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**COOSA RUN AT LAKE MITCHELL**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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## COOSA RUN AT LAKE MITCHELL

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**THIS COOSA RUN AT LAKE MITCHELL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made as of the 19th day of February, 2021 by LakeTown, LLC, a Delaware limited liability company.

#### R E C I T A L S:

**WHEREAS**, Developer, as hereinafter defined, is the owner of the Property, as hereinafter defined, and desires to own, develop, improve, lease and sell the Property for single-family detached residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the property and to have a flexible and reasonable method for the development, administration and maintenance of the Property.

**WHEREAS**, Developer intends to develop the Property as set forth herein.

**WHEREAS**, following the execution and recording of this Declaration, Developer intends to convey the Property to LakeTown Coosa Run, LLC, a Delaware limited liability company, an affiliate of Developer, such conveyance to be subject to, among other reservations, conditions and exceptions, the terms of this Declaration.

**NOW, THEREFORE**, Developer does hereby declare that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property and any of the Additional Property, as hereinafter defined (but only to the extent that Developer submits any Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns

#### ARTICLE 1 DEFINITIONS

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

**Section 1.1 Access Roads** The term “Access Roads” shall mean and collectively refer to all private roadways and alleyways within the Property depicted on the Final Plat, which are not located within the boundaries of any Lot or Dwelling and are not maintained by any Governmental Authority.

**Section 1.2 Additional Property**. The term “Additional Property” shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close

proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

**Section 1.3 Affiliate.** The term “Affiliate” shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term “control” (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

**Section 1.4 Applicable Rate.** The term “Applicable Rate” shall take the meaning ascribed to such term in Section 8.7(a) hereof.

**Section 1.5 ARC.** The term or letters “ARC” shall mean the architectural review committee for the Association to be appointed pursuant to Article 5 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

**Section 1.6 Architectural Standards.** The term “Architectural Standards” shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article 5 hereof for the purpose of (i) establishing architectural styles and standards for any Improvements to be constructed on any of the Lots and (ii) procedures for reviewing and approving all Dwellings, landscaping and any other Improvements which may be made to any Lot or Dwelling.

**Section 1.7 Assessment.** The term “Assessment” shall mean, collectively, the Annual Assessments (as defined in Section 8.3(a) below), Special Assessments (as defined in Section 8.4 below), and Individual Assessments (as defined in Section 8.5 below).

**Section 1.8 Association.** The term “Association” shall mean Coosa Run Owners’ Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

**Section 1.9 Board.** The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Certificate of Formation and Bylaws.

**Section 1.10 Boat Ramp and Dock.** The term “Boat Ramp and Dock” shall mean the boat ramp structure and the dock structure to be attached to the Property and located within the area designated as “Common Area 1” on the Final Plat and which is available to be used in common by all Owners and Occupants.



**Section 1.11 Buffer Area.** The term “Buffer Area” shall mean with respect to each Lot, that part of the Property which is a 10 foot wide strip of land lying above, adjacent to and along the three hundred seventeen foot (317’ mean sea level) elevation contour line of the Lake.

**Section 1.12 Bylaws.** The term “Bylaws” shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

**Section 1.13 Certificate of Formation.** The term “Certificate of Formation” shall mean and refer to the Certificate of Formation of the Association filed with the Alabama Secretary of State, together with any articles, attachments and supplements thereto, as the same may be amended and supplemented from time to time.

**Section 1.14 Common Areas.** The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall also mean and include (regardless of whether legal title to the same has been conveyed to the Association):

(a) all signage (including, without limitation, informational, traffic and street signage) situated within any portion of the Property, street lights, street and landscaping lighting situated within any portion of the Property, walkways, nature trails, greenways, sidewalks, paths, on-street parking spaces and facilities situated within any portion of the Property, bicycle and jogging paths and lanes, walls, fences, Improvements, landscaping and landscaped or other areas immediately adjacent to any public roadways, including all medians within any public roadways, whether the same are located within the boundaries of the Property or on or within the rights-of-way of any public roadways which may provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling or which are owned or maintained by the Association);

(b) any community buildings or facilities provided for the common use by the Owners and Occupants and any buildings and personal property utilized by the Association in connection with the performance of its duties or obligations hereunder;

(c) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling or which are maintained by the Association or any Governmental Authority);

(d) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers or Governmental Authorities);

(e) all Access Roads and bridges;

(f) all areas designated on the Final Plat as common area;

(g) any and all guard buildings, access gates, access control devices and similar devices and equipment, if any, which are used to limit and restrict access to the Property (other

than any such buildings, gates, devices or equipment located solely within the boundary lines of any Lot or Dwelling or which are maintained by any Person other than the Association);

(h) any Recreational Facilities located within the Property; and

(i) any other areas or Improvements on or within Coosa Run which are designated by Developer as Common Areas from time to time including, but not limited to, the Boat Ramp and Dock; provided, however, the use and enjoyment of such structures is subject to the Project License and the Permit. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

**Section 1.15 Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.3(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

**Section 1.16 Coosa Run.** The term “Coosa Run shall mean the common name of the subdivision to be developed on the Property.County. The term “County” shall mean and refer to Coosa County, Alabama.

**Section 1.18 Declaration.** The term “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

**Section 1.19 Developer.** The term “Developer” shall mean LakeTown, LLC, a Delaware limited liability company and its successors and assigns.

**Section 1.20 Dock Facilities.** The term “Dock Facilities” shall mean and refer to any open-sided boathouse, uncovered boat slip, mounting platform, swim pier, dock, floating dock, or other similar structure or Improvement that may be attached to any Lot as a means to gain access to the Lake and/or for storage of a boat or other water vessel, provided, however, boat ramps are specifically excluded and shall not be permitted on a Lot; excluding any such facilities included as Common Areas.

**Section 1.21 Dwelling.** The term “Dwelling” shall mean and refer to any Lot which has been improved with a single-family detached residential housing unit situated thereon and which is sufficiently complete to reasonably permit habitation thereof. Common Areas shall not constitute Dwellings.

**Section 1.22 FERC.** The term “FERC” shall have the meaning given to such term in Section 3.8(a) below.

**Section 1.23 Final Plat.** The term “Final Plat” shall mean and refer to any recorded final subdivision plat of Coosa Run recorded in the Probate Office which reflects Lots thereon and any amendments thereto.

**Section 1.24 Governmental Authority.** The term “Governmental Authority” shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental

agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any Improvements thereto.

**Section 1.25 Governmental Requirements.** The term “Governmental Requirements” shall mean and refer to any and all laws, statutes, ordinances, rules, regulations or requirements of any Governmental Authority.

**Section 1.26 High Water Mark.** The term “High Water Mark” shall mean and refer to the normal high elevation of water in the Lake which is located at the three hundred twelve foot (312’ mean sea level) elevation contour line of the Lake.

**Section 1.27 Improvement.** The term “Improvement” shall mean and refer to all Dwellings, Dock Facilities and any building, structure or device constructed, erected or placed upon any Lot or Dwelling which in any way affects, alters or causes a change in the exterior appearance of any Lot, Dwelling or Dock Facilities. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, treehouses, playhouses, swingsets, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Dwelling or any other buildings situated on any Lot or Dwelling. “Improvements” shall also mean any exterior alterations or additions to any existing Dwelling or other structure situated on a Lot and any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

**Section 1.28 Lake.** The term “Lake” shall mean and refer to Lake Mitchell and the Coosa River and any of their tributaries and channels which are situated in Coosa County and Chilton County in the State of Alabama.

**Section 1.29 Living Space.** The term “Living Space” shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of any of the following areas of a Dwelling which are not heated and cooled by heating, ventilating and air conditioning equipment: “bonus” rooms in garages or attics, garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriiums, bulk storage areas, attics and basements. Following initial approval by the ARC of the minimum and maximum Living Space for any Dwelling, none of the foregoing described areas which are not heated and cooled by heating, ventilating and air conditioning equipment shall be enclosed or otherwise improved to create Living Space out of such areas unless (a) the same is approved by the ARC and (b) any additional Living Space created out of such areas will not result in the Dwelling exceeding the maximum Living Space limitations established for such Lot and Dwelling unless the same has been specifically approved in writing by the ARC.

**Section 1.30 Lot.** The term “Lot” shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of the Final Plat or any re-subdivision plat for any portion of the Property, each lot indicated thereon (other than any lots designated thereon as Common Areas or which

subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon substantial completion of construction of such Improvements, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. Common Areas shall not constitute Lots.

**Section 1.31 Mortgage.** The term “Mortgage” shall mean and refer to any mortgage, deed of trust or other security instrument encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office.

**Section 1.32 Mortgagee.** The term “Mortgagee” shall mean and refer to the holder of any Mortgage.

**Section 1.33 Occupant.** The term “Occupant” shall mean and include any family members, guests, agents, servants, employees and invitees of any Owner and their respective family members, guests, agents, employees, invitees and any other person who occupies or uses any Lot or Dwelling within the Property. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot or Dwelling.

**Section 1.34 Owner.** The term “Owner” shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot or Dwelling, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

**Section 1.35 Permit.** The term “Permit” shall mean that certain Non-Transferable Lakeshore Use Permit issued by Alabama Power Company to Developer and/or the Association in connection with the creation of the Boat Ramp and Dock.

**Section 1.36 Person.** The term “Person” shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

**Section 1.37 Probate Office.** The term “Probate Office” shall mean and refer to the Office of the Judge of Probate of Coosa County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Coosa County, Alabama.

**Section 1.38 Project License.** The term “Project License” shall have the meaning given to such term in Section 3.8(a) below.

**Section 1.39 Property.** The term “Property” shall mean and refer to that certain real property situated in Coosa County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof and shall include all Lots, Dwellings, and Common Areas.

**Section 1.40 Recreational Facilities.** The term “Recreational Facilities” shall mean and refer to any swimming pool, tennis courts, parks, playgrounds, walking trails and other recreational amenities or facilities, if any, situated within Coosa Run (and thus constitute Common Areas) or are made available for use by all Owners and Occupants pursuant to the terms and provisions of Section 4.6(b) below. Notwithstanding anything provided herein to the contrary, in no event shall Developer be obligated to construct or otherwise provide any Recreational Facilities within any portion of the Property or on or around the Lake.

**Section 1.41 Recreational Facilities Use Agreements.** The term “Recreational Facilities Use Agreements” shall have the meaning given to such term in Section 4.6(b) below.

**Section 1.42 Shared Driveway Easement.** The term “Shared Access Easement” shall have the meaning given to such term in Section 3.9 below.

**Section 1.43 Shoreline Rules.** The term “Shoreline Rules” shall mean and refer to those certain general guidelines for residential shoreline permitting for Lake Mitchell, as set forth at [http://apcshorelines.com/pdfs/Lay\\_Mitchell\\_Jordan\\_Bouldin\\_Guidelines.pdf](http://apcshorelines.com/pdfs/Lay_Mitchell_Jordan_Bouldin_Guidelines.pdf), as the same may be hereafter amended and modified to conform with the terms and conditions of the Project License and any license that subsequently may be issued for the Coosa River hydroelectric project, together with the applicable provisions of the Federal Power Act, and the rules, regulations and orders of FERC, all as may be amended from time to time.

**Section 1.44 Substantial Completion.** The term “Substantial Completion” shall have the meaning given to such term in Section 5.11 below.

**Section 1.45 Turnover Date.** The term “Turnover Date” shall mean the first to occur of the following: (a) the date on which Developer and any Affiliates of Developer cease to own any portion of Coosa Run and all Lots sold by Developer have been improved with a Dwelling that has been approved by Developer, through its control of the ARC or (b) the date on which Developer elects, in its sole and absolute discretion, to relinquish (1) all rights to appoint and remove members of the Board pursuant to Section 4.2 below and (2) all voting rights in the Association reserved to Developer pursuant to Section 4.3 below.

## ARTICLE 2 PROPERTY SUBJECT TO THE DECLARATION

**Section 2.1 General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area thereof. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer) but this

Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration.

**Section 2.2 Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration (whether before or after the Turnover Date), to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to this Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.2 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, whether before or after the Turnover Date, then this Declaration may be amended solely by Developer in accordance with the provisions of this Section 2.2 without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

**Section 2.3 Right of Developer to Modify Restrictions With Respect to Lots and Dwellings Owned by Developer.** With respect to any Lot or Dwelling owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot or Dwelling.

**Section 2.4 Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and Dwelling and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent

Owners of any Lot or Dwelling within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**Section 2.5 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any portion of the Property, to make improvements and changes to all Common Areas and to all Lots and Dwellings owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots or Dwellings owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) the installation and maintenance of any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas or Access Road right of way, (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses and (f) removing or exempting any portion of the Property and any Lots, Dwellings, or Common Areas from the terms and provisions of this Declaration. The exercise by Developer of any of the rights set forth in this Section 2.5 may be exercised solely by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot or Dwelling, acknowledges and agrees that Developer or Affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.2 above. In addition, Developer reserves the right, in its sole and absolute discretion, to cause any portion of the Property owned by Developer to be zoned or re-zoned at any time without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

**Section 2.6 Subdivision.** Developer shall herewith simultaneously file the Final Plat with the Probate Office which shall be binding on the Property and is incorporated herein by reference thereto. Developer reserves the right to record, modify, amend, revise and otherwise add to the Final Plat, at any time and from time to time, with one or more re-subdivision plats setting forth such additional information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, internal lakes, retention ponds and drainage basins. Any such re-subdivision plats and any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.6 may be exercised by Developer without any requirement that the consent or approval of any Owners, Occupants or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Dwellings, Common Areas and other portions of the Property owned by Developer, and (b) amend from time to time and at any time Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property.

**Section 2.7 Removal of Property From Declaration.** Notwithstanding anything provided in this Declaration to the contrary, at any time on or prior to the occurrence of the Turnover Date, Developer reserves the right, in its sole and absolute discretion, without the consent or approval of any Owner (other than the Owner of that portion of the Property being removed from the Declaration), Occupant, Mortgagee or the Association, to amend this Declaration in order to remove and exclude any real property from the definition of the Property and the terms and provisions of this Declaration. The rights reserved by Developer pursuant to this Section 2.7 shall include, without limitation, the right to amend from time to time and at any time Exhibit A to this Declaration to reflect the removal of any real property from the definition of Property, without being required to obtain the consent or approval of any Owner, Mortgagee or the Association.

### ARTICLE 3 EASEMENTS

#### **Section 3.1 Grant of Non-Exclusive Easements to Common Areas.**

(a) Subject to the rights of the Association to limit and prohibit access to and the use of the Common Areas and the Recreational Facilities, if any, as provided in Subsection (b) below and Section 11.1 below, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other Owners, Occupants and other parties having any rights or interest therein. Subject to the rights of the Association to limit and prohibit access to and the use of the Common Areas and the Recreational Facilities, if any, as provided in Subsection (b) and Section 11.1 below, the easement and rights granted pursuant to this Subsection (a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

(b) Subject to the limitations, restrictions, terms and provisions set forth in this Subsection (b) and in Section 11.1 below, Developer does hereby grant to each Owner and the respective family members of each Owner the right and privilege to use and enjoy the Recreational Facilities in common with Developer, its successors and assigns, all other Owners and their respective family members and any other parties who have rights to use the Recreational Facilities, as determined by the Board from time to time. Notwithstanding anything provided herein to the contrary, access to and the use and enjoyment of the Recreational Facilities, if any, (i) shall be subject to any and all rules and regulations established from time to time by the Board pursuant to Section 4.8 below, (ii) shall be limited to the Owners, their spouses, dependent children (as may be defined from time to time by the Board, in its sole discretion), their guests and invitees, and any other persons authorized by the Board from time to time to use the same and (iii) may be suspended or permanently revoked by the Board for any Owner or the respective family members of any Owner who (1) violates any of the rules and regulations applicable to the use and enjoyment of the Recreational Facilities or (2) fails to timely pay all Assessments due and payable by such Owner to the Association. The easement and rights granted pursuant to this Subsection (b) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

#### **Section 3.2 Reserved.**



**Section 3.3 Reservation of General Access and Maintenance Easement.** Developer does hereby establish and reserve for itself and its successors and assigns, the ARC, the Association, and all of the foregoing parties' respective agents, employees, representatives, invitees, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of (a) providing ingress to and egress from each Lot, Dwelling and Dock Facilities for (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Dwelling directly affected thereby and (b) mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

**Section 3.4 Reservation of Easements With Respect to Common Areas.**

(a) Developer does hereby establish and reserve, for itself and its successors and assigns, the ARC, the Association, their successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings, Dock Facilities and other Improvements in and to any Lots, Dwellings and Common Areas, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) Developer does hereby establish and reserve for itself and its successors and assigns, the ARC, the Association, their successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, the permanent right to change, modify and realign the boundaries of any of the Common Areas. Developer hereby establishes and reserves for itself and its successors and assigns, the ARC, the Association, their successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, (i) a permanent and perpetual non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate, (ii) the right to grant to third parties rights to use the Common Areas and (iii) the right to grant to third parties, other real property and the owners of such real property rights to use any of the Common Areas. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

**Section 3.5 Reservation of Easement For Utilities.** Developer does hereby establish and reserve for itself and its successors and assigns, the ARC, the Association and their successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property or other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.5 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.5 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.5 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein and (iii) the establishment and reservation of easements pursuant to this Section 3.5 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.5.

**Section 3.6 Reservation of Easements For Signs, Walks, Trails, Walls and Fences.**

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

(b) Developer does hereby establish and reserve for itself, its successors and assigns, the ARC and the Association, its successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Lot or Dwelling which constitutes the

perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Property; provided, however, that (i) neither Developer nor the Association shall have any obligation to construct any such perimeter wall, fence, mound or berm and (ii) to the extent Developer desires to exercise the easement rights reserved in this Section 3.6, then Developer shall have the further right, at any time and from time to time, to alter, change, modify, terminate and remove any improvements constructed by Developer on any portion of the Property pursuant to this Section 3.6.

**Section 3.7 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, its successors and assigns, the ARC, the Association and their successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, a permanent and perpetual right and non-exclusive easement on, over, across, through and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Requirements of any Governmental Authorities, including, without limitation, any watershed, soil erosion, stormwater discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the ARC or the Association of the rights reserved in this Section 3.7 shall not unreasonably interfere with the use or occupancy of any Dwelling.

**Section 3.8 Project License; Reservation of Easement For Buffer Area; Water Quality and Quantity; Control Area.**

(a) **Project License.** The Property abuts the project boundary of Alabama Power Company's Coosa River hydroelectric project, which Alabama Power Company operates and maintains under a license issued by the Federal Energy Regulatory Commission ("FERC") (the "Project License"). All rights of any Owner of any Lot or Dwelling, and all rights of use of any such Owner to the Lake, are subject to the terms and conditions of the Project License, including any amendments thereto, and any license that may subsequently be issued to Alabama Power Company for the Coosa River hydroelectric project, together with the applicable provisions of the Federal Power Act, and the rules, regulations and orders of FERC. No Owner shall use any portion of the Property or Lake in any manner so as to endanger health, create a nuisance or otherwise be incompatible with Alabama Power Company's use of the Coosa River hydroelectric project for purposes authorized by the Project License. The Owner of any Lot or Dwelling shall also take all reasonable precautions to ensure that the construction, operation and maintenance of the Dwelling and Improvements on its Lot within the Property will occur in a manner that will protect the scenic, recreational and environmental values of the Property.

(b) **Buffer Area.** The Buffer Area shall remain and at all times be free from any Improvements of any nature that have not otherwise been approved by the ARC, and shall be

maintained by the Owner. Developer does hereby establish and reserve for itself, and its successors and assigns, the ARC, the Association and their successors and assigns, and all of the foregoing parties' respective agents, employees, representatives, invitees, a permanent and perpetual right and easement to enter upon any portion of any Lot or Dwelling lying within the Buffer Area for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash therefrom so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that the reservation of the foregoing easements shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

(c) Water Quality and Quantity. The quality and quantity of the water in the Lake are subject to the following matters: (i) the terms and conditions of the Project License issued to Alabama Power Company by FERC, including any amendments thereto, and any license that may subsequently be issued to Alabama Power Company for the Coosa River hydroelectric project, together with the applicable provisions of the Federal Power Act, and the rules, regulations and orders of FERC, all as may be amended from time to time; (ii) present disputes between the states of Alabama, Georgia and Florida related to use of the water in the Lake, including quality and quantity; (iii) the discharge of wastewater by municipalities and industries through publicly owned wastewater treatment facilities; and (iv) runoff from septic, agricultural and domestic sources into the Lake by parks owned and operated by the State of Alabama, residential homeowners, recreational homeowners, commercial businesses and others in and around the Lake. Neither Alabama Power Company, Developer, nor any of their parents, subsidiaries or related companies, nor any of the respective agents, employees, representatives, successors or assigns of any of the same, is able to predict the possible outcome of any of the foregoing matters on the quality or quantity of the water in the Lake. Furthermore, by acceptance of any deed or other instrument from Developer which conveys any right or interest in the Property or to a Lot or Dwelling within the Property, each Owner agrees and acknowledges that neither Alabama Power Company, Developer, nor any of their parents, subsidiaries or related companies, nor any of the respective agents, employees, representatives, successors or assigns of any of the foregoing, makes any representation or warranty concerning the effect, if any, that any of the foregoing matters may have on the quality or quantity of water in the Lake.

(d) Control Area. Without limiting Subsection (c) above, Developer hereby acknowledges and hereby provides notice to all Owners that Alabama Power Company, its successors and assigns, owns and has the right to back-up and maintain the waters of the Lake in the area of land located from the High Water Mark until the three hundred seventeen foot (317' mean sea level) elevation contour line and to raise and lower such waters as the Alabama Power Company deems necessary, in its sole and absolute discretion.

**Section 3.9 Shared Driveway Easement.** Developer does hereby establish and reserve an easement for the use and benefit of the Owners of Lots 1 and 2 and their family members, guests, agents, servants, employees, licensees and invitees, and such Owners' heirs and assigns, for vehicular and pedestrian ingress and egress to and from Coosa Run over and across a portion of Lots 1 and 2 as shown and labeled as "Shared 40' Driveway Easement" on the Final Plat (the "Shared Driveway Easement"). The Shared Driveway Easement is and shall be a covenant running with the land and shall constitute a burden on and a benefit to Lots 1 and

2. Any driveway or roadway lying within the Shared Driveway Easement shall at all times be unobstructed and free of any structures that would affect the aforementioned parties' rights under this sub-section. Further, after the initial construction of the shared driveway lying within the Shared Driveway Easement, the Association shall not be obligated to improve, maintain or repair the Shared Driveway Easement and any driveway, roadway or landscaping thereon. The Shared Driveway Easement and any driveway, roadway or landscaping thereon shall at all times be improved, maintained or repaired by the Owners of Lots 1 and 2 in accordance with Section 7.1 hereof, provided, however, that any and all improvement, maintenance or repair costs and expenses therefor shall be shared equally by and between the Owners of Lots 1 and 2. The obligations of the Owners of Lots 1 and 2 as set forth herein shall be subject to Section 7.2(b) hereof.

#### ARTICLE 4 ASSOCIATION

**Section 4.1 Membership.** The Owner of each Lot or Dwelling shall be a member of the Association. For purposes of determining membership in the Association, only one (1) membership in the Association shall be allowed per each Lot or Dwelling, regardless of the number of Dwellings situated on any Lot. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling within the Property owned by Developer, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot or Dwelling shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership in, or the rights and benefits of, the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Certificate of Formation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

**Section 4.2 Board.** The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the Turnover Date, the number of members of the Board shall increase to five (5) and the Owners shall have the exclusive right to appoint and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly

provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot or Dwelling, vests in Developer the sole and absolute authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

### **Section 4.3 Voting Rights.**

(a) Notwithstanding anything provided to the contrary in this Declaration, the Certificate of Formation or the Bylaws, Developer shall, subject to the remaining terms and provisions of this Subsection (a), have the sole and exclusive right to exercise all voting rights in the Association until the Turnover Date; provided, however, that (i) any Special Assessments must be approved by the Owners in accordance with the terms and provisions of Section 8.4 below and (ii) certain amendments to this Declaration are subject to the terms and provisions of Section 10.2 below. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to have irrevocably and unconditionally agreed to the foregoing terms and provisions of this Declaration and shall further be deemed to waive any and all voting rights in the Association prior to the Turnover Date except as specifically set forth in Section 8.4 and Section 10.2 hereof.

(b) Following the Turnover Date, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matter submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling owned and, to the extent any Lot contains more than one Dwelling, then such Lot and Dwelling shall be entitled to only one (1) vote regardless of the number of Dwellings situated on such Lot. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Only those Owners who hold legal title to a Lot or Dwelling shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.3, at all times prior to and after the Turnover Date, Developer shall be deemed the Owner of, and entitled to, all voting rights attributable to any Lots or Dwellings owned by Developer.

(c) Each Owner, by acceptance of a deed to a Lot or Dwelling, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.6 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted.

(d) Notwithstanding anything provided herein to the contrary, the Association shall have the right to suspend any Owner's voting rights or privileges in the Association pursuant to the terms and provisions of Section 11.1 below.

**Section 4.4 Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from

the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The powers and authority granted herein and in the Certificate of Formation and Bylaws of the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

**Section 4.5 Meetings of Members of Association.** Notwithstanding anything provided in this Declaration, the Certificate of Formation or the Bylaws to the contrary, no meetings of the Owners (i.e., members of the Association) shall be held prior to the Turnover Date. Following the occurrence of the Turnover Date, annual meetings of the Owners (members of the Association) shall be held in accordance with the terms and provisions of the Bylaws.

**Section 4.6 Actions by Board and Use of Recreational Facilities.**

(a) Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property.

(b) The Board, either prior to or after the occurrence of the Turnover Date, shall have the right, in its sole and absolute discretion, to enter into any and all agreements with third parties, which may include Affiliates of Developer, pursuant to which (i) such third party will allow Owners and Occupants to utilize the Recreational Facilities of such third party in consideration of the payment by the Association of a monthly sum for such use and (ii) the Association will collect from all Owners and remit to any such third party (which may include Affiliates of Developer) monthly fees for the use of any Recreational Facilities. To the extent the Association enters into any such agreement for the use of Recreational Facilities (a "Recreational Facilities Use Agreement"), each Owner shall be required to pay, as part of the Common Expenses, such Owner's share of the monthly fees, dues or other charges which are payable by the Association to such third party under any such Recreational Facilities Use Agreement entered into by the Association. In addition to agreements which the Association may enter into with respect to the use of third party Recreational Facilities, the Association shall also have the right to enter into Recreational Facilities Use Agreements with those persons who own other facilities and amenities within Coosa Run on such terms and conditions as the Association may, in its sole and absolute discretion, determine to be appropriate for the use of any such other facilities and amenities by the Owners and/or Occupants. To the extent the Association enters into any such Recreational Facilities Use Agreements which would allow Owners and/or Occupants to use Recreational Facilities or other facilities or amenities, then such use shall be subject to such rules, regulations and requirements as may be mutually agreed upon by the Association and any such third parties (including Affiliates of Developer) and may include, without limitation, provisions which limit, restrict and prohibit the use of any such Recreational Facilities and other facilities and amenities by any Owner who has failed to pay Assessments or who is otherwise in violation of any of the terms and provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any other rules and regulations adopted by the Board from time to time.

(c) In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party

management companies which may be Affiliates of Developer, such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Common Areas, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically reserved to the Board or the officers of the Association by this Declaration, the Certificate of Formation or the Bylaws. Such manager may be any Person and may be bonded in such manner as the Board may require, with the cost of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal, accounting and other professional services as are necessary or desirable in connection with the administration and operation of the Property and the Association or the enforcement of this Declaration, the Certificate of Formation, the Bylaws, the Architectural Standards or any rules and regulations of the Association.

**Section 4.7 Management by Developer or its Affiliates.** Developer or any of Developer's Affiliates may be employed as the manager of the Association and for the Property until the Turnover Date at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of Coosa Run.

**Section 4.8 Rules and Regulations.** In addition to the terms and provisions set forth in this Declaration, the Board may establish and enforce rules and regulations governing the use, improvement, maintenance and repair of all Lots, Dwellings, and Common Areas, including, specifically, the Recreational Facilities. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas by Owners and Occupants, including, specifically, rules and regulations which (a) allow persons other than Owners the right, subject to the payment of any applicable fees, to utilize the Recreational Facilities, if any, situated within the Common Areas, (b) restrict or limit the number of guests of any Owner utilizing the Recreational Facilities, (c) specify the hours and days on which any of the Recreational Facilities may be utilized or (d) prohibit the use of all or any portion of the Recreational Facilities by those Owners who have violated the rules and regulations of the Association or who have not paid all Assessments hereunder. In addition, the Board may adopt rules and regulations which designate and govern certain recreational hunting areas, bird sanctuaries, wildlife and wild flower areas within the Property and provide for the enforcement of the terms and provisions of this Declaration and establishing other applicable rules and regulations limiting, restricting or prohibiting certain activities within the Property, including, without limitation, the use of any portion of the Property for recreational hunting purposes and the application of fertilizers, pesticides and other chemicals within the Property. Such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the vote of the



members of the Association entitled to vote thereon at any regular or special meeting of the Association or any ballot vote held in accordance with the terms and provisions of the Bylaws.

**Section 4.9 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association harmless from and against any and all liability, expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding, including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) harmless from and against any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) may be entitled, including anything provided to the contrary in the Certificate of Formation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.9 and the costs of such insurance shall constitute a Common Expense.

**Section 4.10 Turnover.** On or prior to the occurrence of the Turnover Date, all Common Areas, if any, owned by Developer shall be transferred and conveyed by Developer to the Association by quitclaim deed. Developer may, in its sole and absolute discretion, elect to transfer and convey to the Association by quitclaim deed any other real property owned by Developer at any time prior to or after the occurrence of the Turnover Date. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, cause any real property conveyed to the Association to be conveyed free and clear of all liens and encumbrances other than taxes for the then current year and all subsequent years thereafter, the terms and provisions of this Declaration and all other easements, restrictions, rights-of-way, reservations and other matters of record and such other terms, covenants and agreements as may be required by Developer (which may include, by way of illustration, but not limitation, the reservation of easements and other rights as to such real property conveyed by Developer to the Association). The Association, by execution

of this Declaration, agrees to accept conveyances by quit claim deeds of any and all real property which may be conveyed to it by Developer and, if requested by Developer, from any builders or developers of any portion of the Property and all such Property shall thereafter constitute and be deemed to be part of the Common Areas. In addition, on or before the Turnover Date, Developer shall transfer and assign to the Association and the Association shall assume all of Developer's rights and obligations under any and all agreements entered into by Developer on behalf of the Association or which benefit the Association. Developer does not make, and has not made, any representations or warranties, either express or implied, as to the physical condition of any real or personal property which may be conveyed by Developer to the Association and the Association shall accept any such real or personal property in its then "AS IS" condition, "WITH ALL FAULTS".

## ARTICLE 5 ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

**Section 5.1 Committee Composition.** The ARC shall consist of an odd number of persons of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.2 below. The persons designated to serve on the ARC may, but shall not be required to be, Owners or Occupants. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.2 below.

### **Section 5.2 Appointment and Removal of ARC Members.**

(a) **DEVELOPER RESERVES THE RIGHT AND SHALL HAVE THE RIGHT AT ALL TIMES PRIOR TO THE TURNOVER DATE TO APPOINT AND REMOVE ALL MEMBERS OF THE ARC.** Any person appointed as a member of the ARC by Developer may be removed, with or without cause, at any time by Developer. In the event of the death or resignation of a member of the ARC who has been appointed by Developer, then the Developer shall appoint a substitute member to the ARC to fill such vacancy, if Developer elects to fill such vacancy.

(b) Developer reserves the right, at any time prior to the Turnover Date to elect, in a written notice given to the Association, to no longer retain the exclusive rights to appoint and remove members of the ARC as set forth in (a). Following the giving of such written notice by Developer to the Association, the Board shall, at all times thereafter, have the right to appoint and remove all persons who will serve on the ARC. Any person appointed as a member of the ARC by the Board may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC who has been appointed by the Board, then the Board shall appoint a substitute member to the ARC to fill such vacancy. Any person appointed by the Board to serve on the ARC shall be deemed an agent of the Association. The terms and provisions of this Subsection (b) shall not be effective until such time as Developer elects, in its sole and absolute discretion, to relinquish the right to appoint and remove members of the ARC, which election must be evidenced by a written notice provided by Developer to the Association in accordance with the terms and provisions of (a) above.

**Section 5.3 Procedure and Meetings.** The ARC shall elect a chairman and he or she, or in his or her absence, any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

**Section 5.4 Architectural Standards.** The ARC is hereby authorized to promulgate and amend and modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings, Dock Facilities and any other Improvements on any Lot or Dwelling, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot or Dwelling are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot or Dwelling. The Architectural Standards and any and all amendments thereto adopted from time to time by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

**Section 5.5 Approval of Plans and Specifications.**

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS, DOCK FACILITIES AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT, DOCK FACILITIES OR DWELLING OTHER THAN BY DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT, DWELLING OR DOCK FACILITIES UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND**

APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SUBSECTION (b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, SEPTIC TANKS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, DOCK FACILITIES, PLAYHOUSES, PLAY EQUIPMENT, AWNINGS, WEATHER VANES, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT'S QUARTERS, OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION TO AN EXISTING DWELLING, DOCK FACILITIES, GARAGE OR OTHER STRUCTURE ON A LOT BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE), UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SUBSECTION (b) BELOW. NO INTERIOR PORTIONS OR AREAS WITHIN A DWELLING OR OTHER STRUCTURES LOCATED ON A LOT WHICH DO NOT CONSTITUTE LIVING SPACE MAY BE CONVERTED INTO LIVING SPACE UNLESS THE ARC, IN ITS SOLE AND ABSOLUTE DISCRETION, APPROVES THE SAME.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Dwelling, Dock Facilities or other Improvements on any Lot, Dwelling or Dock Facilities, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which, at the option of the ARC may be digitally submitted, and shall include the following unless otherwise agreed to by the ARC in its sole discretion:

(1) Three (3) copies (unless submitted digitally) of a professionally and accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings, septic tanks and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling;

(2) Three (3) copies (unless submitted digitally) of a foundation plan, floor plans, lighting plans (including specifically, any exterior lighting to be utilized with respect to such Lot or Dwelling) and exterior elevation drawings of the front, back and sides of the Dwelling or other Improvements to be constructed on the Lot;

(3) Three (3) copies (unless submitted digitally) of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, roofing and other materials to be utilized on the exterior of a Dwelling

and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwelling;

(4) Three (3) copies (unless submitted digitally) of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.6 below, together with the irrigation (underground sprinkler) plan for such Lot or Dwelling; and

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

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot or Dwelling, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for Coosa Run. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other two (2) copies shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within such Owner's Dwelling without the necessity or requirement that the approval or consent of the ARC be obtained so long as (i) such improvements and alterations do not affect the exterior appearance of such Dwelling and (ii) the Living Space within such Dwelling is not increased.

(d) The ARC may establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot or Dwelling to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful

completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot or Dwelling and the compliance with all of the terms, conditions and provisions of this Declaration and interest, if any, earned on said deposit shall belong to and remain the property of the Association. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot or Dwelling and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her agents, employees or independent contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her agents, employees or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's builder, to execute a soil erosion indemnity in favor of the ARC, the Association and Developer.

(e) In the event the ARC fails to approve in writing any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, then the plans and specifications so submitted to the ARC will be deemed to have been disapproved.

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

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

(h) Each Owner acknowledges and agrees that, if applicable, the County will not issue building permits for any Improvements on a Lot until such time as the ARC has approved the plans and specifications for such Improvements.

**Section 5.6 Landscaping Approval.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any

nature shall be implemented or installed by any Owner (other than by Developer) on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the ARC.

**Section 5.7 Construction Without Approval.** If

(a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot, Dwelling or Dock Facilities without ARC approval of the plans and specifications for the same, or

(b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with,

then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.12 below.

**Section 5.8 Inspection.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot, Dwelling, Dock Facilities or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

**Section 5.9 Subsurface Conditions.** The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the ARC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

**Section 5.10 Limitation of Liability.** Notwithstanding anything provided herein to the contrary,

(a) neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof shall have any liability of any nature whatsoever for, and

(b) each Owner, by acceptance of a deed to any Lot or Dwelling, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of

(1) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article 5,

(2) any defects, structural or otherwise, in any work done according to such plans and specifications,

(3) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article 5,

(4) the construction or performance of any work related to such plans, drawings and specifications,

(5) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling), and

(6) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or Dwelling, or any Improvements situated thereon.

**Section 5.11 Commencement and Completion of Construction.** Unless otherwise agreed to in writing by the Developer, each Owner shall:

(a) Following commencement of construction of a Dwelling, each Owner agrees to diligently pursue such construction to completion; and

(b) On or before eighteen (18) months following commencement of construction, achieve Substantial Completion of such Dwelling, in accordance with the plans and specifications for the same which have been approved by the ARC.

For clarity purposes, the obligations of this Section 5.11 shall be binding on the first Owner of each Lot and all of the heirs, executors, successors and assigns of such Owner, and any subsequent Owner so long as the Lot has not already been improved to be deemed a Dwelling. As used herein, the term "commence construction" or "commencement of construction" shall mean the commencement by such Owner of construction of a Dwelling on such Lot by substantially clearing, grading and excavating such Lot and otherwise commencing to make other improvements to such Lot such as, but not limited to, pouring of footings and foundations (or a concrete slab) and commencement of framing work. If, at any time after an Owner has commenced construction, such Owner fails to make significant construction progress during any



30-day period, such failure shall be considered to be a failure to diligently pursue construction as required by the terms hereof. A Dwelling shall be deemed to have been substantially completed upon the issuance of a final certificate of occupancy for such Dwelling by the County or applicable Governmental Authorities (or ARC if applicable) (“Substantial Completion”). Notwithstanding anything provided in this Section 5.11 to the contrary, all of the time periods specified herein this Section 5.11 shall be extended for casualty, extreme material shortages, inclement weather conditions which are not normal or customary for the time of year during which construction of such Dwelling is being undertaken and any other significant matters beyond the reasonable control of an Owner (or his or her builder); provided, however, that no extension shall be granted as a result of any inability to obtain financing or funding for the construction of such Dwelling.

**Section 5.12 Enforcement and Remedies.** In the event any of the provisions of this Article 5 are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to

- (a) enjoin such violation or noncompliance, and/or
- (b) without limiting subsection (a) above, bring an action for specific performance or enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements, and/or
- (c) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article 5 including, without limitation, attorneys’ fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner’s contractors, agents or invitees to comply with the terms and provisions of this Article 5, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.5 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.1 and Section 8.7 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.12 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

**Section 5.13 Compliance Certification.** The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

## ARTICLE 6 USE AND PROPERTY RESTRICTIONS

**Section 6.1 Use Restrictions.** Except as otherwise provided to the contrary in this Section 6.1, each Lot and Dwelling shall be used for single-family residential purposes only and for ancillary structures and uses normally and customarily found in residential developments and that such ancillary structures have been approved by the ARC. No trade or business may be carried on in or from any Lot or Dwelling; provided, however, that

(a) the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic, and

(b) Developer and any Person to whom Developer has specifically authorized in writing to do so may utilize any portion of the Property and any Lot or Dwelling owned by Developer or such Person for information centers, sales centers, offices and model homes. Unless otherwise provided herein this Declaration, the leasing or rental of a Lot or Dwelling for residential purposes is prohibited.

Notwithstanding anything provided in this Section 6.1 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for any of the uses included in the definition of Common Areas and any other uses so long as such other uses have been approved in writing by the ARC.

In no event shall any of the Lots be used for trailers, recreational vehicles and mobile/manufactured homes; provided, however, that with ARC approval, construction trailers may be located on any of the Property during the construction of Improvements on the Property.

**Section 6.2 Plan Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling or Improvements have been approved by the ARC in the manner set forth in Article 5 above.

### **Section 6.3 Underground Utilities.**

(a) All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

(b) All electrical, gas, telephone and cable television meters, transformers, generators and junction boxes, if any, for each Lot, shall be located, to the greatest extent possible, so as not to be visible from any roadway within or adjacent to the Property. All Owners shall install and maintain landscaping around all such meters and all electrical transformers, generators and junction boxes situated on such Owner's Lot in a manner to visually screen, to the greatest extent practicable, all such meters, transformers and junction boxes from view from any roadway within or adjacent to the Property. All exterior heating, ventilating and air conditioning compressor units and equipment shall be located on the ground level of such Dwelling in a

location and with appropriate screening by either walls or landscaping so that the same is not visible from any of the streets within or adjacent to the Property.

**Section 6.4 Building Setbacks.**

(a) Subject to the provisions of Section 6.6 below, minimum building setback lines for all Dwellings shall be set forth in the Architectural Standards or approved by the ARC (which may vary for each phase of development) or as set forth in the deed from Developer to the Owner of such Lot or Dwelling. Canopies and awnings and second story porches, decks and balconies may overhang any building setback lines by up to twenty-four (24) inches but may not overhang Lot boundary lines.

(b) No Dwelling shall be built within the setback areas established in accordance with any of the procedures specified in (a) above or Section 6.6 below. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.4.

**Section 6.5 Application of Architectural Standards.** The Architectural Standards may establish various requirements for the development, use and construction of a Dwelling, Dock Facilities and other Improvements on any Lot. The Architectural Standards are binding on all Lots and include, without limitation, requirements regarding Lot size, Dwelling size, approved building materials and landscaping requirements for each Lot and Dwelling. Each Owner of a Lot or Dwelling shall be bound by and shall observe all requirements established by the Architectural Standards in the development, use and construction of Dwellings, Dock Facilities and any other Improvements on such Owner's Lot.

**Section 6.6 Siting of Dwellings.** Prior to commencing any construction-related activities on any Lot or Dwelling (including any grading or clearing), the location of any Dwelling to be constructed thereon (or any alterations to the existing Dwelling situated thereon) shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.5(b) above. Notwithstanding anything provided in Section 6.4 above to the contrary,

(a) subject to the terms and provisions of this Section 6.6, the ARC may require building setback requirements different from those described in or established pursuant to Section 6.4, including building setbacks which are less than or greater than those specified in or established pursuant to Section 6.4 above,

(b) the Buffer Area, Shoreline Rules and the setback requirements (as set forth in Section 6.4 hereof) shall be applicable to all Lots, and

(c) building setback requirements and the Buffer Area, as applicable, created for the Lots may not be changed, altered, modified or amended in any respect without the prior written consent of Developer and the ARC.

**Section 6.7 Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. The height of each Dwelling shall be approved by the ARC and shall be subject to all regulations and requirements of applicable

Governmental Authorities. Towers, decks and outside porches shall be subject to the foregoing height limitations. Chimneys and roof finials are not subject to the foregoing height limitations.

**Section 6.8 Minimum and Maximum Living Space.** Minimum and maximum Living Space requirements for all Dwellings shall be established by the ARC.

**Section 6.9 Landscaping and Trees.**

(a) Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner (other than Developer) shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees, prohibit Developer from cutting or removing trees to the extent reasonably required to construct roads, utilities or Common Areas within the Property or clearing any portion of the Property in connection with the development of the same for any of the uses described in Section 6.1 above or prohibit Alabama Power Company's exercise of any rights pursuant to the Shoreline Rules.

(b) Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his or her Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot. The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which must be utilized on any Lot or Dwelling, which rules and regulations may also prescribe that a minimum dollar amount be established and utilized as a landscaping budget for each Lot or Dwelling.

(c) All landscaping for a Lot or Dwelling shall be completed in accordance with the landscaping plan approved by the ARC no later than forty five (45) days following the issuance of a certificate of occupancy by the County or applicable Governmental Authorities (or ARC if applicable) for the Dwelling situated thereon.

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

(e) No rocks, rock walls or other substances shall be placed on any Lot or Dwelling as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or Dwelling or to otherwise impede or limit access to the same. No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed on or within the front or side yards of any Lot or Dwelling or which would be visible from any roadway within or adjacent to the Property, unless otherwise approved by the ARC.

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

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

(h) Seasonal or holiday decorations may not be placed on any Lot or Dwelling more than 40 days prior to such holiday and shall be promptly removed from each Lot or Dwelling no later than 30 days following the date of such holiday.

**Section 6.10 Roofing.** The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling. No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling without ARC approval. All plumbing and heating vents, stacks and other projections of any nature on the roof shall

(a) be painted the same color as the roofing material used for such Dwelling, and

(b) to the extent practicable, not be visible from any roadways within or adjacent to the Property. No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

**Section 6.11 Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting, accent lighting, upward pointed lighting and utility (e.g., flood) lighting, must be approved by the ARC.

**Section 6.12 Exterior Materials and Finishes.**

(a) All exterior building material finishes and exterior colors for any Dwelling or Dock Facilities must be approved by the ARC. All wood surfaces utilized on the exterior of any Dwelling shall be painted or stained using solid color stains approved by the ARC, provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the use of wood toned or semi-transparent stain on exterior doors, shutters or brackets to the extent approved by the ARC.

(b) Concrete steps, stoops or porches must be stained or finished in tile, brick or stone, all as approved by the ARC. Unless otherwise approved by the ARC, no concrete, concrete block or cinder block shall be used as an exposed building surface. Unless otherwise approved by the ARC, any concrete, concrete block or cinder block utilized in the construction of a Dwelling, Dock Facilities or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling or Dock Facilities (e.g., brick or stone). Metal flashing, valleys, vents and gutters installed on a Dwelling or Dock Facilities shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

(c) The exterior of all chimneys shall be constructed of materials approved by the ARC. If a fireplace utilizes a metal spark arrester or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All

metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

**Section 6.13 Off-Street Parking and Related Restrictions.**

(a) Each Dwelling shall provide for off-street parking as approved by the ARC. Garages and carports, including the location and orientation thereof, may be allowed at the sole discretion of the ARC. Garage doors shall likewise be constructed of such materials as are approved by the ARC.

(b) In no event shall any boats, automobiles or other vehicles, machinery or equipment be parked or left unattended on or within

(1) any Common Areas, or

(2) any of the roadways within the Property (unless parking on or within such roadways is required for guests or invitees or any Owner or Occupant due to full utilization of any off-street parking for such Lot or Dwelling and then, only to the extent that such vehicles do not remain parked on or within such roadways for more than 24 hours). Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Automobiles shall be parked only in driveways or garages. Automobiles shall not be parked on any landscaped or natural areas of a Lot or Dwelling or within any of the Common Areas. No vehicles, machinery or equipment shall be

(A) repaired or restored outside an enclosed structure (e.g., a garage) on any Lot or Dwelling, or

(B) placed on any types of blocks or other types of fixtures or personal property which are located outside of an enclosed structure (e.g., a garage).

(c) No portion of any Lot or Dwelling may be utilized to provide access, ingress to or egress from any property outside the boundaries of the Property without the express prior written consent of the ARC, which consent may be withheld by the ARC in its sole and absolute discretion.

(d) No vehicles, boats, garbage or trash cans or other personal property of any Owner shall be parked or allowed to remain in any of the roadways within the Property which would or could interfere with vehicular or pedestrian access through such roadways or access into or out of any garages situated on any such roadways.

**Section 6.14 Fences.** No chain link or vinyl coated fences shall be allowed on any Lot. All fences, including the height, materials to be used, paint colors, style or architectural features of such fences and the location of any fences, must be approved in writing by the ARC.

**Section 6.15 Windows, Window Treatments and Doors.**

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be constructed on any Dwelling. All exterior doors on any Dwelling or other Improvements on a Lot must be approved by the ARC as to style, materials used, color, size and types of door hardware to be utilized. Burglar bars on windows and doors shall not be permitted. Screen doors shall be authorized only on the rear of a Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

**Section 6.16 Mailboxes.** Each Lot or Dwelling shall have only one (1) mailbox; provided, however, that the ARC may authorize and require that double mailboxes containing only one post be located at or near the common property line of two (2) Lots (or Dwellings) which will serve both Lots (or Dwellings). All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or approved by the ARC; provided, however, that the ARC and/or Developer may require, in lieu of mailboxes, that a kiosk or community mail center be constructed for certain portions of the Property, which kiosks or community mail centers shall constitute part of the Common Areas.

**Section 6.17 Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall be located on each Lot so as not to be visible from any roadways within or adjacent to the Property. No window mounted heating or air conditioning units or window fans shall be permitted.

**Section 6.18 Satellite Dishes and Antennae.** No satellite dishes shall be allowed on any Lot, Dwelling or Dock Facilities; provided, however, that one (1) satellite dish no more than two (2) feet in diameter may be installed on a Dwelling so long as (a) the same is not visible from the Lake or any roadway within or adjacent to the Property and (b) the location of such satellite dish is approved by the ARC. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling unless the same is (i) contained entirely within the interior of a building or other structure, (ii) not visible from the Lake or any roadway within or adjacent to the Property or any adjacent Lot or Dwelling and (iii) approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.

**Section 6.19 Driveways and Sidewalks.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of materials approved by the ARC. To the extent any Owner or Occupant or any of their respective builders, contractors, subcontractors, agents, employees, guests or invitees damage or destroy any sidewalks, curbing or gutters within the Property which constitutes part of the Common Areas, then the Owner of such Lot or Dwelling shall promptly cause, at his, her or its sole cost and expense, such damaged sidewalk, curbing or gutters to be repaired and replaced in accordance with any and all requirements of the Association.

**Section 6.20 Soil Erosion and Drainage.** Each Owner shall provide and maintain on his or her Lot or Dwelling adequate soil erosion measures and drainage facilities to accommodate any storm water runoff resulting from any Improvements being or having been constructed on such Owner's Lot or Dwelling. Each Owner shall also insure that his or her Lot or Dwelling and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all stormwater drainage and runoff Governmental Requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, Governmental Requirements, and rulings of any Governmental Authority. Each Owner shall, in connection with the construction of any Dwelling or other Improvements on such Owner's Lot, be solely responsible for providing adequate storm water drainage improvements and facilities on such Owner's Lot which shall be sufficient to adequately channel any storm water which may either cross or come upon such Owner's Lot from adjoining Lots or Common Areas or which may originate and drain from such Owner's Lot and any Improvements thereto onto adjoining Lots and Common Areas. **Each Owner, by acceptance of a deed to his or her Lot or Dwelling, shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and expenses, and any and all other amounts suffered, paid or incurred by Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 6.20.**

**Section 6.21 Outdoor Furniture, Recreational Facilities and Clotheslines.**

(a) Unless otherwise specifically approved by the ARC, any yard (exterior) furniture placed, kept, installed, maintained or located in or on any Lot, Dwelling or Dock Facilities shall, to the greatest extent practicable, be located so that the same will not be visible from the Lake or any roadways within or adjacent to the Property. Without limiting the use of lounge chairs, patio furniture or other similar items intended for outdoor use, no furniture or furnishings intended for the interior of a Dwelling (i.e., sofas, appliances, etc.) shall be utilized outside any Dwelling.

(b) Wood piles, free-standing playhouses, treehouses, children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational or play equipment and appurtenances shall be located

(1) so that the same are not visible from the Lake or any roadways within or adjacent to the Property, and

(2) in a location approved in writing by the ARC and, if applicable, by Alabama Power Company.



(c) Basketball backboards shall be located so as not to be visible from the Lake. Basketball backboards shall not be located within the front yards of any Lots or Dwellings and, if located within the side yard of any Lot or Dwelling, must be no closer to the street than 15 feet behind the forwardmost corner of the front façade of the Dwelling on such Lot. Basketball goal backboards shall be of clear Plexiglas or acrylic and shall not be affixed to a Dwelling.

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

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and shall not be visible from the Lake or any roadways within or adjacent to the Property unless covered and appropriately situated as allowed by the ARC. No commercial barbecue equipment, including, without limitation, commercial grade smokers and grills, shall be placed, stored or operated on any Lot or Dwelling.

(f) Bird feeders, wood carvings, plaques and other types of home crafts shall not be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of home crafts shall be located only at the rear of a Dwelling and shall not be visible from the Lake or any roadways within or adjacent to the Property, except as may be allowed by the ARC.

**Section 6.22 Pets and Animals.** No animals, livestock, reptiles, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or Dwelling or any other portion of the Property; provided, however, that not more than three (3) dogs or cats (or a combination of the same so long as the total is not greater than three (3)) may be kept and maintained on a Lot or Dwelling so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas and spaces) shall be located only at the rear of a Dwelling, shall not be visible from any roadways within or adjacent to the Property and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling which are screened with appropriate landscaping approved by the ARC or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street right-of-way or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any of the laws, statutes, ordinances, rules or regulations of the County with respect to any pets or other animals maintained by such Owner or Occupant on or within any Lot or Dwelling or within any portion of the Property, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the County and not the Association.

**Section 6.23 Trash, Rubbish and Nuisances.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots, Dwellings or Common Areas or any other real property in close proximity to the Property. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Dwelling or any other portion of the Property; provided, however, that the foregoing shall not apply to the use of any of the foregoing devices within or for any of the Recreational Facilities, if any. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his or her Lot or Dwelling or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from the Lake and all roadways within or adjacent to the Property and all adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers may be moved to the side or front yard of any Dwelling on trash collection days so long as such trash cans and containers are removed from the front and side yard promptly after trash has been collected.

(c) No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or Dwelling unless the same is undertaken in strict accordance with the laws, statutes, ordinances, rules and regulations of all other Governmental Authorities. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any of the laws, statutes, ordinances, rules or regulations of the County or Governmental Authorities with respect to the outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the County or Governmental Authorities and not the Association.

**Section 6.24 Recreational Vehicles and Machinery and Equipment.**

(a) Mobile homes, motor homes, trailers of any kind, tractors, construction machinery and campers shall not be permitted, stored or allowed to remain on any Lot or Dwelling. Golf carts, boats and any other type of watercraft, including boat trailers, lawnmowers, tools, and yard equipment of any type or nature, and any other similar types of machinery or equipment shall not be permitted, stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored and maintained within a wholly enclosed structure, with roofing and doors, on such Lot or

Dwelling. Neither the Common Areas nor the roadways within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, boats, machinery or equipment.

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

(c) The Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, motor homes, tractors, equipment, machinery, trailers (with or without wheels), trucks (other than pick-up trucks), vans (other than mini-vans used solely for passenger uses), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, golf carts, all-terrain vehicles, motorized go-carts and other forms of transportation. No motorcycles, motorized bicycles, all-terrain vehicles or motorized go-carts shall be allowed to be operated on any of the streets within the Property in violation of any of the laws, statutes, ordinances, rules and regulations of the County or Governmental Authorities. Enforcement of any and all laws, statutes, ordinances, rules and regulations concerning the operation of any types of vehicles (including, without limitation, all-terrain vehicles or motorized go-carts) shall be undertaken solely by the County or Governmental Authorities and not the Association.

**Section 6.25 Signage.** No signs or advertising posters of any kind (other than one (1) "for sale" sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC, in its sole and absolute discretion. Notwithstanding the foregoing, the restrictions set forth in this Section 6.25 shall not be applicable to any signs erected pursuant to Section 6.28(b) below.

**Section 6.26 Above and Below Ground Tanks and Wells; Septic Tanks.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or Dwelling or within any of the Common Areas. No private water wells may be drilled or maintained on any Lot or Dwelling without the prior written consent of the ARC. All septic tanks and accompanying facilities and the location of the same must be approved by the ARC prior to installation. The septic tanks and accompanying facilities are to be installed and maintained according to the rules and regulations of the State of Alabama Department of Public Health and the applicable county health department having jurisdiction over the Property. Once the ARC grants approval of the preliminary site development plan for an Owner's Lot, and prior to the initiation of construction of any Dwelling on such Owner's Lot, the Owner or his/her representative must obtain approval and any required permit for the location and placement of the septic tank and the waste disposal field lines from the applicable county health department having jurisdiction over the Property. All septic tanks and waste disposal field lines for a septic

system shall not encroach upon the three hundred seventeen foot (317' mean sea level) elevation contour line of the Lake and shall comply with any set back requirements of the applicable county health department having jurisdiction over the Property.

**Section 6.27 Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, storage shed, utility building, portable building, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot, Dock Facilities or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit

(a) any detached garages or other structures which are approved in writing by the ARC,

(b) to the extent approved by the ARC, dog houses for not more than three (3) dogs so long as such dog houses are visibly screened with landscaping from view from the Lake, all roadways within or adjacent to the Property and all adjacent Lots and Dwellings,

(c) to the extent approved by the ARC, temporary structures for social functions as may be permitted by the rules and regulations of the Board, and

(d) construction trailers and/or sales offices of Developer.

**Section 6.28 Construction of Improvements.**

(a) During the construction of any Improvements (including a Dwelling) on any Lot, (i) such Lot or Dwelling shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly. Used construction materials may be burned on-site only in accordance with ARC consent and the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot, Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any roadways within or adjacent to the Property.

(b) During the initial construction of any Dwelling, up to two (2) signs, in size and color to be approved by the ARC, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or containing information identifying the builder of such Dwelling. No other signage, banners, flags or advertising posters shall be allowed on any portion of the Property. No signage shall be attached, nailed or otherwise adhered to any tree or other plant life.

(c) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park

within any of the Common Areas, (ii) utilize off-street parking only, (iii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling, and (iv) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.9 above, are to be preserved. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition. All builders, contractors, subcontractors, laborers, suppliers, materialmen and other professionals involved in the construction of any Dwelling or other Improvements on a Lot shall be required to abide by and comply with all construction standards, guidelines and requirements adopted from time to time by the ARC as part of the Architectural Standards.

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

(e) All contractors must be approved by the ARC.

**Section 6.29 Subdivision and Interval Ownership.** No Lot may be further subdivided into more than one (1) Lot unless such Lot is owned by Developer. Lots may be resubdivided to combine two (2) Lots into one (1) Lot or resubdivided to reflect the same number of Lots which existed immediately prior to any such resubdivision so long as the same is approved by the ARC. Nothing contained in this Section 6.29 shall be applicable to the subdivision, resubdivision, or combination of any Lots or other real property owned by Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs. To the extent the ARC has approved the resubdivision or combination of any Lot as required by the terms and provisions of this Section 6.29, then such resubdivided or combined Lot shall continue to constitute the same number of Lots which existed immediately prior to the resubdivision or combination of such Lots and the Owner of such combined Lots shall continue to pay Assessments on the basis of the number of Lots which existed immediately prior to the resubdivision or combination of such Lots.

**Section 6.30 Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling but only to the extent that the ARC has approved the same in writing and the construction of the same satisfy all restrictions and requirements imposed by the ARC with respect thereto. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the

construction of swimming pools, other outdoor water facilities and amenities and tennis courts within the Property. Swimming pools and tennis courts shall be fenced as may be required by any of the Governmental Authorities, which fencing must also be approved by the ARC.

**Section 6.31 Waterfront Lots, Lots Adjacent to Water Features and Recreational Areas.**

(a) The Owner of each Lot or Dwelling which abuts or is contiguous to the Lake or any lakes or a Lot or Dwelling which abuts any other water features within the Property shall at all times maintain all such lakefront or waterfront areas of such Owner's Lot or Dwelling in a safe and attractive condition.

(b) Owners and Occupants of any Lot or Dwelling situated adjacent to the Lake or all waterfront areas within the Property, as well as their respective family members, guests, agents and invitees, shall refrain from any actions or activities which would interfere with the use of the Lake or such lakes, waterfront areas and water features within the Property, by other Owners and Occupants, as determined by the ARC, in its sole discretion. Such prohibited activities shall include, without limitation, burning materials where the smoke would interfere with the reasonable use and enjoyment of the Lake or any such lakes and water features, maintenance of dogs or other pets which interfere with the use of the Lake or such lakes or water features due to loud barking or odors, playing of loud radios, televisions, stereos, or musical instruments or allowing trash, rubbish, weeds or undergrowth to remain or grow on any Lot or Dwelling which is unsightly, as determined by the ARC, in its sole discretion.

(c) The Recreational Facilities, if any, provided by the Association for the use and benefit of all Owners and Occupants and the use of the Lake or any lakes or water features within the Property by any Owners or Occupants are provided without lifeguards or other supervisory personnel and neither the Association nor Developer will provide any such lifeguards or supervisory personnel in connection with the utilization of the Recreational Facilities, if any, the Lake, or such lakes or water features by any Person.

(d) The Owner of each Lot or Dwelling, for himself or herself and any Occupant of such Lot or Dwelling and their respective heirs, executors, personal representatives, administrators, successors and assigns, by acceptance of a deed to such Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot or Dwelling, for themselves and their respective successors and assigns, do hereby:

(1) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association and each Governmental Authority and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of: (i) any loss, damage or injury to person or property, including death, as a result of any entry onto the Lake or any lakes or water features within the Property, or the Recreational Facilities, if any, by any such Owner, Occupant, Mortgagee or any of their respective family members, guests, invitees, heirs, executors, personal

representatives, administrators, successors and assigns; and (ii) the rise and fall of the water level of the Lake or any lake or water feature, including, without limitation, the flow of water onto and out of the Lake or such lakes or water features which could result in or cause damage, by flooding or otherwise, to any Improvements or any other personal property situated on any portion of such Lot or Dwelling, or which would result in or cause any Improvements situated on or adjacent to the Lake or any such lakes or water features to be unusable due to low or high water levels; and

(2) Acknowledge and agree that: (i) neither Developer, the ARC, the Association, any Governmental Authority nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about the Lake or any such lakes or water features or the Recreational Facilities, if any; (ii) the use of the Lake or any such lakes or water features, and the Recreational Facilities, if any, by any such Owner or Occupant or any of their respective family members, guests, invitees or heirs, executors, personal representatives, administrators, successors and assigns, shall be at the sole risk and expense of the Person or entity using the Lake or such lakes or water features and Recreational Facilities, if any; (iii) neither Developer, the Association, the ARC, any Governmental Authority nor any of their respective agents, employees, representatives, successors or assigns, shall be obligated to take any action to maintain a specific water level for the Lake or any such lakes or water features on, within or adjacent to the Property; and (iv) the Lake or any lakes and water features on, within or adjacent to the Property and the Recreational Facilities, if any, as with any other body of water, pose a potential threat of life threatening harm and each Owner or Occupant and their respective family members, guests and invitees should exercise utmost care and safety precautions in and around any such lakes or water features, including specifically, the Recreational Facilities, if any.

**Section 6.32 Compliance With Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the County and all other Governmental Authorities.

**Section 6.33 Additional Regulations.** In addition to the restrictions set forth in this Declaration, the (a) ARC shall have the right, in its sole and absolute discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, and each Lot or Dwelling, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling, and (b) Board shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interest of all Owners, which rules and regulations shall be binding on all Owners and each Lot or Dwelling.

**Section 6.34 Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article 5 above and this Article 6. Any variance request submitted to the ARC shall be in writing and, upon approval of

the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC.

**Section 6.35 Enforcement and Remedies.** In the event any of the provisions of this Article 6 are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot, Dwelling or Dock Facilities and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article 6, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article 6, shall constitute an Individual Assessment to such Owner pursuant to Section 8.5 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.1 and Section 8.7 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 6.35 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

**Section 6.36 Dock Facilities and Piers.** Dock Facilities may be constructed on an Owner's Lot and within the Buffer Area only after the Owner: (i) submits sketch plans and specifications, including exterior appearance, design, dimensions, materials to be used and siting to the ARC; (ii) obtains the written approval of the ARC for said plans and specifications; and (iii) obtains the express written permission of Alabama Power Company pursuant to the Shoreline Rules. In addition to and without limiting the foregoing, Dock Facilities must comply with the following terms and conditions:

(a) No Dock Facilities may be erected which will interfere with the adjoining Owner's access to the Lake.

(b) No house boat or other vessel shall be utilized for overnight stays while docked at a Waterfront Lot.

## ARTICLE 7 MAINTENANCE RESPONSIBILITIES

### **Section 7.1 Responsibilities of Owners.**

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Dwellings, Dock Facilities, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be



responsible for maintaining his or her Lot, Dwelling and Dock Facilities in a neat, clean and sanitary condition, both inside and outside of any Dwelling, Dock Facilities and other Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings, Dock Facilities and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot or Dwelling shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.6 above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon (except those areas which are to be maintained as a Buffer Area as required by the terms of this Declaration) shall at all times be maintained by the Owner thereof in a fully and well-kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Subsection (b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of the roadway abutting such Lot or Dwelling and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot or Dwelling shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, trash, refuse, rubbish, debris, garbage and waste material shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Property. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot or Dwelling nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas or any other portion of the Property.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any Lot or Dwelling or the landscaping and grounds or other Improvements within a Lot or Dwelling unless such decoration, change or alteration is first approved, in writing, by the ARC.

## **Section 7.2 Responsibilities of Association.**

(a) Except as otherwise provided in this Declaration to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas. Without limiting any other limitation of liability set forth in this Declaration, the Association shall not be liable for injuries or damages to any person or property (i) caused by the elements, acts of God or any Owner or other person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Area, or (iii) resulting from theft, burglary or other illegal entry onto the Property or any Lot or Dwelling. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or

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

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by either the negligence or willful act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have seven (7) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such seven (7) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.1 and Section 8.7 below. If, and to the extent that, the Association undertakes any action pursuant to this Subsection (b) on behalf of any Owner, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

## ARTICLE 8 COMMON AREA ASSESSMENTS

**Section 8.1 Assessments and Creation of Lien.** Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.3 below, (b) Special Assessments, to be established and collected as provided in Section 8.4 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.5 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.7(a) below, and all court costs and attorneys' fees and expenses incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.7(c) below. Each Owner shall be personally liable for the payment of all Assessments

coming due while he or she is the Owner of a Lot or Dwelling and his or her grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.7(a) below, court costs and attorneys' fees and expenses incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall commence as to each Lot or Dwelling as provided in Section 8.6 below and be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area, or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Board. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

## **Section 8.2 Uniform Rate of Assessments.**

(a) Both Annual and Special Assessments, as described in Section 8.3 and Section 8.4 below, shall be assessed against each Lot or Dwelling at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as determined by a fraction, the numerator of which shall be the total number of Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings within the Property at the time such Annual Assessments or Special Assessments are levied.

(b) Notwithstanding anything provided in Subsection (a) above to the contrary, in the event any Additional Property is added to the Property, then each Lot or Dwelling within the Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Property.

(c) Each Owner of a Lot or Dwelling, by acceptance of a deed to such Lot or Dwelling, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in

the event that (i) any Additional Property is added to the Property or any Lots or Dwellings are combined, subdivided or resubdivided pursuant to Section 2.6 or Section 6.29 above or (ii) any portion of the Property becomes a Common Area.

### **Section 8.3 Computation of Annual Assessments.**

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association, and (ii) the amount of Annual Assessments which shall be payable by each Lot or Dwelling. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Property for the then applicable year and each Owner shall pay his or her prorata share of the same as provided in Section 8.2 above. As used herein, the term "Annual Assessments" with respect to each Lot or Dwelling shall mean the prorata portion of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of this Section 8.3. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.4 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

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

(2) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Association;

(3) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, street lighting, trash collection and security services;

(4) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors' and officers' liability insurance and any other liability insurance coverage for the benefit of the Association, the members of

the Board, any officers, employees, agents or representatives of the Association (including members of the ARC);

(5) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

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

(7) The expenses of the ARC which are not paid in full by plan review charges;

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

(9) Any and all costs and expenses payable by the Association to any third party (including Developer and any Affiliates of Developer) as monthly dues or service charges for the use of any Recreational Facilities not owned by the Association pursuant to any Recreational Facilities Use Agreements entered into by the Association with such third party;

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

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

**Section 8.4 Special Assessments.** In addition to the Annual Assessments authorized in Section 8.3 above and the Special Assessments authorized in Section 9.1(b) and Section 9.3(a)(1) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Section 9.1(b) and Section 9.3(a)(1) below) must be approved by a majority of the members of the Association voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 8.4 or Section 9.1(b) and Section

9.3(a)(1)below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.2 above.

**Section 8.5 Individual Assessments.** The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot or Dwelling: (a) fines against an Owner and such Owner's Lot or Dwelling in accordance with the terms and provisions of this Declaration, (b) any costs or expenses, including, without limitation, collection costs, professional engineering and architectural fees and expenses, attorneys' fees and expenses, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors, to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association pursuant to Section 5.12, Section 6.35, Section 7.2(b), Section 8.7, Section 11.1 or Section 11.2 hereof and (c) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board. The Individual Assessments provided for in this Section 8.5 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner.

**Section 8.6 Date of Commencement of Assessments.**

Assessments shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board, subject to proration for the remainder of the then calendar year in which such Lot or Dwelling was conveyed to a person other than Developer or any Affiliate thereof. Assessments for Lots and Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such Additional Property was added to the terms of this Declaration. Notwithstanding anything provided herein to the contrary, Developer shall have the option, in its sole discretion, to either pay Annual Assessments on Lots or Dwellings owned by Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual cost incurred by the Association for Common Expenses in any particular year. At such time as Developer no longer has any interest in any Lot or Dwelling, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

**Section 8.7 Effect of Non-Payment; Remedies of the Association.**

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association, all Assessments provided for herein. The Association shall provide

written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of such Lot or Dwelling shall be deemed in default hereunder and (ii) a late fee in the amount of \$100.00 (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion; provided any such late fee amount shall not exceed an amount which may be charged to said Owner by applicable law) shall automatically be levied and assessed against such Owner and such Owner's Lot or Dwelling. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late fee charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days following the due date for the payment of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

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

(2) The Association may enforce the lien created pursuant to Section 8.1 and Subsection (c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late fees or charges, interest at the Applicable Rate and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of

defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office:

- (1) The name of the delinquent Owner;
- (2) The legal description and street address, if any, of the Lot or Dwelling upon which the lien claim is made;
- (3) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees and expenses incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (4) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

(d) In addition to the other rights and remedies provided herein, in the event any Owner fails to pay any Assessments within 30 days from the statement billing date for such Assessments, then the Association shall have the right to suspend the privileges of such Owner, his or her Occupants, family members, guests and invitees from using any of the Recreational Facilities, if any.

**Section 8.8 Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.7(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser



or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.7(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by Mortgagee on such Owner's Lot or Dwelling.

**Section 8.9 Certificates.** The Association (or any officer or authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

**Section 8.10 Transfer Fees.**

(a) To the extent any Recreational Facilities Use Agreement entered into by the Association with any third party (which may include Developer or any Affiliates of Developer) for the use of any Recreational Facilities by the Owners, which Recreational Facilities are not owned by the Association, requires the payment of a membership fee (which may be in addition to monthly dues or service charges for the use of such Recreational Facilities), then at the time of the transfer of any Lot or Dwelling to any third party purchaser (other than Developer or any Affiliate of Developer), such third party purchaser shall be obligated and required to pay to the Association the then applicable amount of such membership fee which may be payable under any agreement entered into by the Association with any Person who will allow Owners to utilize the Recreational Facilities owned by such Person.

(b) Subject to the remaining terms and provisions of this Section 8.10, at the closing of each conveyance of any Lot or Dwelling to any purchaser, other than Developer or any Affiliates of Developer, each such purchaser of such Lot or Dwelling shall contribute and pay to the Association a transfer fee equal to \$1,000.00 or such other amount as may be established by the Association from time to time. Such contribution shall be paid directly to the Association and may be utilized by the Association for the payment of any costs and expenses and shall not be considered to be a prepayment of any Annual Assessments.

(c) Notwithstanding anything provided in this Declaration to the contrary, the transfer fees specified above shall not be applicable to (i) the Association, to the extent the Association purchases a Lot or Dwelling in any foreclosure proceeding pursuant to the provisions Section 8.7 above or (ii) the transfer and conveyance of any Lots or Dwellings to Developer or any Affiliates of Developer.

**ARTICLE 9  
CASUALTY, CONDEMNATION AND INSURANCE**

**Section 9.1 Damage or Destruction to Common Areas.**

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article 9, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything to the contrary provided in (a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner equally as provided in Section 8.2 above. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

**Section 9.2 Damage or Destruction to Lots or Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article 5 and Article 6 above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

**Section 9.3 Condemnation of Common Areas.**

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(1) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered,

authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (A) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (B) levied against each Owner equally as provided in Section 8.2 above; and

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

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

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

**Section 9.4 Condemnation of Lots or Dwellings.** In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article 5 and Article 6 above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

### **Section 9.5 Insurance.**

(a) The Board shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Board may from time to time deem appropriate for the benefit of the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Board in its sole and absolute discretion.

(b) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his or her Lot, Dwelling, Dock Facilities and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot or Dwelling, does hereby waive and release the Association, the ARC, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Association, the ARC, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

## **ARTICLE 10 TERM AND AMENDMENTS**

**Section 10.1 Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least seventy-five percent (75%) of all Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article 3 hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

**Section 10.2 Amendments Prior to Turnover Date.** Until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee; provided, however, that in the event any amendment proposed by Developer materially and adversely alters or changes the rights of any Owner to the use of his or her Lot or Dwelling, as determined solely by Developer, in its reasonable discretion, then such amendment shall be valid only upon the written consent or ballot vote of both (a) Developer and (b) fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights

attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Notwithstanding anything provided to the contrary in this Section 10.2, each Owner, by acceptance of a deed to any Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot or Dwelling, acknowledges and agrees that (i) any amendments to this Declaration made by Developer pursuant to Section 2.2, Section 2.3 and Section 2.7 above and (ii) any amendments to this Declaration to reflect the resubdivision of any Lots or Dwellings pursuant to Section 2.6 and Section 6.29 above, shall not and do not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of his or her Lot or Dwelling and shall not require the consent or approval of any Owner or Mortgagee. Any amendments to this Declaration made pursuant to this Section 10.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.2. Except as specifically provided in this Section 10.2 (with respect to any amendments proposed by Developer which materially and adversely alter or change the rights of an Owner to the use of his or her Lot or Dwelling), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

**Section 10.3 Amendments After Turnover Date.** Subject to Section 10.4, after the occurrence of the Turnover Date, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of seventy-five percent (75%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.3 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

**Section 10.4 Restrictions on Amendment.** Notwithstanding anything provided herein to the contrary, none of the terms and provisions of Article 2, Article 3, Article 4, Article 5 and this Section 10.4 hereof may be amended or modified after the occurrence of the Turnover Date in any respect without the prior written consent and approval of Developer, which such consent and approval may be withheld in Developer's sole discretion.

## ARTICLE 11 DENIAL OF USE PRIVILEGES

**Section 11.1 Authority and Enforcement.** In addition to the other rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective

agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any other rules and regulations adopted by the Board from time to time, then the Board shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment, (b) suspend an Owner's right, if any, to vote in the Association and (c) suspend or terminate an Owner's or Occupant's privilege (and the privilege of such Owner's or Occupant's family members, guests and tenants) to use all or any of the Recreational Facilities, if any. Any action to be taken by the Board pursuant to this Section 11.1 shall be subject to the satisfaction of the terms and provisions of Section 11.2 below.

**Section 11.2 Procedure.**

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend or terminate any other rights pursuant to Section 11.1 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Subsection (b) below and providing such Owner the opportunity to appear before and be heard by the Board.

(b) Any notices required by (a) above shall specify:

(1) The alleged violation;

(2) The action required to abate such violation;

(3) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions; and

(4) The date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear before the Board and be heard.

(c) The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.1 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

**Section 11.3 Non-Exclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article 11 are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

**ARTICLE 12  
MISCELLANEOUS PROVISIONS**

**Section 12.1 Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (A) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (B) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN SECTION 10.2 ABOVE). FOLLOWING THE TURNOVER DATE, DEVELOPER'S CONSENT IS STILL REQUIRED BEFORE CERTAIN AMENDMENTS TO THIS DECLARATION MAY BE SOUGHT.

**Section 12.2 Legal Expenses.** In addition to all of the other rights and remedies set forth in this Declaration, in the event either Developer, the Board, the Association, the ARC or any of their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The Association and its agents and representatives, including the ARC, and the Board are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure any such violation or breach by any Owner.

**Section 12.3 Severability.** If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

**Section 12.4 Captions and Headings.** The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

**Section 12.5 Pronouns and Plurals.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

**Section 12.6 Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns and shall inure to the benefit of Developer, the Association, the ARC, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**Section 12.7 Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, any laws, regulations or ordinances of County or Governmental Authorities, this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, any laws, regulations or ordinances of the County or Governmental Authorities, this Declaration, the Certificate of Formation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency.

**Section 12.8 No Reverter.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

**Section 12.9 Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

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

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



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

**Section 12.13 Standards for Review.** Whenever in this Declaration the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of the ARC or the Association, as the case may be.

**Section 12.14 Oral Statements.** Oral statements or representations by Developer, the Association, the ARC, or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the Association or the ARC.

**Section 12.15 Notices.** Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot or Dwelling of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot or Dwelling shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Lot or Dwelling of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Association that all notices be submitted to such Owner's electronic mail address. All notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Association (or if no address has been furnished, then to the Lot or Dwelling of such Owner), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the Dwelling, if any, situated on an Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of such Lot or Dwelling, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such facsimile notice or (d) sent by electronic mail to an electronic mail address provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Association. All notices to the Association (or to the ARC) shall be delivered or sent to the following address:

Coosa Run Owners' Association, Inc.  
 c/o LakeTown, LLC  
 600 North 18<sup>th</sup> Street  
 Birmingham, Alabama 35291  
 Attn: William A. Edge  
 12N-0976

or to such other address as the Association (or the ARC) may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other address as Developer may notify the Association.

**Section 12.16 Assignment.** Developer shall have the right, in its sole and absolute discretion, to assign, by way of a recorded instrument, any and all of the rights, powers,

reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the rights created in this Declaration which Developer has transferred to any such third party.

**Section 12.17 Further Assurances.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

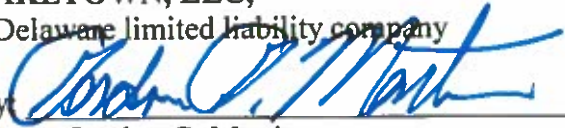
**Section 12.18 No Waiver.** All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure by Developer, the ARC or the Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

**Section 12.19 Perpetuities.** 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 George Herbert Walker Bush, former President of the United States.

**[Remainder of Page Intentionally Blank]**

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

LAKETOWN, LLC,  
a Delaware limited liability company

By   
Name: Gordon G. Martin  
Title: President

STATE OF ALABAMA            )  
JEFFERSON COUNTY         )

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Gordon G. Martin whose name as President of LakeTown, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 19<sup>th</sup> day of February, 2021.



  
Notary Public  
My Commission Expires: 9/30/2023

This instrument was prepared by:

Lee L. Sheppard  
Maynard, Cooper & Gale  
1901 Sixth Avenue North  
2400 Regions Harbert Plaza  
Birmingham, Alabama 35203  
205.254.1000

## Exhibit A

### Legal Description of Property

A parcel of land located in the West one half of Section 2 and the East one half of Section 3, Township 21 North, Range 16 East Coosa County, Alabama. Said parcel being more particularly described as follows:

Begin at a set 5/8 inch capped rebar stamped CA-560-LS marking the intersection of the Northwest right of way of Lakeview Road as shown on Airplane Slough Plat No. 2 as recorded in Map Book 3 Pages 37 and 37A in the Office of Judge of Probate Coosa County, Alabama and the West right of way of Poinciana Road as shown on Airplane Slough Plat No. 1 as recorded in Map Book 3 Pages 36 and 36A in the Office of Judge of Probate Coosa County, Alabama; thence run South 51 Degrees 16 Minutes 25 Seconds West along said Lakeview Road for a distance of 206.72 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the left having radius of 407.88 feet, a central angle of 32 Degrees 33 Minutes 15 Seconds, a chord bearing of South 34 Degrees 56 Minutes 47 Seconds West, a chord length of 228.64 feet, thence run along the arc of said curve and along said right of way for a distance of 231.75 feet to a found 5/8 inch rebar, said point marking the intersection of the Northwest right of way Lakeview Road and the North right of way of Daybreak Curve as shown on the above mentioned Airplane Slough Plat No. 2; thence leaving said Lakeview Road right of way run South 85 Degrees 38 Minutes 02 Seconds West along said Daybreak Curve right of way for a distance of 396.94 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the right having radius of 773.72 feet, a central angle of 14 Degrees 01 Minutes 04 Seconds, a chord bearing of North 87 Degrees 21 Minutes 16 Seconds West, a chord length of 188.82 feet, thence run along the arc of said curve and along said right of way for a distance of 189.30 feet to a found 5/8 inch rebar; thence run North 80 Degrees 21 Minutes 04 Seconds West along said right of way for a distance of 365.53 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the right having radius of 72.10 feet, a central angle of 71 Degrees 10 Minutes 52 Seconds, a chord bearing of North 44 Degrees 54 Minutes 05 Seconds West, a chord length of 83.92 feet, thence run along the arc of said curve and along said right of way for a distance of 89.57 feet to a found 5/8 inch rebar; thence run North 09 Degrees 18 Minutes 49 Seconds West along said right of way for a distance of 931.37 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the left having radius of 60.00 feet, a central angle of 111 Degrees 32 Minutes 06 Seconds, a chord bearing of North 64 Degrees 59 Minutes 35 Seconds West, a chord length of 99.21 feet, thence run along the arc of said curve and along said right of way for a distance of 116.80 feet to a found capped rebar stamped HMM; thence leaving said right of way run North 22 Degrees 32 Minutes 38 Seconds West for a distance of 36.62 feet to a found capped rebar stamped HMM; thence run North 05 Degrees 21 Minutes 50 Seconds East for a distance of 150.58 feet to a found 1/2 rebar; thence run South 80 Degrees 15 Minutes 58 Seconds West for a distance of 179.83 feet to a found capped rebar stamped 16456 lying on the 317.00 contour; thence meander in a northerly, easterly, and southerly direction along said 317.00 contour for a distance of 6968 feet more or less to a found capped rebar stamped 16456, said course having the following calls for a reference line; thence run North 01 Degrees 49 Minutes 50 Seconds West for a distance of 514.04 feet to a point; thence run South 33 Degrees 39 Minutes 55 Seconds West for a distance of 425.76 feet to a

point; thence run North 05 Degrees 34 Minutes 18 Seconds East for a distance of 225.42 feet to a point; thence run North 05 Degrees 09 Minutes 25 Seconds East for a distance of 622.65 feet to a point; thence run North 26 Degrees 38 Minutes 59 Seconds East for a distance of 588.01 feet to a point; thence run North 40 Degrees 34 Minutes 01 Seconds East for a distance of 339.37 feet to a point; thence run North 34 Degrees 57 Minutes 19 Seconds East for a distance of 437.21 feet to a point; thence run South 12 Degrees 31 Minutes 10 Seconds East for a distance of 237.95 feet to a point; thence run South 26 Degrees 59 Minutes 19 Seconds West for a distance of 234.74 feet to a point; thence run South 09 Degrees 35 Minutes 46 Seconds West for a distance of 223.00 feet to a point; thence run North 57 Degrees 06 Minutes 54 Seconds East for a distance of 420.93 feet to a point; thence run North 69 Degrees 19 Minutes 40 Seconds East for a distance of 459.66 feet to a point; thence run South 59 Degrees 52 Minutes 15 Seconds East for a distance of 488.83 feet to a point; thence run South 01 Degrees 02 Minutes 35 Seconds East for a distance of 323.95 feet to a found capped rebar stamped 16456; thence leaving said 317.00 contour run South 61 Degrees 45 Minutes 15 Seconds West for a distance of 194.08 feet to a found 1 1/2 inch capped pipe; thence run South 41 Degrees 16 Minutes 01 Seconds East for a distance of 167.69 feet to a found capped rebar stamped Brad Lucas, said point lying on the right of way of the aforementioned Poinciana Road; thence run South 63 Degrees 46 Minutes 58 Seconds West along said right of way for a distance of 51.16 feet to a found 5/8 inch rebar; thence run South 25 Degrees 59 Minutes 49 Seconds East along said right of way for a distance of 283.64 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the right having radius of 22.23 feet, a central angle of 48 Degrees 30 Minutes 37 Seconds, a chord bearing of South 01 Degrees 23 Minutes 38 Seconds East, a chord length of 18.26 feet, thence run along the arc of said curve and along said right of way for a distance of 18.82 feet to a found 5/8 inch rebar thence run South 22 Degrees 25 Minutes 05 Seconds West along said right of way for a distance of 38.15 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the left having radius of 619.66 feet, a central angle of 38 Degrees 03 Minutes 57 Seconds, a chord bearing of South 03 Degrees 26 Minutes 15 Seconds West, a chord length of 404.16 feet, thence run along the arc of said curve and along said right of way for a distance of 411.68 feet to a found 5/8 inch rebar; thence run South 15 Degrees 33 Minutes 12 Seconds East along said right of way for a distance of 204.42 feet to a found 5/8 inch rebar, said point marking the beginning of a curve turning to the right having radius of 312.75 feet, a central angle of 70 Degrees 37 Minutes 54 Seconds, a chord bearing of South 19 Degrees 43 Minutes 02 Seconds West, a chord length of 361.59 feet, thence run along the arc of said curve and along said right of way for a distance of 385.54 feet to a found 5/8 inch rebar; thence run South 55 Degrees 05 Minutes 29 Seconds West along said right of way for a distance of 377.09 feet to a set 5/8 inch capped rebar stamped CA-560-LS, said point marking the beginning of a curve turning to the left having radius of 189.56 feet, a central angle of 122 Degrees 13 Minutes 19 Seconds, a chord bearing of South 06 Degrees 00 Minutes 35 Seconds East, a chord length of 331.94 feet, thence run along the arc of said curve and along said right of way for a distance of 404.36 feet to a found 5/8 inch rebar; thence run South 67 Degrees 06 Minutes 47 Seconds East along said right of way for a distance of 429.36 feet to the POINT OF BEGINNING. Said parcel contains 4,631,431 square feet or 106.32 acres more or less.