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Lot in which they hold the interest required for membership; provided however, there shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment.

Class "A" Members shall be entitled to vote on all matters as specifically set forth in this Declaration and the By-Laws, provided that, except for the matters specifically set forth in this Declaration and By-Laws, the rights and the powers of the Association shall be exercised by the Board pursuant to Section 6.5.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Certificate, are specified in the relevant sections of this Declaration, the By-Laws and/or the Certificate. The Class "B" Member may appoint a Majority of the members of the Board of Directors until the Class "B" membership terminates. In conformance with the By-Laws, the Class "B" membership shall continue until the first to occur of the following:

(i) when one hundred (100%) percent of the total number of Lots have had completed residences constructed thereon, which residences shall have obtained all inspections required by the local governing authority necessary prior to occupancy and have been conveyed to Persons other than Builders;

(ii) when in its discretion, the Class "B" Member so determines.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.

(c) Exercise of Voting Rights. In any situation where a Member is entitled to exercise a vote for a Lot and there is more than one (1) Owner of the Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and notify the secretary of the Association in writing prior to the vote being taken. Absent notice to the Secretary, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

## ARTICLE VI

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

6.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 3. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with the Declaration, By-Laws, all Supplemental Declaration, and the rules of the Association, as amended from time to time, and the laws of the State of Alabama.

6.2 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, recreational facilities, if any, furnishings, equipment, and other personal property of the Association), and shall keep it in attractive condition and good

repair, consistent with the Guidelines. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, at the Association's expense.

6.3 Personal Property and Real Property for Common Use. The Association through the action of its Board, may acquire, hold and dispose of tangible and intangible personal property and real property, subject to the provisions of Section 4.4 and otherwise. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties, personal property and leasehold property interest. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members. Upon written request of Declarant, the Association shall re-convey to the Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

6.4 Enforcement. The Board or the covenants committee, if established, may impose sanctions for violation of this Declaration, the By-Laws, or any Supplemental Declaration, or any rule or regulation, after compliance with the notice and hearing procedures set forth in the By-Laws, as amended. Such sanctions may include without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the Lot(s) of the violator (In the event that any occupant, guest or invitees of a Lot violated the Declaration, the By-Laws, the Supplemental Declaration, or any rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant, guest or invitee; provided however, if the fine is not paid by the occupant, guest or invitee within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

(b) filing liens in the Public Records for nonpayment of assessments or fees;

(c) suspending an Owner's right to vote;

(d) suspending any Person's right to use any recreational facilities with the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or ingress to or from a Lot;

(e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(f) levying Specific Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 9.5(b) and 2.8.

In addition, the Board, or the covenants committee, if established, may elect to enforce any provision of this Declaration, the By-Laws, or any Supplemental Declaration, or the rules and regulations of the Association by self-help as more particularly described in Sections 2.8 or elsewhere (specifically including, but not limited to, the towing of vehicles that in violation of

parking rules and the removal of pets that are in violation of pet rules) or by suit at law or in equity to enjoin any violation and/or to recover monetary damages.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restrictions or rule.

6.5 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Certificate, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

6.6 Governmental Interests. For so long as the Declarant owns any property which is subject to this Declaration, the Declarant may unilaterally designate sites within the Properties for public or quasi-public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by the Declarant. The sites may include other property not owned by the Declarant provided the owner consents.

6.7 Indemnification. The Association shall indemnify every officer, director and ARB or committee member, against all damages and expense, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee or ARB member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Certificate of Formation and Alabama law. The officers, directors, and ARB or committee members shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and ARB or committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and ARB or committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB or committee member



may be entitled. The Association shall, as its expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.8 Declaration of or Grant of Easement on Common Area. The Association may dedicate or grant easements across portions of the Common Area to the City, County, or to any other local, state, or federal governmental or quasi-governmental entity subject to any approval as required by Sections 4.4 and 12.4.

## ARTICLE VII

### MAINTENANCE

#### 7.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Common Areas, which may include, but need not be limited to:

(i) Common Areas, entrance gates and the facilities located therein or associated therewith;

(ii) all landscaping and other flora, parks, ponds, structures, and improvements, including any entry features whether located upon Common Area or any Lot;

(iii) all furnishings, equipment and other personal property of the Association;

(iv) any landscaping and other flora, sidewalks, greenbelts, within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board.

(v) such portions of any additional property included within the Common Areas as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(vi) all ponds, streams, wetlands and drainage channels located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith, except as pre-empted by a recorded Amended Declaration of easements.

(b) The Association shall maintain the facilities and equipment within Common Areas on continuous operation, unless the Declarant and/or the Class "B" Member, if any, in its sole discretion, agrees to discontinue such operation or the Board, in its sole discretion, determines any periods necessary to perform required maintenance or repairs. In the event Declarant has transferred and/or assigned its entire rights herein and no Class "B" Member exists, such

discontinuation may be agreed in to writing by and among Members holding sixty-seven (67%) percent of the Class "A" votes in the Association. Except as provided herein, the Common Areas shall not be reduced by amendment of this Declaration or any other means except with the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration, or which the Declarant may unilaterally subject to this Declaration.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Areas shall be an expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Common Areas pursuant to this Declaration or other recorded covenants, or agreements with the owners(s) thereof. Notwithstanding the foregoing, the Declarant shall not be required to pay assessments on any portion of the Properties owned by Declarant. Furthermore, any Builder shall not be required to pay Assessments on a Lot until said Lot is sold and/or occupied.

7.2 Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas, sidewalks, landscaping, fencing and other improvements comprising the Lot in a manner consistent with the Guidelines and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association, the City or Houston County. In addition to that of the Guidelines, all Lots shall be kept neat, clean, orderly, free of debris and litter, continuously mowed, and/or trimmed. In addition to any other enforcement rights, if an Owner fails to properly perform maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article 9. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

## ARTICLE VIII

### INSURANCE AND CASUALTY LOSSES

#### 8.1 Association Insurance.

(a) Required Coverages and Payment of Premiums. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonable available.

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair, and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance

policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Common Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixty (1/6) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, fidelity insurance covering Persons responsible for the Association funds, and property insurance on insurable improvements.

Premiums for all insurance on the Common Areas shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss, the deductible shall be treated as part of a General Assessment or Specific Assessment in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with this Declaration and/or By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Article 9.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs. All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member insured upon such Member's written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 8.1(a).

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Alabama which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustees for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insured and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents and guests;

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

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross-liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimated of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Declarant and/or the Class "B" Member, if any, agrees not to repair or

reconstruct. In the event Declarant has transferred and/or assigned its entire rights herein and no Class "B" Member exists, such determination not to repair or reconstruct may be agreed in to writing by and among Members holding sixty-seven (67%) percent of the total Class "A" votes in the Association, within sixty (60) days after the loss. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Guidelines.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy a Special Assessment without a vote of the Members to cover the shortfall against those Owners responsible for the deductible for the applicable insurance coverage under Section 8.1(a).

8.2. Owner's Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his, her or their Lot, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on his or her Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 2. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Guidelines. The Owner shall pay any costs which are not covered by insurance proceeds.

## ARTICLE IX

### ASSESSEMENTS

#### 9.1 Creation of and Obligation for Assessments.

(a) Purpose and Types. There are hereby created assessments for the Common Expenses of the Association as the Board may authorize from time to time. There shall be three types of assessments (a) General Assessments; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to have notice of liability for these assessments and to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest not to exceed the maximum rate allowable by law, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid. Each assessment, together with interest not to exceed the maximum rate allowable by law, late charges, costs of collection, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of the Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to acquisition of title. The Association, shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether the assessment has been paid. This statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of a statement. Assessments shall be paid in the manner and on the dates as the Board may establish, which may include discounts for early payment or similar time and price differentials. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first (1<sup>st</sup>) day of each month, quarter or fiscal year, as the case may be as determined by the Board. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid monthly, quarterly or annually. If any Owner is delinquent in paying any assessment or other charges levied on this Lot, the Board may require any unpaid installments or all outstanding assessments to be paid in full immediately. Any assessment or installment shall be considered delinquent on the fifteenth (15<sup>th</sup>) day following the due date unless otherwise specified by Board Resolution. No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some functions required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.2 Computation of General Assessments. The initial annual assessment shall be Two Thousand Four Hundred (\$2,400.00) Dollars. At least (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year including any capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.3. General Assessments shall be levied equally on all Lots subject to assessment. The assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any addition Lot reasonably anticipated to become subject to assessment during the fiscal year. The Board shall send a copy of the budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least thirty (30) days prior to the effective date of the budget. The budget and assessment shall become effective unless disapproved by Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the

Association and by the Class "B" Member, if any. If a budget is not adopted for any year, or if the Association fails to deliver an assessment notice, then until such time as a budget is adopted, the budget in effect for the immediate preceding year shall continue for the current year and each Owner shall continue to pay General Assessment on the same basis as during the last year. Once a new budget is adopted and assessments levied, the Association may retroactively assess any shortfalls in collections.

Notwithstanding the above, during the Class "B" control period set forth in Section 5.2 there shall be a maximum General Assessment for each year. The maximum General Assessment may increase for each subsequent fiscal year by ten percent (10%) over the maximum General Assessment of the immediately preceding fiscal year. The Association may, but shall not be required to, levy General Assessments in the amount of the maximum General Assessment each fiscal year. The maximum General Assessment for any year may be increased by an amount greater than that set forth above with the consent of Owners representing at least sixty-seven (67%) of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present. The ten percent (10%) increase from year to year shall be cumulative so that an increase not used during a previous year may be used in a subsequent year.

If the budget proved inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The revised budget shall become effective unless disapproved in the same manner as prescribed hereinabove for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws. The petition must be presented to the Board within ten (10) days after delivery of the notice of assessment.

So long as the Declarant owns any portion of the Properties, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future assessment due from the Declarant, or a loan, in the Declarant's discretion. Any anticipated payment or contribution by the Declarant shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of the subsidy shall be made known to the membership. Payments or contributions by the Declarant in any year shall under no circumstances obligate the Declarant to continue payments and contributions in future years, unless otherwise provided in a written agreement between the Association and the Declarant. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

9.3 Reserve Budget and Capital Contribution. The Board, if deemed necessary in its discretion, may prepare reserve budgets which take into account the number and nature of replaceable assets with the Common Areas, the expected life of each asset, and the expected repair or replacement cost. If reserve budgets are established, the Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs for the Association, as shown on the budget over the budget period.

9.4 Special Assessment. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses in excess of those budgeted. So long as the total amount of Special Assessments allocable to a Lot does not exceed fifty percent (50%) of the General Assessment levied against a Lot for that fiscal year, the Board may impose the Special Assessment. Except as provided in Section 8.1(c) hereof, any Special Assessment which would cause the amount of Special Assessments allocable to any Lot to exceed this limitation shall require the affirmative vote or written consent of Members representing at least sixty-seven (67%) of the total Class "A" votes in the Association, and the written consent of the Declarant so long as the Declarant owns any property which is subject to this Declaration or which Declarant may unilaterally subject to this Declaration. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Lots.

9.5 Specific Assessments.

(a) The Association shall have the power to levy Specific Assessments against a particular Lot or Lots to cover the costs, including overhead and administrative costs, or providing benefits, items, or services to the Lots or occupants thereof upon request of the Owner pursuant to a menu of special services, which the Board may from time to time authorize (which may include without limitation garbage collection, landscape maintenance, janitorial service, pest control, etc.) This type of Specific Assessment may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

(b) The Association shall have the power to levy Specific Assessments against a particular Lot or Lots to cover costs incurred in bringing the Lot(s) into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests. The Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws before levying a Specific Assessment under this paragraph.

9.6 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, interest on delinquencies at a rate set by the Board (subject to the maximum interest rate limitations under Alabama law), late charges and costs of collection (including attorneys' fees). This lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded Mortgage with first priority over other Mortgages made in good faith and for value. The lien, when delinquent, may be enforced by suit, judgment, and nonjudicial or judicial foreclosure as permitted under Alabama law. The Association may bid for the Lot as the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) the other Lots shall be charged, in addition to the usual assessment, a pro rate share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The sale or transfer of any Lot shall not affect



the assessment lien or relieve a Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first priority Mortgage shall extinguish the lien as to any installments of assessments due prior to foreclosure. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on the Lot due prior to foreclosure. Such unpaid assessments shall be deemed to be expenses collectible from Owners of all Lots subject to assessment, including such acquirer, its successors and assigns.

9.7 Date of Commencement of Assessment. The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to or occupied for residential purposes by a Person other than a Builder or Declarant. The first annual General Assessment levied on each Lot shall be paid, as applicable (a) at the closing of the sale to a Person other than a Builder or Declarant or (b) immediately upon demand by the Association based on the date of occupancy of the Lot for residential purposes. The first annual General Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

9.8 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collection.

9.9 Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Common Areas pursuant to Section 4.1;
- (b) Any property dedicated to an any accepted by an governmental or quasi-governmental authority or public utility; and
- (c) Any Lot owned by Declarant and/or a Builder and not occupied for residential purposes by a Person.

## ARTICLE X

### DECLARANT'S RIGHTS

10.1 Transfer to Association. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

10.2 Development. The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties, and/or construction or sale of Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

10.3 Improvements to Common Area. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all the Common Areas as it deems appropriate in its sole discretion.

10.4 Additional Declarants. No Person shall record any Amended Declaration of covenants, conditions and restrictions, Amended Declaration of easements or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in Public Records.

10.5 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions or rules made after termination of the Class "B" membership shall be effective without prior notice to and the written consent of Declarant so long as the Declarant owns any property which is subject to this Declaration or which Declarant may unilaterally subject to this Declaration. This Article may not be amended without the written consent of the Declarant.

10.6 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including, but not limited to, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through General or Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owners(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such party.

## ARTILE XI

### EASEMENTS

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachments for maintenance and use of any permitted encroachment, between adjacent Lots and between each Lot and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements construction, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot (with respect to encroachment) and three (3) feet (with respect to maintenance) as measured from any point

along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

#### 11.2 Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any Property which is subject to this Declaration or which the Declarant may unilaterally subject to this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company, whether public or private) a perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of installing, construction, monitoring, replacing, repairing, maintaining, operating and removing cable television or master antenna systems and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads and walkways; pathways and trails; wetlands and drainage system; irrigation systems, street lights; signage; and all utilities including but not limited to water, sewers, telephone, gas and electricity and utility meters; and an easement for access of vehicular and pedestrian traffic over, across and through the Properties, as necessary, to exercise the above-described easements. Declarant specifically grants to the local water supplier, electric company, telephone-company, cable-company and natural gas supplier easement across the Properties, for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property.

(c) Any damage to a Lot resulting from the exercise of the easements described in paragraphs (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 Easement for Slope Control and Drainage Maintenance. The Declarant, for itself and the Association, and their respective representative, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Lot for the purpose of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion and complying with local erosion control ordinances, if any;

(b) drainage of natural or man-made water flow and water areas from any portion Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipe, lines, conduits, or other equipment or facilities as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

The easement rights reserved are perpetual and run with and are appurtenant to title to the Properties and constitute a perpetual burden upon the drainage easement areas. The rights reserved include without limitation the right of the Declarant to go upon the drainage easement areas to effect maintenance, repair and replacement, and to disturb existing landscaping within the drainage easement areas and to temporarily pile dirt and plant material upon the drainage easement areas, provided the area is restored to a neat and attractive conditions to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Landscaping and structures in the drainage easement area are subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of the drainage facilities. Such landscaping and structures shall be installed in conformance with Article 2 herein.

#### 11.4 Easement for Greenbelt, Open Space, Nondisturbance, Park and Recreation Area Maintenance.

(a) The Declarant reserves for itself and its successors, assigns and designees the nonexclusive right and easement, but not obligation, to enter upon greenbelts, buffer zones, nondisturbance, open spaces, park and recreation areas located within the Area of Common Responsibility to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association and their designee shall have an access easement over and across any of the Properties or Lots abutting or containing any portion of greenbelt, buffer zone, or nondisturbance, open space, or park or recreation area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over or across greenbelts, buffer zones, and nondisturbances, open spaces, park and recreation areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping in these areas is subject to removal in the

reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with Article 2 herein. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easement.

11.5 Easement for Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit, for emergency, security and safety reasons. Such right may be exercised by the authorized agents, employees, officers and managers of the Association, any member of its Board, or committees of the Association and shall not constitute a trespass. All police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties are hereby granted a perpetual easement for entry. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to an permission from the Owner. The easements granted in this Section include the right to enter any Lot to cure any condition which may increase the risk of fire, immediate danger of personal injury or other hazard if an Owners fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6 Easement for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities under Article VI, (b) make inspection to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, Design Guidelines and rules, and (c) abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violated the Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines, or rules passed thereunder. Except in emergencies, entry onto a Lot shall be only during reasonable hours. Entry hereunder shall not constitute a trespass. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owner's property, and any damage beyond the scope of the maintenance or enforcement shall be repaired by the Association at its expense.

11.7 Easement for Lateral Support. Every portion of the Common Area, every Lot, and any improvements which contributes to the lateral support of another portion of the Common Area or of another Lot shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.8 Liability for Use of Easement. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

11.9 Non-Merger. Notwithstanding the fact that Declarant is the current Owner of the Properties, it is the express intention of Declarant that the easements in Articles IV and X herein established for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

11.10 Grants. The parties hereby declare that this Declaration, and the easements created hereunder in Articles IV and X shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easement granted in this Declaration.

## ARTICLE XII

### GENERAL PROVISIONS

#### 12.1 Duration.

(a) Unless terminated as provided in this Section or unless otherwise limited by Alabama law, this Declaration shall have perpetual duration. If Alabama law hereafter limits the period during which covenants may run with the land, then, unless terminated as provided herein or, if such termination method is not consistent with Alabama law, in such other manner as required by Alabama Law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Alabama law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety (90) percent of the total Lots within the Properties, which instrument is recorded in the Public Records; provided, however, regardless of the provisions of Alabama Law, this Declaration may not be terminated without the prior written consent of the Declarant so long as the Declarant owns any property which is subject to this Declaration or which the Declarant may unilaterally subject to this Declaration. After twenty (20) years from the date of the recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one (51%) percent of the Lots and constituting of at least fifty-one (51%) percent of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

## 12.2 Amendment.

(a) By Declarant. Subject to the provisions of Section 12.4, Declarant may unilaterally amend this Declaration for any purpose until termination of the Class "B" membership. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including for example, the Department of Veterans Affairs, the Federal Housing Administration, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lot; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, so long as the Declarant owns property which is subject to this Declaration or which Declarant may unilaterally subject to this Declaration, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of the Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration including without limitation Section 12.4, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven (67%) percent of the total Class "A" votes in the Association, including sixty-seven (67%) percent of the Class "A" votes held by Members other the Declarant, and the consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration, or which Declarant may unilaterally subject to this Declaration.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or Contract between the Owner and a third party will affect the validity of such amendment.

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

12.4 HUD/VA Approval. Notwithstanding anything contained in this Declaration, to the contrary, as long as there is a Class "B" membership, the following actions shall require the

prior approval of the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgagee on any Lot, or the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Lot: merger, consolidation or dissolution of the Association; dedication, conveyance or mortgaging of Common Area except in accordance with Section 6.3; or material amendment of this Declaration, the By-Laws or the Certificate.

12.5 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or application.

12.6 Alternative Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules or the Certificate through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

12.7 Litigation. Except as provided below, no judicial or administrative proceedings shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five (75%) percent of the total Class "A" votes in the Association and the consent of the Class "B" Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

12.8 Cumulative Effect. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. The Association shall have the standing and authority to enforce the provisions of any Supplemental Declaration.

12.9 Use of the Words "Highlands Cove Subdivision" or "Highlands Cove Owners Association, Inc.". No Person shall use the words "Highlands Cove Subdivision" or "Highlands Cove Owners Association, Inc." in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the word "Highlands Cove Subdivision" or "Highlands Cove Owners Association, Inc." in printed or promotional matter where such terms



are used solely to specify that particular property is located within the Highlands Cove Subdivision development and the Association shall be entitled to use the words "Highlands Cove Subdivision" or "Highlands Cove Owners Association, Inc." in its name.

12.10 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, the By-Laws, and the Association rules. Failure to comply shall be grounds for any action by the Association or by any aggrieved Lot Owner(s) to recover sums due for damages or injunctive relief or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 6.4.

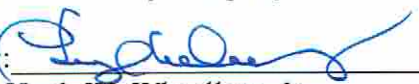
12.11 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) days written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

12.12 Exhibits. Exhibit A attached to this Declaration is incorporated by this reference.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 5th day of June, 2018.

DECLARANT:

HIGHLANDS COVE, LLC, an Alabama  
limited liability company

By:   
\_\_\_\_\_  
Hugh W. Wheelless, Jr.

Its: Authorized Member

**EXHIBIT "A"**

Lots 1 through 13, Block "A" and Lots 1 through 40, Block "B", along with all Common Areas, on the Plat of Highlands Cove Subdivision, a plat of which is recorded in Plat Book 15, Page 21, in the Office of the Judge of Probate of Houston County, Alabama, together with such additional property as may be subjected to this Declaration.

Recording Fee	110.00
TOTAL	110.00

*Ret: Hugh Wheelus*

John H. Merrill  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

**Highlands Cove Owners Association, Inc., an Alabama non-profit Corporation**

This name reservation is for the exclusive use of Benjamin H. Barron, Esq., Post Office Box 1665, Dothan, AL 36302 for a period of one year beginning March 08, 2018 and expiring March 08, 2019

CORP 150 441  
Recorded In Above Book and Page  
06/05/2018 04:02:54 PM  
PATRICK H DAVENPORT  
Judge of Probate  
Houston County, Alabama

**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.**



RES789907

March 08, 2018

Date

John H. Merrill

Secretary of State