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**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR  
BURWELL GARDENS SUBDIVISION**

**Prepared by:**

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RLAN JUDGE  
PICK UP

**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR**

**BURWELL GARDENS SUBDIVISION**

**THIS DECLARATION** is made on the date hereinafter set forth by Concord Development Company, Inc., an Alabama corporation (hereinafter sometimes called "Declarant").

**BACKGROUND  
STATEMENT**

Declarant is the owner of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1, hercof to the provisions of this Declaration to create a residential community.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

**ARTICLE I  
Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall have the definition meaning set forth in Exhibit "A", attached hereto and by reference made a part hereof.

**ARTICLE II**  
**Property Subject to This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

**Section 2. Other Property.** Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article IX.

**ARTICLE III**  
**Association Membership and Voting Rights**

**Section 1. Membership.** Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership.

**Section 2. Voting.** Owners shall be entitled to one (1) vote for each Residence owned. When more than one (1) Person holds an ownership interest in any Residence, the vote for such Residence shall be exercised as those Owners themselves determine. In the event of a dispute, the vote shall be suspended if more than one (1) Person seeks to exercise it. Those Owners of property, if any, which is exempt from assessments as provided in Article IV, Section 11, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

Any Owner of a Residence not occupied by the Owner may, in the lease or other written instrument, assign the Owner's voting right appurtenant to that Residence to the Occupant, provided that a copy of such instrument is furnished to the Secretary within the time period prescribed by the Secretary. In the event of such assignment, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote.

**ARTICLE IV**  
**Assessments**

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Type of Assessments.** Each Owner of any Residence, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments, such assessments to be

established and collected as hereinafter provided in Article IV, Section 10; and (c) Specific assessments against any particular Residence which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Residences in the Community.

**Section 3. Creation of Lien and Personal Obligation for Assessments.** All assessments, together with late charges, interest at a rate equal to the lesser of fifteen percent (15%) or the maximum lawful rate, costs, and reasonable attorney's fees actually incurred shall be a charge on the land and shall be a continuing lien upon the Residence against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Residence at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Residence, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

**Section 4. Budget.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve.

The Board Shall cause the assessments, based upon the Budget, to be levied against each lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of Declarant and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Residence which is more than one hundred twenty percent (120%) of the General Assessment for the immediately preceding fiscal year. In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year. The initial general assessment shall be no more than One Hundred Fifty and no/100 dollars (\$150.00) per year. General Assessments shall be due on or before February 1, of each year. The timing in which Assessments shall be due and payable may be modified in such manner and on such schedule as the Board of Directors may provide. Any assessments collected at closing shall be pro-rated.

**Section 5. Special Assessments.** In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special assessments allocable to each Residence does not exceed the amount of the current General Assessment in any one (1) fiscal year, the Board may impose the special assessment. Any

special assessment which would cause the amount of special assessments allocable to any Residence to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 6. Lien for Assessments.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be delinquent. Any assessment delinquent shall incur a late charge of five and no/100 dollars (\$5.00), per day, or in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Residence. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

**Section 8. Declarant Exempt.** The Declarant and any lots owned by Declarant shall be exempt from the payment of any assessments due under this Article.

**Section 9. Loans from Declarant.** The Declarant may, but shall in no way be required, loan money to the Association and/or advance funds to pay for insurance premiums, taxes, maintenance, and other expenses of the Association. The Association shall account for such loans/advances on an annual basis. At that time, the Association's officers shall execute a note in favor of Declarant with interest to accrue at Regions Bank's Prime Rate. The principal and interest shall be payable over a five year period commencing once one hundred (100) Lots have been conveyed by the Declarant.

**Section 10. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Residences for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Residences may be specifically assessed equitably among all of the Residences which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Residences, but which do not provide an equal benefit to all Residences, may be specifically assessed equitably among all Residences according to the benefit received.

**Section 11. Exempt Property.** The following property shall be exempt from General Assessments and special and specific assessments:

(a) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, public parks, roads, rights-of-way, streets and easements; and

(b) all property owned by non-profit organizations dedicated to land preservation, or conservation, including, but not limited to, organizations such as the Huntsville Land Trust or the Alabama Conservancy, provided, however, the availability of the exemption for such non-profit organizations is contingent upon prior approval by the Board.

**ARTICLE V**  
**Maintenance: Conveyance of Common Property**  
**by Declarant to Association**

**Section 1. Association's Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into leases, easements and covenants and to share costs agreements regarding such property (and any other property) where the Board has determined that this would benefit Owners.

The foregoing maintenance costs shall be assessed as a part of the General Assessment or specific assessments, as determined by the Board in accordance with this Declaration.

**Section 2. Owner's Maintenance Responsibility.** Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements.

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have five (5) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a five (5) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner.

**Section 3. Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. The Declarant may place conservation restrictions or easements on Common Property prior to conveying it to the Association, regardless of whether or not the restriction is in place before the recording of a plat referencing "Common Area".

**Section 4. Additional Improvements.** Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

#### **ARTICLE VI Use Restrictions and Rules**

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XI, Section 4, hereof regarding amendment of this Declaration. In addition, the Board, by a three-fifths (3/5) vote, may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community and to set the maximum and minimum speeds of vehicles on private streets within the Community and to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. The Board may also restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon.

**Section 2. Residential Use.** All Residences shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. However, the Board may permit Residence to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance. The Board may issue rules regarding permitted business activities. Residences of more than two and one half stories, excluding basements, are prohibited. Split level homes will be allowed only with the permission of the Architectural Review Committee and such permission shall be in the sole discretion of said committee.

**Section 3. Signs.** The Owner of a lot shall be entitled to display one sign thereon from time to time for purposes of selling or renting the property; provided, that each face of such



sign shall be rectangular in shape and shall not exceed five (5) square feet in surface area, and that the content of such sign be limited to the words "Sold", "For Sale", or "For Rent", the name and telephone number of the seller or real estate agent, and the words "Shown by Appointment Only". No "For Sale" or "For Rent" sign shall be displayed unless a telephone number, where daytime inquires can be answered, is listed in numbers readable from the curbside. No "For Sale" or "For Rent" sign shall be displayed for any purpose other than a bona fide offer to sell or to rent the property upon which the sign is located. No "Sold" signs shall remain on a lot more than two (2) weeks after completion of the sale. In addition, during the period of lot sales and construction of new residences, Builders maintaining a sales or construction office within the subdivision, or areas duly annexed, Declarant and Builders with consent of Declarant shall have the right to place directional signs and other "Sold" and "For Sale" signs (not exceeding eight square feet in size) that do not contain the telephone number of the builder and other marketing signs, provided such signs are approved in writing by the Architectural Control Committee.

For purposes of security and safety, the Board of Directors shall have the authority to approve the installation of one sign on each lot noting the existence of a residential security system; no such sign shall be placed greater than two (2) feet from the residence, and no sign or sticker shall be installed without the size, shape, color, and material being first approved by the ACC.

The Association may place signs on lots noting special accomplishments, such as awards for "Yard of the Month".

No other sign, advertisement, billboard or advertising structure of any kind may be erected or maintained within subdivision boundaries without first having obtained the consent in writing of the Board of Directors of the hereinafter named Association, which consent may be withheld without cause and which consent may not be given unless the Board finds that the sign will create a benefit for the general membership of the Association. Said Board of Directors of the Association shall have the right to remove any unpermitted sign, advertisement, billboard or structure which is erected or placed on any lot or adjacent easement or right-a-way without such consent, and in so doing, shall not be subject to any liability for trespass or other tort in connection therewith.

No sign shall be displayed on any motor vehicle, trailer, bus, boat, camper or related means of transportation, except for commercial vehicles upon which the following may appear: (1) the name of the business owning or leasing the vehicle, (2) the street address of the business owning or leasing the vehicle, (3) the telephone number of the business owning or leasing the vehicle, (4) any license number of the business owning or leasing the vehicle required by a regulatory authority, and (5) any logo of the business owning or leasing the vehicle. As used herein the term "commercial vehicle" shall mean a motor vehicle that (1) is owned or leased by a business, (2) is utilized solely in the furtherance of the business purpose, (3) is utilized solely for transporting equipment, parts and tools used for the business purpose, (4) is covered by a policy of insurance as a commercial vehicle, and (5) is not used for general transportation of the primary driver. No sign of a temporary nature, i.e. magnetic or easily removed and replaced, shall be allowed.

No sign of any kind shall be placed or allowed to remain on any private street, public street, or right-of-way.

The provisions of this Section 3 may be enforced at anytime by any person or entity named, referenced or identified on any sign.

**Section 4. Vehicles, Parking, and Garages.** The term "vehicles" as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, recreational vehicles, and automobiles.

All motorcycles, trucks, vans, and automobiles shall be parked within garages, driveways, or other Board approved paved parking areas on a Lot. Parking in yards is prohibited. No vehicle, machinery or equipment of any kind shall ever be parked on any lot or on any street right-of-way, easement or common area adjacent to any lot, except for temporary parking (not to exceed twenty four (24) hours) incident to the contemporaneous use of such object or as otherwise approved by the Board of Directors of the hereinafter named Association, nor shall any such object be left parked or stored on any lot or on any adjacent street right-of-way, easement or common area.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Community.

Notwithstanding the foregoing, no camper, motor home, mobile home, boat, trailer, bus, recreational vehicle or the like, shall be placed, kept, parked or stored upon any portion of any residential lot, whether paved or unpaved, unless same is placed, kept, parked or stored out of general view from the fronting street of such lot and all common areas. No motor home, camper, boat, trailer, or other vehicle of height greater than nine (9) feet shall be kept or stored on any lot or on the street adjoining any lot or common area.

Any boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Without limiting the foregoing, it shall be presumed that any vehicle that does not have attached a current license plate or has one or more flat tires, or is otherwise disabled or partially disassembled, is a vehicle stored in violation of this Section 4.

Detached garages or carports shall be permitted only in the sole discretion of the Architectural Review Committee. Garage doors shall be kept closed at all times, except when garage is in use.

**Section 5. Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

**Section 6. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residence, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Pets shall be registered, licensed and inoculated as required by law.

**Section 7. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Residence to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

**Section 8. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**Section 9. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by Architectural Review Committee(s) established by the Declarant. The following items, without limitation, will be submitted to the Architectural Review Committee: house

plans, site plans, landscaping plans, and exterior color and material schedule. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to pay any fees charged by such architects or other qualified persons. The Declarant/Architectural Review Committee may also delegate certain responsibilities to one or more Owners or other individuals.

In the event that the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within forty-five (45) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**Section 10. Antennas.** Except where preempted by federal or state law or regulation, no exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Residence without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Residence. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. No "satellite receiving dish" larger than twenty-four (24) inches in diameter shall be allowed in the Community.

**Section 11. Tree Removal.** No trees shall be removed without the express consent of the Declarant or Board or their respective designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons; or (d) trees in the immediate location of building approved by the Architectural Review Committee.

**Section 12. Site Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**Section 13. Clotheslines, Garbage Cans, Woodpiles, Etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except when done during the normal construction of a residence or by Declarant.

**Section 14. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant or its designee. Declarant, however, hereby expressly reserves the right to replat and/or subdivide any property, Lot, Residence or Residences owned by Declarant during the time in which Declarant may annex property. After the expiration of the Declarant's right to annex, the Board must approve all resubdivisions. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 15. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.

**Section 16. Fencing.** No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Architectural Review Committee or its designee. Fences must be approved following the same standards and application process as outlined in Section 9. herein. Fences shall be constructed of wood, shall be six feet (6') tall, and shall be compatible

with the home, and have architectural interest. No chain link fence or vinyl fence will be allowed within the subdivision. Fences, regardless of construction, will not be permitted any nearer to front lot line than the mid line of the dwelling except in special circumstances.

**Section 17. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

**Section 18. Air-Conditioning Units.** Except as may be permitted by the Architectural Review Committee or its designee, no window air conditioning units may be installed.

**Section 19. Above-Ground Swimming Pools.** Except as may be permitted by the Architectural Review Committee or its designee, above ground swimming pools shall not be erected.

**Section 20. Driveways.** All driveways and other parking areas must be approved following the same standards and application process as outlined in Section 9. herein. Except as may be permitted by the Architectural Review Committee or its designee, driveways shall be constructed with concrete.

**Section 21. Exteriors.** Except as may be permitted by the Architectural Review Committee or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. No Residence exterior shall be constructed of untreated wood. All wood exteriors must be painted or specifically approved by the Architectural Review Committee.

**Section 22. Window Coverings.** Except as may be permitted by the Architectural Review Committee or its designee, window coverings shall consist of material designed for such purpose and shall be white, cream, off-white, or of similar color, or be backed with such color so as to appear the same from the exterior of the home. Temporary paper, sheets, bed linens, plastic or any other unsightly material is expressly prohibited as used as window coverings. The covering of window panes with aluminum foil, mirrored or reflective glass is also expressly prohibited.

**Section 23. Mailboxes.** Only approved mailboxes can be installed in the community. Each mailbox must be the designated model of the Architectural Review Committee, or its designee. Each mailbox shall be of wrought iron construction and have a black finish. Mailboxes may not be moved to another location on the lot without the consent of the Architectural Review Committee, or its designee

**Section 24. Storage Tanks.** Any storage tank must be approved by the architectural Review committee and, if approved, must be buried, or, if they are less than fifty-gallon capacity, may, with the architectural Review committee's approval, be installed above ground, if properly screened.

**Section 25. Basketball Goals.** No basketball goals may be erected or constructed on any lot or any Residence in the subdivision. All portable basketball goals are also expressly prohibited.

**Section 26. Storage Sheds.** Storage sheds must be approved following the same standards and application process as outlined in Section 9. herein. Storage sheds shall be placed out of general view from the fronting street of such lot and the style, materials, and color of the shed shall match the home. Metal sheds are expressly prohibited.

**Section 27. Drainage.** The owner of each lot shall maintain the original drainage design and construction of drainage on the residential lot. The original drainage design and construction shall not be altered without prior approval by the Architectural Review Committee; also during the first ten (10) years of the existence of each lot, no approval for alteration of the drainage design or construction of any lot shall be effective unless Declarant has given its written approval of such change. Declarant shall have no liability of any kind for its approval or rejection of any request for alteration of drainage. The owner of the lot upon which drainage is altered shall have the sole responsibility for any damages arising therefrom. No landscape plan or design, which would have the effect of altering the drainage of any individual lot to hold water or would increase the flow of water to another lot, may be approved. Each property owner is solely responsible for changes to the drainage upon each owner's property, including but not limited to damages to such owner's property and surrounding properties.

**Section 28. Utility and Drainage Easements.** All easements for utilities and drainage shall be kept clear of improvements or structures of any kind and no trees, shrubs, berms or other obstructions may be placed upon such easements in such a manner as would in any way limit the intended use of the easements. In this regard, neither the Declarant, nor the Association, nor any utility company or drainage authority using said easements shall be liable for any damage done to shrubbery, trees, flowers, or other property which is located within the area covered by said easements. Fencing placed in any such easement is done so with the expressed known risk that the homeowner may have to pay for the removal and rebuilding of said fencing should it interfere with the intended use of the easements.

**Section 29. Maintenance of Residential Lot.** The owners and occupants of each lot shall at all times keep all weeds or grass thereon cut or trimmed in a reasonable neat manner, and shall keep and maintain adequate ground cover to protect against soil erosion. The owner and occupants of each lot shall at all times keep the curb lines and gutter lines, along the streets adjoining their property lines, free of grass, weeds and overgrowth. No lot shall be used for storage of material or equipment except for normal residential requirements or incidental to construction of improvements thereon as herein permitted. All dwellings, fences, walls and other approved structures must be kept in a reasonable good state of painting and repair, and must be maintained at the cost of the homeowner so as not to become unsightly.

**Section 30. Dwelling Restrictions.**

(i) All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall be constructed with such materials and in such design as approved by the Architectural Review Committee.

(ii) All dwellings shall have at least one thousand two hundred (1200) square feet of heated living area.

**Section 31. Prohibition of Occupancy by Registered Sex Offenders.** Except where prohibited by the laws, rules, regulations and ordinances of the United States, the State of Alabama and/or Madison County, no home may be occupied, at any time, by a person registered as a sex offender in the State of Alabama or any other state. This prohibition applies to all persons whether or not such person is an owner, a tenant, a non-owner family member or guest. Without limiting other enforcement rights that may be available under this Declaration or Alabama law, the owner of any lot upon which a registered sex offender may occupy and the registered sex offender occupying such lot shall be responsible for all costs incurred in the enforcement of this provision and all damages that arise therefrom.

**Section 32. Authority to Enter and Remedy Default.** In addition to rights, powers and remedies granted by law, in the event of default on the part of the owner or occupant of any lot in observing the requirements set out in Article VI, Sections 1 through 30, as set out herein above, or any of them, and the continuation of such default after five (5) days written notice from the hereinafter named Association of the existence of such default, said Association, upon approval by the Board of Directors, may enter upon said lot through its agents, without liability to the owner or occupant in trespass or otherwise, and cause to be done any work or other thing necessary to secure compliance with these Restrictions, and may charge the owner or occupant of such lot for the cost of any such work or thing. The owner or occupant of each lot agrees, by the purchase or occupation of the lot, to reimburse the Association immediately upon receipt of a statement covering the cost of any such work or thing. In the event of failure to pay such statement, the amount thereof and any attorney fees and court costs added to the annual maintenance charge assessed by the Association against such lot and become a charge thereon and be collected in the same manner as the regular annual maintenance charge provided for in these Restrictions. As a means of clarification, the Association, through its agents, is given explicit permission to enter upon a lot to remedy any default that violates any of Article VI, Sections 1 through 30 above, including, but not limited to, cut grass, tow vehicles, and remove signs.

**ARTICLE VII  
Insurance and Casualty Losses**

**Section 1. Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and the entry features, if any, which the Association is obligated to maintain.



The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00).

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

#### **ARTICLE VIII Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners.

#### **ARTICLE IX Annexation of Additional Property**

**Section 1. Unilateral Annexation by Declarant.** As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof, and as it may be amended from time to time, to the provisions of this Declaration and the jurisdiction of the Association by filing for record a Supplementary Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land or nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 2. Exhibit "C": Real Property Amendment.** Subject to the consent of the owner or owners thereof and, so long as the Declarant has the right to subject additional real property as described in Exhibit "C" (as it may be amended from time to time as herein provided) to this Declaration as provided above, with the consent of the Declarant, upon the affirmative vote of at least a majority of the Board of the Association, in person or by proxy, at a meeting duly called for such purpose, the Board may amend Exhibit "C" real property to include such

additional real property as may meet the above described requirements by filing for record a Supplementary Declaration with respect to the property being annexed included by amendment to Exhibit "C" Real Property. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation amendment shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein. The Declarant may unilaterally amend Exhibit "C," to provide for the inclusion of any property later acquired by the Declarant within a one-half (½) mile radius of the property described in said Exhibit.

## **ARTICLE X**

### **Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Residences in the Community. The provisions of this Article apply to both this Declaration and the By-Laws notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Residence on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

**Section 2. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Residence in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residence.

**Section 4. Amendment by Board.** Should the Veterans Administration or the Federal National Mortgage Association subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendments to this Article to be recorded to reflect such changes.

**Section 5. Applicability of Article IX.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

**Section 6. Failure of Mortgagee to Respond.** Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **ARTICLE XI**

### **Easements**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Residence and such portion or portions of the Common Property adjacent thereto or as between adjacent Residences due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Residence and the adjacent portion of the Common Property or as between adjacent Residences, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

**Section 2. Reserved Easements for the Provision of Services to the Community.** There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights-of-way, drainage facilities, flood way easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall full rights of ingress and egress at all times over all portions of the

Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

## **ARTICLE XII**

### **General Provisions**

**Section 1. Enforcement.** Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions and with the design guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to his or her property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules and regulations, use restrictions, or design guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Failure by the Board, Declarant, or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Residence or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner five (5) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Durations.** The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter in effect limit the period during which covenants restricting land to certain uses may run, any provisions of this Declaration

affected thereby shall run with and bind the land so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten (10) years or such shorter period as may be allowed by law, unless such extension is disapproved at a meeting duly called for such purpose by at least a Majority of the total Association vote (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the Association votes as recorded by a referendum on the issue). Such meeting or referendum must be held and a written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a renewal period. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

**Section 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Residences subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Residences subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Residences subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a two-thirds (2/3) vote of the total Association vote entitled to vote thereon or three-fifths (3/5) of the Board. In the event of a conflict between the Board and the Association, the Board's decision controls. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or By-Laws.

**Section 5. Partition.** The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within the Community.

**Section 6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 7. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 8. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 9. 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 Elizabeth II, Queen of England.

**Section 10. Indemnification.** The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 11. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "B", as it may be amended from time to time, to this Declaration, including,

but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parades of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 12. Books and Records.** This Declaration, the By-Laws, the Articles of Incorporation, copies of rules and regulations, use restrictions, design guidelines, membership register, and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents.

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 13. Audit.** An audit of the accounts of the Association may be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

**Section 14. Notice of Sale.** If an Owner sells his or her Residence, the Owner shall give to the Board, in writing, the name of the purchaser of the Residence and such other information as the Board may reasonably require. If an Owner fails to notify the Board of such a sale, then

the Owner will be personally responsible for any uncollected dues (for the subsequent year) and the Board reserves the right to obtain a judgment against the Owner for any such uncollected dues.

**Section 15. Estoppel Certificate.** Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five and no/100 dollars (\$25.00) for the issuance of each such certificate.

**Section 16. Agreements.** All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and other having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 17. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 18. Deviations.** The Board or its designee may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the rules and regulations, the use restrictions, and the design guidelines.

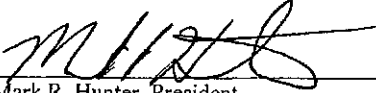
**Section 19. Architectural Review Committees.** Unless relinquished earlier, the Declarant shall have complete control of the Architectural Review Committees for so long as it shall own property in the Community, as expanded, plus an additional six (6) month period. Declarant shall have veto power over the Board as set forth in the Bylaws.

**SIGNATURES ON FOLLOWING PAGE**

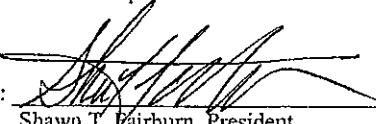


IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized Member on this the 7<sup>th</sup> day of September, 2010.

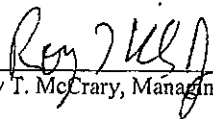
**CONCORD DEVELOPMENT COMPANY, INC.**  
An Alabama corporation

By:   
Mark R. Hunter, President

**HUNTER COMMUNITIES, INC.**  
An Alabama corporation

By:   
Shawn T. Fairburn, President


**HAWKEYE PROPERTIES, LLC**  
An Alabama limited liability company

By:   
Roy T. McCrary, Managing Member

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Mark R. Hunter, President of CONCORD DEVELOPMENT COMPANY, INC., an Alabama corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

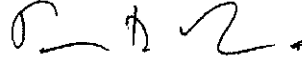
Given under my hand and official seal this the 7<sup>th</sup> day of September, 2010.

  
Notary Public  
My Commission Expires: 3/5/2011

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Shawn T. Fairburn, President of HUNTER COMMUNITIES, INC., an Alabama corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 7<sup>th</sup> day of September, 2010.

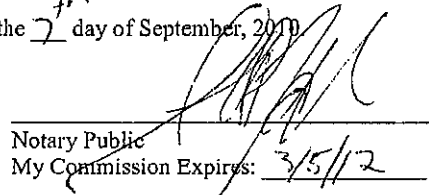


Notary Public  
My Commission Expires: 3/5/2011

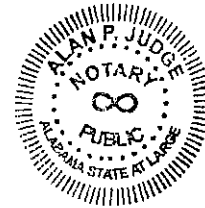
STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Roy T. McCrary, Member of HAWKEYE PROPERTIES, LLC, an Alabama limited liability company, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 7<sup>th</sup> day of September, 2010.



Notary Public  
My Commission Expires: 3/5/12



## EXHIBIT "A"

### Definitions

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) **"Articles of Incorporation"** shall mean the Articles of Incorporation of Burwell Gardens Homeowners Association, Inc., as such document may be amended.

(b) **"Association"** shall mean and refer to Burwell Gardens Homeowners Association, Inc., a nonprofit, nonstock, membership corporation incorporated under the laws of the State of Alabama, its successors and assigns.

(c) **"Association Expenses"** shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the By-Laws, and the Articles of Incorporation.

(d) **"Board of Directors"** or **"Board"** shall mean the governing body of the Association, and the Board shall have such duties as are provided in the Declaration, the By-Laws, the Articles of Incorporation, and the Alabama Nonprofit Corporation Act.

(e) **"Builder"** shall mean any person holding a license with the Alabama Home Builders Licensure Board to build residential dwellings.

(f) **"By-Laws"** shall refer to the By-Laws of Burwell Gardens Homeowners Association, Inc., as such document may be amended from time to time.

(g) **"Certificate of Occupancy"** shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Residence.

(h) **"Common Expense"** shall mean and include (i) expense of administration, maintenance, repair or replacement of the Common Properties; (ii) expenses agreed upon as Common Expenses by the Association; (iii) expenses declared Common Expenses by the provisions of this Declaration; and (iv) all other sums assessed by the Board pursuant to the provisions of this Declaration.

(i) **"Common Properties"** shall mean those easements and common and mutual appurtenances which are shown on the recorded plat and easements appurtenant thereto and required to be maintained by the Association, and are intended for the common use and benefit of all Owners.

(j) **"Community"** shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

(k) **"Community-Wide Standard"** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(l) **"Covenants"** shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

(m) **"Declarant"** shall mean and refer to Concord Development Company, Inc., and its successors-in-title and assigns.

(n) **"Declaration"** shall mean the Declaration of Protective Covenants for Burwell Gardens, as such document may be amended.

(o) **"Developer"** shall mean Concord Development Company, Inc., an Alabama corporation.

(p) **"Dwelling Unit"** shall mean a single family residence situated upon a lot designated and authorized for use and occupancy by a single family.

(q) **"First Mortgage"** shall mean a recorded Mortgage with priority over all other mortgages.

(r) **"First Mortgagee"** shall mean a beneficiary, creditor or holder of a First Mortgage.

(s) **"General Assessments"** shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants.

(t) **"Burwell Gardens"** shall mean the Subdivision of Burwell Gardens, as recorded on May 6, 2010 in Document No. 20100506000235380, Probate Records of Madison County, Alabama, and as said property may be replatted from time to time.

(u) **"Lot"** shall mean any one of the residential lots established by plat in Burwell Gardens, or future additions of Burwell Gardens.

(v) **"Majority"** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(w) **"Member"** shall mean a Person that is a member of the Association as provided in the Declaration.

(x) **"Mortgage"** means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(y) **"Mortgagee"** shall mean the holder of a Mortgage.

(z) **"Occupant"** shall mean any Person occupying all or any portion of a Residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(aa) **"Owner"** shall mean the recorded Owner or Owners, whether one (1) or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any lot situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of any Owner. The Developer may be an Owner.

(bb) **"Person"** means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(cc) **"Residence"** shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. Residence shall include all portions of the land owned as well as any structure thereon, as described above. A Residence shall come into existence when a Certificate of Occupancy is issued by the proper governing authority

(dd) **"Supplementary Declaration"** shall mean an amendment to the Declaration subjecting additional property to the Declaration

**EXHIBIT "C"**

**Property that may be unilaterally submitted by Declarant**

All property according to the Final Plat of Burwell Gardens, as recorded on May 6, 2010 in Document No. 2010050600235380, in the Office of the Judge of Probate of Madison County, Alabama, as said property may be replatted from time to time, and all property within a one (1) mile radius of the property described in Exhibit "B".