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08/06/2007 03:40:55 PM
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Limestone County, AL

# DECLARATION

# OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS

# FOR

# NEWBY PLANTATION

# SUBDIVISION

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# NEWBY PLANTATION

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**THIS DECLARATION** OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS is made on the date hereinafter set forth by Valley Land, LLC, an Alabama limited liability company, (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, hereof to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration.

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.

The Declarant has heretofore caused the Association, as defined below, to be formed as an Alabama non profit corporation for the purpose of making the Assessments, as defined below, and otherwise taking all action which the Association is authorized to take.

## 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 X.

**Section 3. Mutuality of Benefit and Obligation.** The provisions of these Covenants are made (a) for the mutual and reciprocal benefit of each Lot and Common Area within the Community and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Community, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

## ARTICLE III
## Association Membership and Voting Rights

**Section 1. Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership. 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.

**Section 2. Voting.** The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 1; provided, however, there shall be only one vote per Lot. All Class "A" votes shall be cast as provided below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all of the members of the Board of Directors, as determined in the By-Laws, during the Class "B" Control Period which shall continue until the first to occur of the following:

(i) when Declarant no longer owns a Lot in the Community;

(ii) fifteen years from the date of execution of this Declaration;

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right; or

(iv) when the Class "B" Member no longer has a unilateral right to annex Property.

After termination of the Class "B" Control Period, the Class "B" Member may appoint a Majority of the members of the Board of Directors and shall have a right to veto actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) once all Lots have obtained certificates of occupancy;

(ii) five years after expiration of the Class "B" Control Period; or

(iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

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

The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article X, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

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.

An Owner's right to vote may be suspended as provided in Article XII, Section 2, of this Declaration.

## ARTICLE IV
## Assessments and Transfer Fees

**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. AN OWNER WHO OWNS MORE THAN ONE LOT SHALL PAY DUES FOR EACH LOT, WHETHER OR NOT THE LOT IS RESUBDIVIDED WITH THE CITY OF MADISON UNLESS SPECIFICALLY WAIVED BY RECORDED INSTRUMENT AFTER APPROVAL BY THE BOARD.

**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 5; (c) Lawn Assessments as hereinafter provided in Article IV, Section 6; and (d) Specific assessments against any particular Residence and/or Lot 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 Lots 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 (15%) percent 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 Lot 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 Lot 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 Lot, 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.** Each year the Board shall, by majority vote, determine and adopt and approve a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve, and set the annual General Assessments to be levied against each Lot for the following year at a level sufficient to meet the budget. Such budget shall be binding on all Owners. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof) 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 Lot which is more than one hundred twenty (120%) percent 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 Board's failure or delay in preparing or adopting the annual budget for any fiscal year shall not waive or release an Owner's obligation to pay General Assessments whenever the amount of such General Assessment is finally determined. Upon written request, a copy of the then applicable annual budget for General Assessments shall be provided to any Owner.

**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 Lot 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 Lot to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant. 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. Lawn Assessment.** Intentionally omitted.

**Section 7. 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, Limestone 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 8. 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 one time late charge of fifty and no/100 ($50.00) dollars, or such other amount as the Board may from time to time determine. If the Owner's payment of dues (along with the initial late fee and any attorneys' fees) is not received by the Association within 60 days from the due date, in addition to the initial late fee, the Owner shall be charged the collection fee which is then being charged by the Association, which shall not be less than $50. The amount of such collection fee may be changed from time to time by the Association without notice to any Owner. Such collection fee shall be due and payable immediately and shall be for the purpose of helping to pay the extra cost to the Association for handing and collecting delinquent payments. 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 collection fees (which may also be referred to from time to time as "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/or 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 Lot. 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 9. Date of Commencement of Assessments.** The assessments provided for herein shall commence as to each Lot subject to this Declaration upon the transfer from the Declarant to a third party, which shall be prorated from January 1 of each year. Such General Assessment shall be adjusted according to the number of months remaining in the calendar year during which the Lot became subject to assessment and SHALL BE PAID IN ADVANCE. At no time shall any Lot owned by the Declarant be subject to the payment of any assessments due hereunder until title to the subject Lot has been sold and conveyed to a third party. Furthermore, in the event that a Lot is sold to a Builder for the purpose of resale, the Lot will not be subject to General Assessments until such time as it is sold as a residence or until one year has passed from the conveyance by Declarant to Builder. In the event that a Lot is sold to a Builder for his personal home, or if he moves into the home, the General Assessment will commence upon the issuance of a Certificate of Occupancy or upon his moving in the home, whichever occurs earlier. THE INITIAL GENERAL ASSESSMENT FOR THE ASSOCIATION IS FOUR HUNDRED DOLLARS (**$400.00**) PER YEAR. THE DUE DATE FOR GENERAL ASSESSMENTS SHALL BE **JANUARY** 1 OF EACH YEAR, except for prorated payments which SHALL BE DUE AT THE TIME OF CLOSING.

**Section 10. 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 Wachovia Bank's Prime Rate, plus one (1%) percent per annum. The principal and interest shall be payable over a five year period commencing once 75 percent of all Lots are obligated to pay dues to the Association.

**Section 11. 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 Lots 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 Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

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

**Section 13. 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, conservation areas, roads, rights-of-way, streets and easements; and

(b) all property owned by non-profit organizations and restricted for use as private schools churches or conservation areas; 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. In the event the Association ceases to exist, or otherwise fails to perform as specified herein, each Owner shall be liable for their pro rata share of said maintenance based upon the ratio of Lots they owned divided by all Lots in the Community. 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. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: Community hiking and biking trails; Community dock areas; grass and other landscaping along dedicated rights-of-way; sedimentation ponds; Community entrance features; and lakes and dams.

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.

The Association shall also be responsible for maintaining the landscaping for the front portion of each Lot. This maintenance cost shall be assessed as a part of the General Assessment or a Lawn Assessment, as determined by the Board. Such maintenance obligation shall include, without limitation, the following: lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; and keeping lawn areas alive, free of weeds, and attractive. While the landscaped areas will be watered on such schedule as determined by the Association, each Owner will be responsible to pay the water bill for their property. This shall not prevent an Owner from watering their lawn on a more frequent basis. Similarly, **an Owner shall not be prohibited from performing maintenance on their Lot, but this shall in no manner relieve the Owner of the obligation to pay all dues and assessments.**

**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, subject to the Association's duties above, 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 ten (10) 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 ten (10) 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.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard and shall conform to any applicable municipal ordinances and regulations.

**Section 3. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. This shall not apply to fences constructed along a Lot boundary by a single owner unless the adjoining owner has made use of the fence to enclose all or a portion of his own property.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. Provided, however, that any painting or staining of a fence shall not be considered a maintenance item. The painting or staining (after the initial required stain/paint is applied) of a fence shall be the sole expense of the party wishing to stain or repaint).

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of a disagreement between the Owners of any Lots on either side of a party structure with respect to their respective rights and obligations as to such party structure, then such dispute shall be submitted to arbitration with the Architectural Review Committee (the "ARC") (or any designee thereof) whose decision shall be final, conclusive and binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other with respect to the maintenance, repair and replacement of any common fence.

**Section 4. 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. Declarant shall have the right, without limitation, to include Lakes and Dams in the property that may be conveyed by Declarant and which shall be accepted by the Association.

**Section 5. Additional Improvements.** Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

**Section 6. Agreements.** Subject to the conditions, restrictions and other provisions of these Covenants, all agreements, actions and determinations lawfully authorized by the Board with respect to the Property shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Community. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association hereunder 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 property operation of any portion of the Community, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. During the term of any such management agreement entered into by the Association with a third party, such manager may if all of the duties of the Association hereunder, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by these Covenants, the Articles of Incorporation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may heir and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Community, or the enforcement of these Covenants, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

**Section 7. Management by Declarant or its Affiliates.** In addition to the rights and authority granted to the Association in Section 6 of this Article, Declarant or one of its affiliates or members, may, but shall not be obligated to, be employed as the manager of the Association and the Community for so long as Declarant owns any Lot in the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, to relinquish such right, 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 the Community. Each Owner, by acceptance of a deed to or other conveyance of a Lot shall be deemed to ratify the provisions of this Section 7 and specifically be deemed to have approved any management agreement entered into by the Association or Declarant.

**Section 8. Governmental Interests.** For so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may designate sites within the Community for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required

with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

## 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 XIII, Section 4 and in Article XV, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) 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 and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant.

**Section 2. Residential Use.** All Lots 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 any 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, and does not: create a disturbance; involve customers, clients or the like entering into a Residence; or involve employees, other than the Owner, being located at the Residence. The Board may issue rules regarding permitted business activities.

**Section 3. Signs.** No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, and "For Sale" and "For Rent" signs consistent with the Community-Wide Standard may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who become the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu

thereof. Political signs may be displayed in such numbers and in such manner as may be determined by the Board from time to time.

**Section 4. Vehicles and Garages.** The term "vehicles," as used herein, shall include, without limitation, motorcycles, minibikes, scooters, go-carts, trucks, vans, and automobiles. Unless and except to the extent that the Occupants of a Residence shall have more vehicles than the number of parking areas serving their Residence, all vehicles shall be parked within such parking areas. Where the Residence contains a garage, "parking areas" shall refer to the number of garage parking spaces.

No motor homes, farm equipment, heavy machinery, boats, trailers, moving vans, campers, semi-tractor trucks, buses, commercial vehicles or the like shall be permitted to be kept in the Community. Any such items, other than boats, motor homes and campers, may be temporarily allowed in the Community for reasonable periods of time in order to allow for typical construction/repair activities, servicing for a Residence, and the moving of furniture and appliances.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, 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, for periods longer than twenty-four (24) hours each 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.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

All single-family detached Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. An Owner with more vehicles than parking spaces in a garage may park the extra vehicles (or the vehicles of guests, children, domestic employees, etc.) in their driveway. No parking whatsoever is permitted in the front yard.

**Section 5. Leasing.** Residences may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any

other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

**Section 6. 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 7. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets (specifically excluding Vietnamese pot bellied pigs and all other species of swine) 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. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Community, including the right to assess fines for violations of such rules and regulations.

**Section 8. 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 Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the 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 9. 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 10. Architectural Review Committee.**

**(a) Approval of Improvements.** 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 the Architectural Review Committee ("ARC") established by the Declarant. The following items, without limitation, will be submitted to the Architectural Review Committee for new home construction: house plans, site plans, landscaping plans, and exterior color and material schedule.

**(b) Selection of Members.** Prior to the termination of the Class "B" membership (the "Turnover Date"), the Declarant shall have the sole and exclusive right to appoint and remove, with or without cause, at any time and from time to time, all members of the Architectural Review Board, the number of members of which shall be determined solely by the Declarant. Following the occurrence of the Turnover Date, the Board shall have the sole and exclusive right to appoint and remove, with or without cause, at any time and from time to time, all members of the Architectural Review Committee, the number of members of which shall be determined solely by the Board.

**(c) Delegation of Authority.** All individuals serving on the Architectural Review Committee shall be deemed to be agents and representatives of the Association (only, however, to the extent of addressing the matters for which the ARC was established) and may, but shall not be required to be, members of the Association or Owners. The Architectural Review Committee 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 business of the Architectural Review Committee, including, without limitation, the right, to the extent the Architectural Review Committee consists of more than one (1) member, to designate one (1) individual on the Architectural Review Committee to act on behalf of the entire Architectural Review Committee in all matters in which the Architectural Review Committee is granted the right to act under the terms and provisions of this Declaration.

**(d) Professionals.** The Architectural Review Committee may from time to time hire or engage architects, engineers, land planners, attorneys and other professionals to provide services with respect to or for the benefit of the Architectural Review Committee, including designating any such professionals as members of the Architectural Review Committee. Any such professionals may be paid reasonable compensation for all services rendered to, on behalf of or for the Architectural Review Committee. Any such compensation payable to such professionals

shall be paid first from any design review fees paid by applicants to the Architectural Review Committee and the deficit, if any, shall constitute common expenses.

**(e) Additional Rules and Regulations.** The Architectural Review Committee may, from time to time and at any time, adopt additional rules, regulations, and requirements relating to the design review and approval process and the construction of any Improvements to any Lot within the Community, including, without limitation, regulations for architects and builders, adoption of specific forms which must be completed and submitted to the Architectural Design Committee and the requirement that specific information be provided as part of the design review process, requirements establishing that each Builder deposit security deposits with the Architectural Review Committee and any other matters as may be determined from time to time to the Architectural Review Committee , which rules, regulations and requirements shall constitute part of the Rules and Regulations.

**(f) Modifications.** Once a plan is approved, any modification to that plan must also be reviewed and approved in writing by the Architectural Review Committee, along with a review fee to the Declarant of $150.00. No construction of any Lot shall be commenced and no Lot shall be modified except in accordance with a plan approved in writing by the Architectural Review Committee. Any modifications to plans previously approved by the Architectural Review Committee, any additions to be made during construction and any alterations or changes to any existing Improvements on a Lot are subject to review and written approval by the Architectural Review Board, specifically including, but not limited to, the following:

(i) painting of the exterior of a Residence (including doors, windows, and trim) other than with originally approved materials and colors;

(ii) replacement of roof or other parts of the Residence other than with duplicates of the original material approved by the Architectural Review Committee and any other alteration of a Building;

(iii) installation of satellite dishes or receivers or other devices which are visible from outside the Lot;

(iv) construction of fountains, swimming pools, whirlpools or other exterior pools or water features;

(v) construction of privacy walls, fences and gates, as well as limitations thereon and the types of materials to be used;

(vi) addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; and

(vii) significant new landscaping and any removal or substantial pruning of existing trees or plants.

The listing of a category does not imply that such construction is permitted; the Declarant and the Rules and Regulations may, for example, prohibit all solar panels, antennas, satellite dishes or receivers or require that, to the greatest extent practicable, the same not be visible from any right of way in the Community.

**(g) Exceptions.** Interior construction and modifications not affecting the external structure or appearance of any Building are not subject to review. However, floor plans are required as part of the review process to assist in the overall comprehension of the design, and minimum interior ceiling heights may be required, as may be provided in the Architectural Review Committee.

**(h) Application.** The plans to be submitted to the Architectural Review Committee for approval shall be submitted on such forms which the Architectural Review Committee may require and shall include (i) the construction plans and specifications, including all materials and colors, (ii) elevations of all proposed Improvements, (iii) proposed clearing, grading and landscaping plans, and (iv) all other items required by the Architectural Review Committee.

**(i) Basis for Decision.** Applications shall be approved or denied based upon compliance with the Rules and Regulation and/or the guidelines and provisions of the Architectural Review Committee and overall quality of design. The Architectural Review Committee may also consider other factors, including purely aesthetic considerations, which, in the sole opinion of the Architectural Review Committee, will affect the desirability or suitability of the proposed Dwelling. The Architectural Review Committee shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the applicant shall be obligated to comply and must be incorporated into the plans and specifications submitted by such applicant. Approval of plans and specifications by the Architectural Review Committee for Improvements or other matters with respect to one particular Lot shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve similar plans and specifications for any other Lot. The Architectural Review Committee shall be deemed to have approved plans and specifications only if and to the extent their approval is set forth in writing. Verbal or oral approvals are not binding on the Architectural Review Committee. The Architectural Review Committee, with the consent of Declarant (prior to Turnover Date), may grant variances from the Declaration based on existing topographical or landscape conditions, existing trees, or architectural merit. Any such variances must be in writing.

**(j) Expense of Review.** Each Owner (or any contract purchaser of a Lot) who submits any plans to the Architectural Review Committee for approval shall pay to the Declarant a design review fee for the review of such plans and specifications for any Improvements to be made to such Owner's ( or contract purchaser's) Lot. The Board shall adjust the review fees, from time to time, to cover all or part of the expected cost of the operation. Until such time as adjusted by the

Declarant, the review fees shall be $75.00. If such fees do not cover the cost of the review, the Association shall fund the deficit. The Architectural Review Committee may employ personnel or contract with individuals or companies as necessary to assist in the review process.

**(k) Time Period.** In the event that the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) 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 XIII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

**(p) Release of Liability.** 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.

**(m) Elevation Limitations. Unless specifically exempted by the ARC, no Residence may be constructed within 250 feet of a Residence, or an approved planned Residence, with the same front elevation.**

**Section 11. Antennas.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Lot. 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. The erection of small satellite dish may be permitted, however, the size and location must be approved by the Architectural Review Committee.

**Section 12. Tree Removal.** No trees shall be removed without the express consent of the Board or its 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 13. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee or the Board. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. 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 14. 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 15. Clotheslines, Garbage Cans, Woodpiles, Etc.** No clotheslines or woodpiles are permitted in the Community. All garbage cans, 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. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the

Community to bury rocks removed from a building site on such building site. 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. Each construction site must be maintained in a safe, clean and orderly condition and shall include a portable toilet until such facilities are available in the home for construction workers.

**Section 16. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot owned by Declarant during the time in which Declarant may annex property. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Absent proper Association approval, the resubdivision of two Lots into one lot shall not eliminate the obligation to pay Assessments for each original Lot, but only one transfer fee shall be required upon each sale of the newly created Lot.

**Section 17. 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 18. 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 Lot, without the prior written consent of the ARC or its designee. No fence shall be erected nearer to the street than the rear of the Dwelling on each side where the fence is located. On corner Lots, all fences must be behind the minimum building line. With either ARC or Board approval, up to a six (6') feet high fence may be erected, which must be the "shadow box" design with a scalloped top. Chain link fences are expressly forbidden in the Community.

**Section 19. Lakes.** This Section and Article XII of this Declaration, and rules, use restrictions and design guidelines issued by the Board or its designee shall govern the use of such lakes as may exist in the Community or such lakes as are made available for the use of all Owners and Occupants in the Community and activities related thereto. Fishing shall be permitted so long as a license is obtained from the appropriate governmental authority. Swimming, ice skating and water skiing shall not be permitted, except as specifically approved by the Board. Unless approved by the Board or its designee, no Owner may construct a dock. Retaining walls and similar structures shall not be installed without the prior written approval of the Board or its designee. Except as may be approved by the Board or its designee, boats shall not be permitted on the lakes

**Section 20. 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 21. Air-Conditioning Units.** No window air conditioning units may be installed.

**Section 22. Lighting.** Except for approved lighting as originally installed on a Residence, exterior lighting visible from the street shall not be permitted, except for (a) two (2) decorative post lights; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights at Christmas; (d) the required lighting set forth in this section; or (e) front house illumination of model homes. Ground level landscape lighting may be permitted as approved by the Architectural Review Committee.

**Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Board or its designee.

**Section 24. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Board or its designee.

**Section 25. Above-Ground Swimming Pools.** Except as may be permitted by the ARC or the Board, above ground swimming pools shall not be erected.

**Section 26. Driveways.** Except as may be permitted by the Board or the ARC, driveways shall be constructed with standard broom finish concrete. NEWBY ROAD LOTS 29 and 30 shall have a driveway with a turn around. Vehicles are not allowed to back from these lots onto Newby Road.

**Section 27. Exteriors.** Except as may be permitted by the Board 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 wood.

**Section 28. Windows, Window Treatments and Doors.**

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. The portion of all window coverings visible from the exterior of any Residence shall be white or off-white, unless otherwise approved by the ARC.

**Section 29. Chimneys.** All chimneys that are on the exterior wall must have either brick or stone on the three exterior sides of the chimney. Interior chimneys may have either an ARC approved type of siding or stucco product on all four sides of the chimney.

**Section 30. Mailboxes.** Only approved mailboxes can be installed in the Community. Each mailbox must be the designated model of the ARC.

**Section 31. Landscaping.** The purpose of this restriction is to promote landscape development of single family residential lots that will preserve and appreciate the value of the development by promoting a high quality, cohesive level of landscaping. These requirements may be altered or amended at the discretion of the Architectural Review Committee.

1. Guideline for Landscaping Planning:

(a) Existing vegetation and trees should be preserved whenever possible to provide screening and lend an established feeling to the Community.

(b) Shrubs should be well distributed, but not necessarily evenly spaced. Shrubs may be used for screening and to minimize the visual impact of driveways and parking areas.

(c) Either Bermuda sod or Fescue sod shall be installed in the front yard, side yard and in no less than 30 feet of the rear yard, extending from the rear of the dwelling. The balance of the rear yard shall be seeded and strawed.

(d) Unified mulched planting beds edged in materials such as brick, steel or wood are preferred as they look neat longer and their shape is preserved.

(e) Exterior building material colors should be considered when selecting flowering trees and shrubs so that colors will not compete with or negate each other.

2. General Landscape Requirements:

A landscape plan shall be included as part of the lot development package submittal. This plan will include the entire lot and indicate the following:

(a) General information, including date, north arrow, and scale of one inch to no more than fifty feet; all property lines, locations of all easements and rights-of-way; name and telephone numbers of Builder and Owner.

(b) Construction information, including the locations of buildings, driveways, walks, walls, fences, and terraces.

(c) Locations, caliper, species (common name), and intended treatment (move, remove, or save) of existing trees six inches or greater at breast height.

(d) A schedule of all new and existing required plants proposed for landscaping, including size (caliper and height, container size, etc.) common names (genus, species, and variety) of trees, shrubs, and ground cover, and type and amount of turf grasses.

3. Tree and Shrub Requirements:

(a) The front yard of each lot shall be planted with at least one large tree (i, ii, iii) and one small trees (iv, v). Shrubbery required in the front yard shall be a minimum of eighteen shrubs, at least half of which shall be species evergreen in this climate. Shrubs shall be planted in a bed of mulch or ground cover other than turf grass.

(b) All proposed trees shall conform to be the minimum size standard listed below, based on American Standards for Nursery Stock, ANSI Z60.1, published by the American Association of Nurserymen and approved by the American National Standards Institute, as follows:

4. Suggested Large Trees:

(i) Type 1, Shade trees, 2.5" caliper, 12' height range - Sugar Maple, Red Maple, Tulip Poplar, Sycamore, Red Oak, White Oak, and Willow Oak.

(ii) Type 2, Shade trees, 1.5" caliper, 6' to 8' height range - Weeping Willow, Bradford Pear, Golden Rain Tree, Southern Magnolia, Zelkova, River Birch and European Birch.

(iii) Type 5, Coniferous Evergreens, 5' to 6' height range - Pine species, Hemlock and Spruce.

Suggested Smaller Trees:

(iv) Type 3, Small upright trees, 1" caliper, 6' to 7' height range - Redbud, Crabapple, Crepe Myrtle, Cherry Laurel, and Flowering Plum.

(v) Type 4, Small spreading trees, 5' to 6' height range - Flowering Dogwood, Star Magnolia, Flowering Cherry, and Japanese Maple.

5. Other Landscaping Provisions

(i) If existing trees meet requirements of this covenant in all respects, required trees of the covenant may be omitted. Each existing tree meeting requirements may count, at the option of the owner, for one of the trees in its required class, provided it:

Is not one of the following species: Box elder, silver maple, catalpa, cottonwood, camphor, mimosa, chinaberry, princess tree, or Siberian elm.

Has a live crown and is free from serious root, trunk, and crown injury.

Is indicated on the landscaping plan as a tree "to be saved."

Is situated so that it can be incorporated into the landscape with minimal grade, cut, or fill under the drip line of the tree.

(ii) Ground cover may include shrubs and low-growing plants such as Liriope, English ivy, Periwinkle, and similar material. Ground cover may also include non-living organic material such as bark and pine straw.

(iii) All trees greater than six inches in diameter at breast heights shall be preserved, unless removal of them is part of an approved plan.

(iv) The lot shall be completely landscaped. However, planned natural areas will be allowed provided that the lawn and the natural area form a cohesive whole.

(v) Driveways shall coordinate with topography and existing vegetation to preserve all trees greater than six inches in diameter at breast height.

(vi) Each lot Owner must submit a landscaping plan and must completely install such plan within ninety days of occupying the Residence. Additionally, each lot Owner must maintain his lawn in as good or better condition than his original landscaping plan. It is not the intention of the ARC to monitor every planting in Newby Plantation, but if a lawn, at the sole discretion of the ARC, has deteriorated and/or was never installed properly, then the lot Owner will be required to bring his lot into compliance with the guidelines.

**Section 32. Screening of Heating and Cooling Units.** All exterior heat and air conditioning compressors or air handlers must be screened from view. This can be accomplished with either vegetation, brick and/or stone or may be behind a fence, as approved by the Architectural Review Committee. If vegetation is used it must create a walled off effect. The screening is encouraged on all sides of the equipment but is required on the front and side of the equipment.

**Section 33. Storage Tanks.** Any storage tank must be approved by the Architectural Review Committee and, if approved, must be buried.

**Section 34. Home Size.** No home shall be constructed in excess of two stories. Basements are permitted and shall not count toward the levels of the home permitted by this section. No home shall consist of fewer than **2000** square feet of heated/cooled living area.

**Section 35. Basketball Goals.** No basketball goal may be erected over a garage or attached to a dwelling. Portable basketball goals will be allowed in the driveway.

**Section 36. Brick/ Exterior Requirements.** All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior of at least ninety five

percent (95%) stone or masonry brick construction, with no less than eighty percent (80%) of the exterior of the sides of the dwellings or buildings consisting of stone or masonry brick unless, in the sole discretion of the Architectural Review Committee, the style and exterior of the dwelling shall be deemed to architecturally enhance the Community. Visible unpainted red or yellow "sewer brick" will not be allowed. In the event that the ARC, **in its sole and absolute discretion**, chooses to allow a dwelling to be constructed of exterior materials other than brick or stone masonry, then the material shall be stucco, "Hardie Board" or vinyl or material of a similar nature. Composite siding shall be absolutely forbidden.

**Section 37. Decks, Playground Equipment, etc.** The type, design and location of decks and storm shelters constructed with the initial construction of a residence must be approved by the Architectural Control Committee. Decks, playground equipment and storm shelters erected after the initial construction of a residence is completed, must be in accordance with the Exterior Guidelines and may not be erected, placed, allowed or maintained on any lot without the prior written consent of the Board or its designee. Any storm shelter must buried underground.

**Section 38. Foundations.** Slab foundations are permitted. All foundations must have a brick and/or stone veneer with no exposed concrete or masonry block.

**Section 39. Dwelling Restrictions.** The following restrictions shall apply to all Dwellings located in the Community:

a) Each Dwelling must have a two car garage that must be either side, rear entry, or front.

b) Roofs of dwellings constructed on all of said lots shall be of architectural grade shingles or 3-tab, with the color to be approved by the ARC.

c) All dwellings shall have a roof pitch of **8/12** or greater on the main roof unless the ARC determines that the period of the home design dictates the use of a different roof pitch.

d) Each Dwelling shall have one natural gas fired furnace. Failure to install such a unit shall result in a $500.00 assessment to be paid by the Owner to the ARC.

**Section 40. Sidewalks.** The Owner of each Lot, other than Lots 29 and 30, shall be responsible to construct a concrete sidewalk, four feet in width, as determined by the appropriate Governmental Authority and/or the ARC.

**Section 41. Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances and exceptions with respect to the provisions of this Declaration with respect to any Lot. Any request for a variance or exception submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written document executed by either the chairman or vice chairman of the ARC. **No exception granted by the ARC shall constitute a waiver of the restriction in any manner unless the**

**exception is explicitly made on a Community wide basis or made, by resolution, to affect one or more particular subdivision(s) within the Community.**

**Section 42. Involvement of Board.** The Board may, but shall not be required, to take any formal action to abate any nuisances or to take any action with regard to a violation of the restrictions, particularly when the violations are minor or involve pets. Nothing in this provision shall prohibit an Owner from either taking action or filing suit against another Owner in order to protect his/her/its rights under this Declaration.

**Section 43. Set Back Lines.** Set back lines shall be established by plat and/or ordinance.

## ARTICLE VII
## Prohibition of Timesharing

Timesharing shall be prohibited in the Community. The term "timesharing" shall include, without limitation, timeshare estate, timeshare use, and timeshare interval programs.

## ARTICLE VIII
## Insurance and Casualty Losses

**Section 1. Insurance.** 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.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million ($1,000,000.00) Dollars or a greater amount if directed by Declarant during time specified in Article X. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an

interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All insurance policies shall be reviewed annually by one or more qualified persons.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

**Section 2. Property Insured By Association: Damage and Destruction.** Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least sixty-six (66%) percent of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

**Section 3. Property Insured By Owners: Damage and Destruction.** By virtue of taking title to property within the Community, each Owner covenants and agrees with all other Owners and with the Association that in the event that the Association does not carry insurance on the Owner's property, each individual Owner shall carry liability and casualty insurance or cause such insurance to be carried by another entity, such as a condominium association or homeowners association. Each individual Owner further covenants and agrees that in the event of a partial loss of damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

**Section 4. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

## Article IX
## 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. The provisions of Article VIII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## ARTICLE X
## 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 fifteen (15) 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, (sometimes the "Additional Property") 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 and 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. 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 Association 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.

**Section 3. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of the properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Community. Such amendment shall not require the consent of any Person other than the Owner of the Property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

## ARTICLE XI
## Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots 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 Lot 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 Lot 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 Lot 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 Lot 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. Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing.

Unless at least two-thirds (2/3) of the first Mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (A decision, including contracts, by the Board or provisions of any Supplementary Declaration regarding assessments for Parcels or other similar areas shall not be subject to this provision where such decision or Supplementary Declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section 3. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 4. 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 Lot.

**Section 5. Amendment by Board.** Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation 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 6. Veterans Administration Approval.** Intentionally Omitted.

**Section 7. Applicability of Article XI.** 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 8. 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 XII
## Easements

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots 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 Lot and the adjacent portion of the Common Property or as between adjacent Lots, 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. Furthermore, the Declarant does hereby establish and declare a permanent and perpetual reciprocal appurtenant easement for encroachments of up to 12 inches (measured from the common property line of all Lots) for any fence constructed on any Lot.

**Section 2. Easements for Use and Enjoyment of Common Property.** Subject to Section 8 of this Article, every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

(a) the right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property, including, without limitation, swimming pools, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefor, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, Occupants, and invitees;

(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;

(c) the right of the Board to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities locate thereon shall extend to the members of his family and guests. Land Owner shall be deemed to have made a delegation of all such rights (except for the right of ingress and egress to the Owner's property) to the Occupants of any leased Residence.

Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes case in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article X hereof, the consent of Declarant, the Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert tennis courts into a basketball court or vice versa.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall not give any Owner the right of ingress or egress across any Lot to obtain access to such Common Property.

**Section 3. 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.

**Section 4. Reservation of General Access Easement.** Declarant does hereby establish and reserve for itself, the ARC, and the Association, their respective agents, employees, representative, invitees, successors and assigns, a permanent and perpetual nonexclusive easement over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of these Covenants, and (b) the performance of the respective duties of Declarant, the ARC, and the Association hereunder, including, without limitation taking any action required or permitted to be taken by Declarant, the ARC or the Association pursuant to any of the terms or provisions of these Covenants; provided, however, that upon completion and occupancy of any Lot, 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 Lot directly affected thereby.

**Section 5. Easement for Lake Maintenance.** Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successors and assigns, across such portions of the Community, determined in the sole discretion of Declarant (or its successors and assigns), as are necessary to allow for the maintenance of a lake(s), lakebed(s) and shoreline(s), if any, which are within the Community or which are made available for the use and enjoyment of Owners and Occupants within the Community. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of property adjacent to the lake(s), reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. In order the allow the exercise of the rights created pursuant to this easement, no tree or structure may be placed within fifteen (15) feet of the line formed by the highest normal pool elevation of any lake without the prior written approval of the Board or its designee.

**Section 6. Easement for Property Maintenance Along Lake.** Every Lake Lot Owner shall have a right and easement of access to that property located between a lake and the property line of such Lake Lot Owner as needed to perform the maintenance required under Article V.

**Section 7. Reservation of Easements With Respect to Common Areas.**

(a) Easement Upon Common Areas. Declarant does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing, installing, repairing and replacing any Improvements to the Community or to the Common Areas, and (ii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that nothing in this sentence shall obligate Declarant to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Declarant continues to own any portion of the Property, Declarant hereby establishes and reserves for itself and its successor and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Declarant deems appropriate; provided, however, that Declarant should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) Changes in Common Areas. Declarant does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, any Lots, or other portions of the Community or of the Development owned by Declarant. Declarant 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 Development, the Community, or any Improvements thereto to be utilized as Common Areas, as Declarant, in its sole discretion, may determine.

**Section 8. Reservation of Maintenance Easement.** Declarant does hereby establish and reserve for itself and the Association, and each of their respective agents, employees, successors and

assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of 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 Community; provided, however, that such easement shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions and provided further that Declarant or the Association shall be entitled to be reimbursed by the Owner of such Lot for the same.

**Section 9. Landscaping by Owners on Easement Areas.** The Declarant, the Association, any Governmental Authority, any utility company, and each of their respective successors and assigns, shall not be liable to any Owner, Occupant or any other party for and on account of damage to any landscaping or plantings placed on any easement area or road right-of-way within the Community by any Owner, Occupant or any other party.

**Section 10. Easement for Special Events.** Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, as well as activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

**Section 11. Surface Water and Stormwater Management System.** The Association shall have the right to maintain and cause all Owners to maintain proper drainage within the Community in accordance with the stormwater drainage plan approved by the applicable Governmental Authorities having jurisdiction over the Community, as the same may be amended from time to time. In the exercise of this right, the Association shall have a blanket easement, less and except the footprint of the Dwelling erected on any Lot, and right on, over, across, under and through all portions of the Community to maintain and to correct drainage of surface water; provided, however, that each Owner shall be solely responsible for providing and maintaining adequate soil erosion measures and drainage facilities on such Owner's Lot and neither the Association nor the Declarant shall, by virtue of the reservation of the foregoing easement, be under any obligation to provide or connect any stormwater or surface drainage improvements or facilities on any Lot. The foregoing easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with Governmental Regulations; provided, however, that neither the Declarant nor the Association shall be obligated to undertake any of the foregoing actions. Notwithstanding the foregoing, each Owner shall provide and maintain on his or her Lot adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff from and coming onto such Owner's Lot or resulting from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also insure that his or her

Lot 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 requirements and regulations of all applicable Governmental Authorities and (c) all other Governmental Regulations. **Each Owner, by acceptance of a deed to his or her Lot, shall and does hereby indemnify, defend and agree to hold the Declarant, the Architectural Review Committee, 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 any and all other amounts suffered, paid or incurred by any of them 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 breech by such Owner (or any breech by such Owner's Occupants, contractors, subcontractors, guests, agents, employees, or invitees) of any of the terms and provisions of this Section.**

**Section 12. Easements for Pest Inspections, Treatments and Prevention.** To the extent necessary, if at all, there shall be reciprocal appurtenant easements between adjacent Lots to allow each Owner to have a licensed pest control company to conduct inspections for wood destroying insects, treat for any infestations of the same, and to install preventative bait systems at such distances as shall be required to effectively prevent termite infestation. All such inspections, treatments and installation of preventative measures shall be conducted on week days during normal business hours.

## ARTICLE XIII
### 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. Furthermore, the Board shall be entitled to recover costs and reasonable attorney's fees from the Owner and/or Occupant upon being the substantially successful party in any litigation resulting from an Owner and/or Occupant failing to comply with this Declaration in any material respect. Failure by the Board 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 Lot 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 ten (10) 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. Term.** The terms, covenants, conditions and restrictions set forth in these Covenants shall run with and bind all of the Community, 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 these Covenants shall be automatically renewed and extended for successive and continuous periods ten (10) years each, unless, at any time after twenty (20) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots within the Property agreeing to terminate or modify these Covenants has been recorded in the Probate Office of Limestone County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article XII hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

Notwithstanding anything herein to the contrary, these covenants and restrictions must remain in force and effect so long as Common Property is owned by the Association.

**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 Lots subject to this Declaration; © 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 Lots 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 Lots 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. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to the property of any Owner without the consent of the affected Owner or Occupant.

Furthermore, so long as Declarant owns any Lot within the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, **Declarant may amend these Covenants by a written instrument** filed and recorded in the Probate Office of Limestone County, Alabama, **without obtaining the approval of any Owner or Mortgagee**; provided, however, (a) in the event any amendment proposed by Declarant materially and adversely alters or changes any Owner's rights to the use and enjoyment of his or her Lot or materially or adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by the affected Owner, or, alternatively, by fifty percent (50%) of all of the Owners (including Declarant who shall have the voting rights attributable to any Lots owned by Declarant), or (b) in the event any such proposed amendment by Declarant would materially and adversely affect the title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. Any amendment made pursuant to this Section shall be certified by Declarant and shall be effective upon recording of the same in the Probate Office of Limestone County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section and further agrees that, if requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of these Covenants or any other instruments relating to the Community or the Association if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provision of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lot within the Community.

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-fourths (3/4) of the Board and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant. In the event of a conflict between the Board and the Association, the Boards 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.

Notwithstanding anything contained herein to the contrary, any amendment which affects the maintenance of the Common Property must be approved by the City of Huntsville, Alabama.

**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, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant.

**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, director, ARC and other committee member, as well as former officers, directors, and ARC and other committee members, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer, director or ARC or other committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or ARC or other committee member. The officers, directors and ARC or other committee member 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, directors ARC or other committee member 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 they may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director and ARC or other committee member 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, director, committee member, or former officer, director or committee member, may be entitled under the Articles, By-Laws, contract, or otherwise. 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, until Declarant's right unilaterally to subject property to this Declaration as provided in Article X terminates, 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" and Exhibit "C", 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 Homes 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 Lot, the Owner shall give to the Board, in writing, the name of the purchaser of the Lot and such other information as the Board may reasonably require.

**Section 15. Estoppel Certificate.** Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer of 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 ($25.00) Dollars for the issuance of each such certificate.

**Section 16. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X above, 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 or the Declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, 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. Use of Words "Newby Plantation".** No Person shall use the words "Newby Plantation" in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of the Declarant. However, Owners or Occupants may use the term "Newby Plantation" in printed or promotional matter where such term is used solely to specify that particular property is located within Newby Plantation.

**Section 20. Counsel.** The drafter of this Declaration, the Articles and the By-Laws, prepared said instruments on behalf of the Declarant and not for the benefit of future Owners.

## ARTICLE XIV
## ADDITIONAL SPECIFIC RIGHTS OF DECLARANT

**Section 1. Right of Declarant to Modify Restrictions to Lots Owned by Declarant.** With respect to any Lot owned by Declarant, Declarant may, by deed, contract or other instruments filed for the record in the manner specified by law, modify the provisions of these Covenants as the same apply to any such Lot, including but not limited to, the withdrawal of any such Lot from the operation and effect of these Covenants.

**Section 2. Development of Property.** Subject to the approval of any Governmental Authority with appropriate jurisdiction, Declarant shall have the right, but not the obligation, for so long as Declarant owns any portion of the Community, or until such earlier date as Declarant elects in its sole discretion to relinquish such right, to make improvements and changes to all Common Areas and to all Lots owned by Declarant, including without limitation (I) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lot owned by Declarant or of the Common Areas, (iii) installation of any water, sewer and any other utility systems and facilities within the Common Areas, or (iv) any other change or Improvement to any portion of the Common Areas or to the Lots owned by Declarant.

**Section 3. Subdivision Plat.** Declarant reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Community, including without limitation, the locations and dimensions of all Lots, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, setback line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Community indicated thereon as if such subdivision plat were specifically incorporated into these Covenants. Notwithstanding anything provided to the contrary in these Covenants, Declarant may at any time or from time to time divide and re-divide, combine and re-subdivide any Lots owned by Declarant and change any easement description or relocate any roads affected thereby, subject to approval of any Governmental Authority having jurisdiction thereof.

**Section 4. Board.** The Board of Directors shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Declarant hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board of Directors and any officer or officers of the Association until such time as Declarant no longer owns any Lot in the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, to relinquish such right, except as may be provided otherwise in the By-laws. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.

**Section 5. Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THESE COVENANTS, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE COMMUNITY, DECLARANT HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Declarant shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 5 and the provisions above. At such time as Declarant no longer owns any interest in any portion of the Community, or at such earlier date as Declarant elects, in Declarant's sole discretion, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver all books, accounts and records of the Association, if any, which Declarant has in its possession.

**Section 6. Standards for Review.** Whenever in this Declaration, the Declarant, the Architectural Review Committee, or the Association have the right to approve, consent to, or require any action to be taken pursuant to the terms or provisions 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 Declarant, the Architectural Review Committee, or the Association, as the case may be.

**Section 7. Builder Approval.** Subject to the remaining terms and provisions of this Section, only Builders who are authorized or allowed to build, renovate, improve or refurbish Dwellings within the Community. Approved Builders must comply with all construction regulations of the Architectural Review Committee, including, specifically, building in accordance with the plans and specifications approved by the Architectural Review Committee and compliance with all the terms and provisions of the Declaration. Approved Builders must post a deposit for compliance and damages, the amount of which shall be determined from time to time by the Architectural Review Committee. To the extent any Approved Builder fails to comply with all of the requirements of the Architectural Review Committee or the Declaration, such failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in the Community and removal from the Approved Builder list. The Declarant is not responsible for any claims relating to the

construction of the any Improvements; such claims are solely the responsibility of the individual builder. No home may be constructed in the Community unless a Builder is responsible for the supervision of the construction. The intent of this provision prohibits individual Owners from constructing their own Residence without the assistance of a licensed builder.

**IN WITNESS WHEREOF,** the undersigned, VALLEY LAND, LLC, an Alabama limited liability company, has caused this instrument to be executed on this the 21 day of ~~May~~ August, 2007, and SOUTHBank, as Mortgagee, hereby ratifies the same.

**VALLEY LAND, LLC**

By: _____
Roy Johnson, Member

By: _____
Jerry Brooks, Member

RATIFIED BY MORTGAGEE:

SOUTHBANK

By: _____
Its: Vice President

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Roy Johnson and Jerry Brooks, whose names as Members of VALLEY LAND, LLC, an Alabama limited liability company, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such members 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 21 day of August, 2007.

_____
Notary Public
My Commission Expires: 2-2-11

RLPY 2007 56558

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that J. Read Crawford, whose name as Vice Pres. Cent of SOUTHBANK, 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/she, 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 2nd day of August, 2007.

Notary Public
My Commission Expires: 2-26-08

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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 Newby Plantation Owners Association, as such document may be amended.

(b) **"Association"** shall mean and refer to Newby Plantation Owners Association, a nonprofit, non-stock, 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) **"By-Laws"** shall refer to the By-Laws of Newby Plantation Owners Association, as such document may be amended from time to time.

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

(g) **"Common Areas"** The term "Common Areas" and/or "Common Property" shall mean and refer to all real and personal property now or hereafter owned by the Association for the nonexclusive, common use and enjoyment of the Owners and Occupants. The Common Areas shall include (a) all signage, street lights, lighting, walkways, paths, bicycle and jogging paths or lanes, if any, improvements, landscaped or other areas of common use, (b) all storm drains and sewers, drainage and/or watershed protection areas located within the Community (other than such areas located solely within the boundary lines of any Lot), (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas on more than one Lot, and (d) all easements and easement areas within the Community (other than such areas located solely within the boundary lines of any Lot), and any other areas or Improvements on or within the Community which are designated as Common Areas by Declarant or the Board from time to time. 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 thereof or any other rights, licenses or benefits therein. The designation of any real estate

on any recorded plat shall not be a dedication to the Association. Such dedication may only take place upon the execution and recording of a deed, or quit claim deed, from the Declarant to the Association.

(h) **"Community" and or "Property"** 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.

(I) **"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.

(j) **"Declarant" and or "Developer"** shall mean and refer to VALLEY LAND, LLC, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B" attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

(k) **"Declaration" and or "Covenants"** shall mean the Declaration of Protective Covenants for Newby Plantation, as such document may be amended.

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

(m) **"Governmental Authority"** The term "Governmental Authority" shall mean 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.

(n) **"Improvements"** The term "Improvement" shall mean and refer to all dwellings, any building, structure, planting or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot or Common Area. 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, treas,

shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural conditions of any Lot.

(o) **"Lot"** The term "Lot" shall mean and refer to any portion of the Community which will be owned in fee simple by an Owner. Upon the recordation of any subdivision plat for the Community, each lot indicated thereon shall be deemed a Lot for purposes of these Covenants.

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

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

(r) **"Mortgage"** means any first 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.

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

(t) **"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.

(u) **"Owner"** The term "Owner" shall mean and refer to the record owner, including Declarant, of fee simple title to any Lot, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (I) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

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

(w) **"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. For example, each single family detached home shall constitute a Residence; each condominium unit in a condominium development shall constitute a Residence; each Apartment Unit in an Apartment Complex shall constitute a Residence; and each townhome or cluster home unit in an attached or semi-attached housing development shall constitute a Residence. The foregoing examples are set out by way of illustration and not in limitation of the term "Residence." Residence shall include all portions of the land owned as well as any structure thereon, as described above. Except where it is clear that a different usage is intended, references to a Lot shall include the term "Residence." A Residence shall come into existence for the purpose

of assessments on the earliest date of the happening of any of the following events: (1) when a Certificate of Occupancy is issued by the proper governing authority; (2) in the case of a Lot in a subdivision, the expiration of one year from the date the subdivision is accepted for maintenance by the proper governing authority, (unless made earlier or later by contract between Declarant and Owner).

(x) **"Residential Use"** The term "Residential Use" shall mean and refer to the occupancy of any Lot for single-family residential housing purposes.

(y) **"Rules and Regulations"** shall mean and refer to the Rules and Regulations of the Community as adopted by the Board from time to time, which Rules and Regulations are incorporated into and form a part of this Declaration.

(z) **"Substantial Completion"** of a Dwelling on a Lot shall be deemed to be the time that the applicable Governmental Entity has issued a certificate of occupancy and all landscaping work for the Lot has been completed in accordance with the landscape plan approved by the ARC.

(aa) **"Builder"** shall mean any Person who holds either a general contractor's license or a Homebuilder's license with the State of Alabama.

(bb) **"Approved Builder"** shall mean those Builders identified, from time to time, by the Declarant during the Class B Member Control Period, or the Board after such time, as being approved to purchase Lots and construct Dwellings for resale in the Community for so long as such persons remain on the approved builder list maintained by the Association and the ARC.

(cc) **"Dwelling"** and/or **"Dwelling Unit"** shall mean a single family residential home.

(dd) **"Newby Plantation"** shall mean "Newby Plantation Subdivision–AS RECORDED IN PLAT BOOK G, PAGE 292," along with any and all future phases on property described in Exhibits "B" and "C."

(ee) **"Supplementary Declaration"** shall mean an amendment to the Declaration subjecting additional property to the Declaration and/or modifying the Declaration as to that particular land submitted or still owned by the Declarant.

EXHIBIT "C"

All the lots in Newby Plantation Subdivision, Phase Two, as recorded in Plat Book H, Page 34, Probate Records of Limestone County, Alabama.

AND ALSO:

All property described in the attached legal descriptions, if any, as well as all contiguous properties within a one mile radius of the properties described either in Exhibit "B" or the specific properties set out in this Exhibit "C."

Recording Fee 160.00
TOTAL 160.00