

**COLBY MANOR SUBDIVISION**

**PHASE 1**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

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**THESE COVENANTS, CONDITIONS AND RESTRICTIONS OF COLBY MANOR PHASE 1 SUBDIVISION** ("Covenants") are made as of the \_\_\_\_ day of July, 2025, by **J.C. Development Company, LLC**, an Alabama limited liability company ("Developer").

**RECITALS**

A. Developer is the owner of the Property which consists of no more than seventy-three (73) Lots and Common Areas, as described in Section 1.31 below, and desires to own, develop, improve, lease and sell the Property for a planned community of approved Residential Use as defined in Section 1.32 below, subject to these Covenants in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

B. At such time as Developer has divested itself of all Lots and Common Areas, Developer shall cause the Association, as defined in Section 1.6 below, to be formed as an Alabama nonprofit corporation for the purpose of making Assessments, as defined in Section 1.5 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, subject to the conditions and limitations described below, Developer does hereby proclaim that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to these Covenants which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property and their respective heirs, executors, administrators, personal representatives, successors and assigns:

**1. DEFINITIONS**

- 1.1 **Amendment.** Any additions, deletions, or changes to these covenants and restrictions made by the Developer filed with the Office of the Judge of Probate of Lauderdale County, Alabama. Developer may cede its Amendment power to the Association at any time but is not required to do so until it has divested itself of all lots in Colby Manor Subdivision and any subsequent phases.
- 1.2 **ACC.** The term or letters "ACC" shall mean the Architectural Control Committee appointed pursuant to Section 5.1 hereof with the rights and obligations conferred upon such Architectural Control Committee pursuant to these Covenants. Developer shall retain the right to appoint ACC members so long as it holds title to any lot within the Property or subsequent phases. This right will pass automatically to the Association's Board of Directors upon Developer's sale of all Lots within the Property or subsequent phases.
- 1.3 **Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ACC pursuant to Section 5.5 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other improvements which may be made to any lot, Dwelling or Common Area.
- 1.4 **Articles of Incorporation.** The term "Articles of Incorporation" shall mean and refer to

the Articles of Incorporation or Certificate of Incorporation of the Association and all amendments thereto.

- 1.5 **Assessment.** The term "Assessment" shall mean the annual and special assessments and any other charges assessed against any Lot, or Owner by the Developer (and subsequently the Association) pursuant to Sections 8.1, 8.3, 8.4, 8.5 and 8.6 hereof.
- 1.6 **Association.** The term "Association" shall mean Colby Manor Homeowners' Association, Inc., an Alabama nonprofit corporation, which shall be formed at such time as the Developer has divested itself of any ownership interest in all of the Lots and Common Areas.
- 1.7 **Association Dues.** Monthly or annual dues set by the Developer and/or the Association for the maintenance of all Common Areas. These dues will also cover property taxes and public liability insurance on the Common Areas. Once set, these Dues will become due and payable, in advance, starting on the ninety-first (91st) day after closing date of sale, and will be deposited in its General Fund. Dues will be determined by the Developer until such time as Developer no longer owns any lots in the Subdivision. Once the Developer is divested of any ownership interest in the Subdivision, or once the Developer transfers the authority to set dues to the Association in writing, then the Association shall assume responsibility for setting the Association Dues, which shall be determined by a majority vote of the members of the Association. See Section 5 regarding Developer's responsibility as to lots owned by Developer.
- 1.8 **Attic.** The term "Attic" shall mean any unfinished space above the highest finished ceiling of any Improvement.
- 1.9 **Basement.** The term "Basement" shall mean any area of any Improvement that is confined by four subterranean walls, is not air conditioned or heated space, and is not finished for general living Accommodations.
- 1.10 **Board.** The term "Board" shall mean and refer to the members of the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws, as the same may exist from time to time.
- 1.11 **Bulk Storage Area.** The term "Bulk Storage Area" shall mean and refer to any portion of any Improvement which is unfinished, unheated and uncooled by air conditioning, heating or ventilation equipment, and used for the sole purpose of storage.
- 1.12 **Bylaws.** The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.
- 1.13 **Common Areas.** The term "Common Areas" shall mean and refer as applicable to all real and personal property now or hereafter owned by the Developer, and subsequently the Association at such time as Developer no longer owns any Lots in the Subdivision, for the nonexclusive, common use and enjoyment of the Owners and Occupants. The Common Areas shall include (a) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths or lanes, improvements, landscaped or other areas of common use, (b) all storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, basins or other areas and facilities located within the Development (other

than such areas located solely within the boundary lines of any Lot), (d) all maintenance areas located on any portion of the Development (other than such areas located solely within the boundary lines of any Lot), (e) 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, and (f) all easements and easement areas within the Development (other than such areas located solely within the boundary lines of any Lot), and any other areas or Improvements on or within the Development which are designated as Common Areas by Developer 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.

- 1.14 **Common Expenses.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Developer, or the Association (if the Association has assumed control of the Common Areas), including, without limitation, those expenses described in Section 8.4.3 below and all funds assessed for the creation or maintenance of reserves pursuant to the provisions of these Covenants.
- 1.15 **Covenants.** The term "Covenants" shall mean and refer to Colby Manor Covenants, Conditions and Restrictions as set forth herein, and all amendments thereto.
- 1.16 **Declarant.** The term "Declarant" shall mean and refer to J.C. Development Company, LLC, an Alabama limited liability company, P.O. Box 632, Killen, Alabama 35645 and its successors and assigns.
- 1.17 **Developer.** The term "Developer" shall mean J.C. Development Company, LLC, an Alabama limited liability company, its successors and assigns.
- 1.18 **Development.** The term "Development" shall mean and refer to real property, consisting of seventy-three (73) Lots, easements and access roads, being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and all Improvements thereon which may or may not be submitted thereto as Developer, in its sole discretion, shall deem necessary or desirable. The Property comprises the Development, and the Property and the Development may be referred to herein as "Colby Manor" or the "Subdivision".
- 1.19 **Dwelling.** The term "Dwelling" shall mean and refer to any structure built on any Lot intended for Residential Use. Wherever any of the phrases "Lot or Dwelling", "Lots or Dwellings", "Lot and Dwelling" or "Lots and Dwellings" appear herein, the term "Dwelling" or "Dwellings" in those instances shall include the Lot or Lots upon which such Dwelling or Dwellings are constructed.
- 1.20 **Easement.** The term "Easement" shall mean and refer to designated areas within the boundary of lots for the placement and maintenance of utilities or for Access and egress to the common areas by other lot owners and their guests or for maintenance of the common areas by duly authorized personnel.
- 1.21 **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.

- 1.22 **Guest.** The term "Guest" shall mean and refer to those members of the public who are invited by the Developer and/or an Owner to enjoy limited use of the Common Areas and Amenities of Colby Manor Phase 1 Subdivision. Limitations on any Guest's use of Common Areas shall be established initially by the Developer and then by the Association once the Developer has divested itself of all Lots in the Subdivision.
- 1.23 **Improvement.** 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, Dwelling 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, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot.
- 1.24 **Institutional Mortgagee.** The term "Institutional Mortgagee" shall mean and refer to (a) any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making mortgage loans, (b) any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, and (c) any pension or profit-sharing trust that makes mortgage loans or that purchases mortgage loans in the secondary market, which holds a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Probate Office of Lauderdale County, Alabama and which has given notice to the Association that it holds such Mortgage.
- 1.25 **Living Space.** The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are open to grade on at least one wall, heated and cooled by heating, ventilating and air conditioning equipment and finished for general living Accommodations, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, Bulk Storage Areas, Attics and Basements.
- 1.26 **Lot.** The term "Lot" shall mean and refer to any portion of the Property which will be owned in fee simple by an Owner and upon which the Owner thereof intends that a Dwelling be constructed. Upon the recordation of any subdivision plat for the Property, each Lot indicated thereon shall be deemed a Lot for purposes of these Covenants.
- 1.27 **Mortgage.** The term "Mortgage" shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Lauderdale County, Alabama.
- 1.28 **Mortgagee.** The term "Mortgagee" shall mean and refer to the holder of any first Mortgage which has given notice to the Association that it holds such Mortgage and shall include any Institutional Mortgagee.
- 1.29 **Occupant.** The term "Occupant" shall mean and include any Owner and the family

members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling within the Property. All actions or omissions of any Occupant are and shall be deemed the action or omission of the Owner of such Lot and Dwelling.

- 1.30 **Owner.** The term "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, 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 or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.
- 1.31 **Property.** The term "Property" shall mean and refer to that certain real property situated in the City of Florence, Lauderdale County, Alabama which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, which has been subdivided into seventy-three (73) Lots and Common Areas by a map recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, at Map Book \_\_\_\_, Page \_\_\_\_.
- 1.32 **Residential Use.** The term "Residential Use" shall mean and refer to the occupancy of any Dwelling for detached single-family residential housing purposes.
- 1.33 **Special Assessments.** The term "Special Assessments" shall mean and refer to any assessment that may also be incurred by a lot owner due to the owner's violation of these covenants and restrictions and the direct cost to remedy the violation, including reasonable legal costs.
- 1.34 **Street.** The term "Street" or "Streets" shall mean all roads and their rights of way outside the curbs. The Street is or will be owned, policed, and maintained (after one year) by the City of Florence, Alabama and is available for use by the public.
- 1.35 **Utility System.** The term "Utility System" shall mean and refer to the apparatus of any outside service provider which is located outside a lot or inside a lot, but within designated easements.

## 2. PROPERTY SUBJECT TO COVENANTS

- 2.1 **General.** Developer hereby proclaims that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of these Covenants and the Property, any part thereof, including each Lot, Dwelling and Common Area therein, shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of these Covenants, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the land and Property and shall be binding upon and inure to the benefit of Developer, all Owners, and all Occupants of the Property, and any Lot or Dwelling and Common Area thereof. These Covenants shall not apply to or affect any real property owned by Developer other than the Property.

- 2.2 **Duration.** The Covenants, Conditions, and Restrictions contained in this Declaration, as the same may be amended from time to time, shall run with and bind the Lots perpetually, and shall inure to the benefit of and be enforceable by the Developer, the Association, and the Owners of Lots and their legal representatives, heirs, successors and assigns.
- 2.3 **Mutuality of Benefit and Obligation.** The provisions of these Covenants are made (a) for the mutual and reciprocal benefit of each Lot, Dwelling and Common Area within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the Property, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.
- 2.4 **Property Ownership.** All Lots and Common Areas within Colby Manor Subdivision shall be held in fee simple. Neither the Declarant's, Developer's or Association's positions shall in any way be construed to constitute a condominium form of ownership.
- 2.5 **Development of Property.** Subject to the approval of any Governmental Authority with appropriate jurisdiction, Developer shall have the right, but not the obligation, for so long as Developer owns any portion of the Property, or until such earlier date as Developer elects in its sole discretion to relinquish such right, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Developer, 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 Lots owned by Developer or of the Common Areas (but Developer shall not have the right to increase the number of Lots in the Property), (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 Developer.
- 2.6 **Subdivision Plat.** Developer 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 Developer may deem necessary with regard to the Property, including without limitation, the locations and dimensions of all Lots (but Developer shall not have the right to increase the number of Lots in the Property after the sale of a lot to a third party purchaser), Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, Access easements, set-back line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into these Covenants.
- 2.7 **Adjoining Property.** Nothing contained herein, nor the development of the Property, shall preclude, or be interpreted to preclude, Developer's right and ability to develop and use any land owned by Developer and adjoining or near Colby Manor Subdivision, without restriction, for any purpose or use permitted by the governmental authorities

### 3. EASEMENTS

- 3.1 **Reservation of General Access Easement.** Developer does hereby establish and reserve for itself, the Association, any future ACC and their respective agents, employees,

representatives, 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 and Dwelling for (a) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of these Covenants, and (b) the performance of the respective duties of Developer, the Association, and the ACC hereunder, including, without limitation taking any action required or permitted to be taken by Developer, the ACC or the Association pursuant to any of the terms or provisions of these Covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Dwelling directly affected thereby

### **3.2 Reservation of Easements with Respect to Common Areas.**

3.2.1 Easement Upon Common Areas. Developer does hereby establish and reserve, for itself, any future ACC, 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 Property 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 Developer to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own any portion of the Property, Developer 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 Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

3.2.2 Changes in Common Areas. Developer 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 (except that Developer shall not have the right to increase the number of Lots in the Property), or other portions of the Property or of the Development owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Development, the Property, or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

### **3.3 Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself, and subsequently the Association, and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating all utilities necessary or convenient for the use of any portion of the Development



including, without limitation, publicly or privately owned and operated electrical, gas, telephone, television or cable system, water and sewer services, storm drains and sewers, drainage systems, retention ponds, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.3 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.3 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and right reserved and established pursuant to this Section 3.3 to take reasonable action to repair any damage to any Lot or Dwelling caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

**3.4 Reservation of Easements for Signs, Walks, Trails, Walls and Fences.**

3.4.1 Easement for Walks, Trails and Signs. Developer does hereby establish and reserve for itself, the Association, and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width on any side of any Lot or Dwelling lying parallel and directly adjacent to and abutting any public or private roadway, for the purpose of constructing, installing, maintaining, repairing, operating, replacing sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs, street lights and related improvements; provided, however, that neither Developer nor the Association, by virtue of this sentence, shall have any obligation to construct any of the foregoing improvements.

3.4.2 Easement for Perimeter Wall. Developer does hereby establish and reserve for itself, the Association, and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width on the side of any Lot lying parallel to the perimeter boundary of the Development for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Development; provided, however, that neither Developer nor the Association, by virtue of this sentence, shall have any obligation to construct any such perimeter wall, fence, mound or berm.

**3.5 Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 7.2.2 below, Developer does hereby establish and reserve for itself, and subsequently the Association, and each of their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot or Dwelling 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 Property; provided, however, that such

easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.6 **Reservation of ACC Standards or Environmental Easement.** Developer does hereby establish and reserve for itself, the ACC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities, the Developer, and subsequently the Association. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.6 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

3.7 **Landscaping by Owners on Easement Areas.** The Developer, 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 of any Lot or road right-of-way within the Property by any Owner, Occupant or any other party.

#### 4. THE ASSOCIATION

4.1 **Creation.** At such time as the Property is fully developed, the Developer shall form the Association. The Association shall include all Lots in Colby Manor Phase 1 Subdivision. Owners of Lots in Colby Manor Phase 1 Subdivision shall not be members of the Association until such time as is fully developed. Developer may exclude subsequent phases of the Property from the Association and/or Covenants. If Developer decides to exclude any future phase of the Property from the Association, then residents of such future phases shall be excluded from use of the Common Areas. The Association shall have the power, by two-thirds vote of its members in good standing, to invite such excluded individual lot owners to become members, subject to all rules of this Declaration and to the Bylaws of the Association.

4.2 **Meetings.** Once constituted, Association meetings shall be held at such reasonable times, and upon such reasonable notice, as the Association Officers shall deem appropriate.

4.3 **Membership.** The Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association for so long as Developer owns any portion of the Property, or until such earlier date as Developer elects, in Developer's sole discretion, to terminate Developer's membership in the Association, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owners of such Lot shall be entitled to only one vote in the Association and only one of the Owners shall be entitled to hold a position in the Association at any given time. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the

Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of these Covenants, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board of the Association.

- 4.4 **The Board.** The Board of the Association shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer owns any Lot in the Property, or until such earlier date as Developer elects, in Developer's sole discretion, to relinquish such right. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.4.
- 4.5 **Voting Rights.** Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws (which, among other things, provided that only Developer, for so long as Developer owns any Lot in the Property, or until such earlier date as Developer may elect, in Developer's sole discretion, shall be exclusively entitled to take various actions and vote on all matters to be voted on by the members of the Association) and the rights of the Association, as the case may be, to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.1 below, the Owner of each Lot shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot. Each Owner, by Acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the re-subdivision of any Lot by Developer pursuant to Section 2.6 above. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted. For purposes of this Section 4.5, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots owned by Developer.
- 4.6 **Duties and Powers of Association.** The Association shall exercise all rights and responsibilities herein contained, and shall operate for the benefit, betterment, and enhancement of enjoyment of Colby Manor Subdivision and its Owners. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in these Covenants, the Association shall have the power to perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by these Covenants or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners. Nothing herein shall be construed as a restriction of the rights, duties, responsibilities and obligations of the Association set forth in the Articles of Incorporation or the Bylaws. The

Developer and the Association shall also have the right to adopt Rules and Regulations governing the personal conduct of Owners, tenants, and guests, and to establish penalties for the infraction thereof, and shall further have the right to require every Owner to enter into a binding Agreement to pay dues, fees and assessments as necessary.

- 4.7 **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 Property. 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 proper operation of any portion of the Property, 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 authorized by the Board, exercise all the powers and shall be responsible for the performance of 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 hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Property, or the enforcement of these Covenants, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.
- 4.8 **Management by Developer or its Affiliates.** In addition to the rights and authority granted to the Association in Section 4.6, Developer may, but shall not be obligated to, be employed as the manager of the Association and the Property for so long as Developer owns any Lot in the Property, or until such earlier date as Developer elects, in Developer's sole discretion, to relinquish such right, at such compensation and on such terms as would be usual, customary and obtainable in an arm's 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 Property. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section 4.8 and specifically be deemed to have approved any management agreement entered into by the Association or Developer.
- 4.9 **Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings and Common Areas. Each such rule and regulation shall be binding upon all Owners and Occupants until and unless any such rule or regulation is specifically overruled, canceled or modified by the Board, the Developer or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that for so long as Developer owns any Lot in the Property or until such earlier date as Developer elects in Developer's sole

discretion, to relinquish such right, no such rule or regulation may be overruled, canceled or modified unless such action is also approved by Developer.

- 4.10 **Indemnification.** The Association shall and does hereby agree to indemnify, defend and hold each and every officer, agent, representative and member of the Board harmless from and against any and all expenses, including court costs and reasonable attorney's fees, suffered, paid or incurred in any action, suit or other proceedings (including the settlement of any suit or proceedings if approved by the Developer and the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the Board. The officers, agents, representatives and members of the Board shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the Board harmless from any and all liability to others on Account of any such contract or commitment. The indemnification, obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the Board may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association may maintain general liability and officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.10 and the costs of such insurance shall constitute a Common Expense.

5. ARCHITECTURAL CONTROL COMMITTEE, DEVELOPMENT AND ARCHITECTURAL STANDARDS

- 5.1 **Architectural Control Committee (ACC).** For so long as Developer owns any Lot in the Property or until such earlier date as Developer elects in Developer's sole discretion, to relinquish such right, the Developer, through its authorized representatives, shall act as the sole member of the ACC and shall have absolute authority to review and approve all architectural drawings, building plans and designs. Each Owner acknowledges, understands, and agrees that no construction or landscaping shall begin on any Lot or the Common Areas without review and approval by the ACC. This covenant shall apply to all construction activity and landscaping, both new and future.
- 5.2 **Committee Composition.** For so long as Developer owns any Lot in the Property or until such earlier date as Developer elects in Developer's sole discretion, to relinquish such right, the Developer, through its authorized representatives shall act as the ACC. Once all Lots have been sold and Colby Manor is fully developed, the Developer shall relinquish control of the ACC by filing a written instrument in the Office of the Judge of Probate of Lauderdale County, Alabama, appointing the successor members of the ACC. After the initial successor members of the ACC are appointed by the Developer and have served a term of three (3) years, the ACC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.3 below. The members of the ACC may, but shall not be required to be, members of the Association or Owners of any Lot. The term of office for each member of the ACC shall be three (3)

years, except as provided in Section 5.3(d) below. Any member appointed or elected as provided in Section 5.3 below may be removed with or without cause in the manner provided in Section 5.3 below. Each Owner, by Acceptance of a deed to or other conveyance to a Lot, shall be deemed to ratify the provisions of Section 5.3 below.

### **5.3 Appointment and Removal of ACC Members.**

5.3.1 For so long as Developer owns any Lot in the Property, or until such earlier date as Developer may elect, in Developer's sole discretion, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ACC.

5.3.2 At such time as Developer no longer owns any Lot in the Property, or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ACC as provided in Section 5.3.1 above, then the members of the ACC shall be appointed by the Board of the Association.

5.3.3 Any member of the ACC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 5.3.1 above are in effect, or (ii) the Board of Directors of the Association, in the event the provisions of Section 5.3.2 above are in effect. In the event of death or resignation of a member of the ACC, then Developer, in the event the provisions of Section 5.3.1 above are applicable, or the Board of Directors of the Association, in the event the provisions of Section 5.3.2 above are applicable, as the case may be, shall appoint a substitute member of the ACC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.3.4 The Developer shall appoint the initial ACC for terms ranging from one (1) to three (3) years each, in Developer's sole discretion. At the expiration of the term of office of each respective member of the initial ACC, Developer, in the event the provisions of Section 5.3.1 above are applicable, or the Board of Directors of the Association, in the event the provisions of Section 5.3.2 above are applicable, shall appoint a successor of such member for a period of three (3) years.

5.4 **Procedure and Meetings.** The ACC shall elect a chairman and he or she, or in his or her absence, the vice-chairman, shall be the presiding officer at all meetings of the ACC. The ACC shall meet as necessary, as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ACC shall constitute a quorum of the ACC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ACC shall constitute the action of the ACC on any matter which comes before it. The ACC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ACC in performing its functions set forth herein. Each member of the ACC may be paid a stipend or honorarium as may from time to time be determined by the Developer, in the event the provisions of Section 5.3.1 above are applicable, or the Board of Directors of the Association, in the event the provisions of Section 5.3.2 above are applicable and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ACC, subject to the approval of such expenses by the

Developer, in the event the provisions of Section 5.3.1 above are applicable, or the Board of Directors of the Association, in the event the provisions of Section 5.3.2 above are applicable. The ACC shall have the right from time to time to adopt and establish such rules and regulations as may be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ACC.

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

5.6 **General Construction Requirements.** As further detailed herein, Owner understands that the following requirements control all construction on the Lots.

5.6.1 Builders and Contractors. Owner agrees that all construction and landscaping on his/her Lot shall be performed on his/her Lot by a contractor or contractors approved by the ACC. THE ACC OR THE DEVELOPER SHALL HAVE NO RESPONSIBILITY FOR THE ACTIONS OR THE QUALITY OF THE WORKMANSHIP OF ANY GENERAL CONTRACTOR OR SUB-CONTRACTOR.

5.6.2 Setbacks. All Lots shall have a minimum front setback of twenty-five (25) feet from the road and a minimum setback of eight (8) feet on the sides and a minimum rear setback of ten (10) feet.

5.6.3 Plans. As detailed below, Owners shall submit two sets of blueprints for structures and two completed site plans showing landscaping detail, and a material specification sheet to the ACC for review and plan approval. These will be kept on file by the Developer or Association. IT IS RECOMMENDED THAT ACC APPROVAL BE SECURED BEFORE SUBMITTING A REQUEST TO THE CITY OF ATHENS, ALABAMA FOR A BUILDING PERMIT. Neither the ACC nor the Developer is in no way responsible for securing regulatory permits nor are they in any way responsible for Owners or Contractors compliance therewith

5.6.4 Merging of Lots. Merging of lots for the purpose of increasing lot and house width may be allowed with the approval of the ACC for the purpose of constructing a single dwelling on the merged Lots. If two Lots are merged, the Dwelling must be built in the middle of the two Lots. No one shall purchase an additional Lot adjacent to a Lot on which a Dwelling is built and leave the newly acquired Lot vacant.

5.6.5 Minimum House Size. All houses in the Subdivision shall contain a minimum of 1,500 square feet of heated and cooled living space on the main living level, plus a

double garage, finished, of at least 400 square feet; in addition, second stories, basements, attic bonus rooms, and exterior porches, decks, and verandas are permitted.

- 5.6.6 Driveways and Walks. Driveways and walkways shall be constructed of concrete, stone, or brick. Common sidewalks shall be constructed of concrete. Driveways and turn arounds shall be of adequate size to accommodate off-street parking for at least two (2) full-size automobiles.
- 5.6.7 Foundations. Foundations shall be either crawlspace, basement type or slab type.
- 5.6.8 Exterior Walls. Exterior walls shall be constructed primarily of brick or stone veneer. Up to 20% of the total exterior walls may be vinyl, aluminum, stucco (no "drivet"), wood, or poured cement based composite material, and as further set forth herein.
- 5.6.9 Windows and Exterior Doors. Windows shall be wood or vinyl GBG. Exterior doors may be solid wood, vinyl GBG, or metal clad.
- 5.6.10 Roofs, Eaves, Gutters. Roofs shall be 10:12 pitch or 12:12 on the main house and garage. Roofing material shall be architectural dimensional shingles, tile, slate or architectural composite. Conventional metal roofs are prohibited. Soffit and fascia can be vinyl or aluminum wrapped with perforated vent soffit material. Gutters shall be metal, preferably continuous run type with metal downspouts.
- 5.6.11 Mailboxes. Mailboxes shall be constructed of wrought iron. Drawing of mailbox should be submitted to ACC for approval.
- 5.6.12 Fences. No fences or other structures (except mailbox) shall be permitted any closer to the street than the front set-back line of the house. Any fences in the side or rear yards require the prior approval of the ACC as to suitable aesthetics. Any fence or other landscape item installed on a platted easement may be removed for use of the purpose of the easement without recompense of any kind to the Lot owner except restoration of lawn grass.
- 5.6.13 Trees and Shrubbery. A minimum of fifteen (15) shrubs (including trees) are required in all front yards. ACC approval of site plan and future plantings is required for front yards.
- 5.6.14 Grass. Front and sides will be sod.
- 5.6.15 Pools. In-ground swimming pools, wading pools, and garden pools will be permitted in rear yards. NO ABOVE GROUND SWIMMING OR WADING POOLS ARE PERMITTED. Pools, on deck or veranda Jacuzzis will be permitted with ACC permission. Security fences, approved by the ACC are required around all pools.
- 5.6.16 Signs. Signs are not permitted on any house or lot unless approved, in written permit form, by Declarant, Developer or the Association.
- 5.6.17 Antennas. Except satellite dish antennas of 24" (twenty-four-inches) diameter or



smaller, no communication antennas, wires or other paraphernalia shall be permitted on any Lot or House. Approved dishes must be mounted on the rear of house or inside of fence and not visible from the street.

- 5.6.18 Window Air Conditioners. No window mounted air conditioning unit shall be permitted except a temporary permit may be issued for a window unit if such unit has been prescribed by a physician or other medical professional for medical needs.
- 5.6.19 Exterior Lighting. All exterior lighting must be approved by the ACC with the exception of holiday decorations, which may be installed and used for reasonable periods without further approval, except as further limited herein.
- 5.6.20 Utility Meters. All utility meters, pipes, wires, and related devices can be installed on the sides or front of the house.
- 5.6.21 Architectural Accents and Exterior Trim Colors. Require ACC approval.
- 5.6.22 Liability. As detailed herein, approval by the Declarant, Developer, or the ACC of a plan or of an application by an owner shall not constitute a basis for any liability of the Declarant, Developer, the ACC, or the Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements. The Declarant, the Developer, the ACC, or the Association is/are in no way responsible individually or collectively for regulatory authority permits.

## **5.7 Approval of Plans and Specifications.**

- 5.7.1 IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING BY ANY OWNER, OTHER THAN DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ACC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.7.2 BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING AREAS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, GREENHOUSES, PLAYHOUSES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, RADIO OR TELEVISION ANTENNAS, GAZEBOS, GUEST OR SERVANTS' QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY DWELLING OR IMPROVEMENTS, UNLESS THE PLANS AND

SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ACC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.7.2 BELOW.

5.7.2 The ACC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property. Prior to the commencement of construction of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ACC plans and specification and related data for all such Improvements, which shall include two copies of each of the following:

5.7.2.1 Plans and specifications at a scale of  $\frac{1}{4}" = 1'-0"$  or larger, to include the following:

- (a) Exterior elevations of all improvements
- (b) All finished floor elevations
- (c) A description of all exterior materials
- (d) Foundation plan.
- (e) Floor plans for each floor of the Dwelling or Improvements to be constructed.
- (f) Square feet of Living Space per floor and total.

5.7.2.2 Color samples and specifications of all exterior materials and finishes.

5.7.2.3 Site development plan prepared by a licensed surveyor at a scale of  $1" = 20'$  indicating the following:

- (a) Lot lines, building setbacks, utility easements and adjacent street(s).
- (b) Existing grades at 2' intervals from the edge of pavement along the entire width of the Lot to a minimum or 30' behind the Dwelling to be constructed or greater if affected by construction, to be defined as the "Construction Area".
- (c) Location of all trees 6" in diameter and larger located within the Construction Area and note which of those existing trees are to be cleared.
- (d) Location of waste disposal field.
- (e) Erosion control measures.
- (f) Footprint and finished floor elevation of Dwelling to be constructed.
- (g) Location and size of driveways, decks, terraces, patios, outbuildings, retaining walls, mechanical units, utility meters and drainage pipes.

(h) Proposed layout of underground utility lines from the street to the Dwelling or Improvements to be constructed.

(i) Proposed grades at 2' intervals tied to existing grades.

5.7.2.4 An exterior lighting plan, including specifications for any exterior lighting to be utilized with respect to such Lot or Dwelling.

5.7.2.5 A landscaping plan prepared and submitted in accordance with the provisions of Section 5.8 below.

5.7.2.6 Such other plans, specifications or other information or documentation as may be required by the Architectural Standards.

5.7.3 The ACC shall, in its sole discretion determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the ACC shall be retained in the records of the ACC and the other copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". The ACC shall establish a fee to be charged to and paid by each Owner who submits plans and specifications to the ACC for approval, which fee shall be sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, an Owner may, without the necessity or requirement that ACC approval or consent be obtained, make interior improvements and alterations within his Dwelling that do not affect exterior appearance in any way and that do not increase the Living Space within such Dwelling as previously approved by the ACC.

5.7.4 The ACC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of these Covenants, including purely aesthetic considerations, any failure to comply with any of the provisions of these Covenants or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Development or the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or Dwelling or any other matter which, in the sole judgment of the ACC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The ACC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ACC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate

the ACC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Property.

- 5.7.5 The ACC will respond in writing to all requested plans and specifications submitted for Colby Manor lots within 30 days from date of receipt of request.
- 5.7.6 Any revisions, modifications or changes in any plans and specifications previously approved by the ACC must be approved by the ACC in the same manner specified above.
- 5.7.7 If construction of any Dwelling or Improvements has not substantially commenced (by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval by the ACC of the plans and specifications for such Dwelling or Improvements or changes or modifications to such Dwelling or Improvements, then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all plans and specifications for any such Dwelling or Improvements to the ACC for approval in the same manner specified above.
- 5.7.8 Any approval of plans and specifications by the ACC pursuant to this Section 5.7 shall not be construed in any respect as a representation or warranty of the ACC, the Developer, or the Association that such plans are in conformity with any applicable rules, regulations, and requirements of any Governmental Authorities or that any such plan or the Dwelling or Improvement based thereon is architecturally sound, meets any standards of engineering compliance, or is properly designed. It shall be the responsibility of each Owner who submits any such plans to the ACC to satisfy himself as to such conformity and proper design.

5.8 **Landscaping Approval.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property, and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefor have been submitted to and approved by the ACC. The provisions of Section 5.7 above regarding the method that such plans are to be submitted to the ACC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

5.9 **Construction Without Approval.** If (a) any Improvements or Dwellings are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without Declarant, Developer or the ACC approval of the plans and specifications for the same, or (b) the Declarant, Developer or the ACC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated these Covenants and the Declarant, Developer or ACC shall have the right to exercise any of the rights and remedies set forth in Section 5.15 below. The ACC shall not have the right to withhold approval from Declarant or Developer.

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

5.11 **Subsurface Conditions.**

5.11.1 The Property may be located in an area which includes underground mines, tunnels or other geological formations or conditions which may result in surface subsidence. Approval of the submitted plans and specifications by the ACC as herein provided shall not be construed in any respect as a representation or warranty of the ACC and/or the Developer and/or the Association to the Owner submitting such plans and specifications. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Lot for the construction of any and all Dwellings or other Improvements thereon.

5.11.2 Neither the ACC and its individual members, nor the Association and its members, nor the Developer and its partners, agents and employees and the officers, directors, agents and employees of its partners (both in its capacity as a Developer as herein defined and as the owner or prior owner of any minerals subjacent to the Property), shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on Account of injuries to any parcel of the Property, to any buildings, Improvements, Dwellings or other structures now or hereafter located upon any parcel of the Property, or on Account of any past or future injuries to any Owner, Occupant, or any other person in or upon any parcel of the Property, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels or other geological formations or conditions) under or on the Property.

5.12 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ACC, the Association, nor any agent, employee, representative, member, shareholder, partner, joint venturer, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on Account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Section 5, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) any failure to approve or disapprove any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Section 5, (d) any construction or performance of any work related to such plans, drawings and specifications, (e) any bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of any defect structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore or any past, present or future soil

and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels or other geological formations or conditions on or under any Lot or Dwelling), and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or Dwelling or any Improvements situated thereon.

- 5.13 **Commencement and Completion of Construction.** With respect to each Lot, construction of the permanent Dwelling shall be commenced within one hundred eighty (180) days from the date of purchase of such Lot. Upon commencement of construction of such Dwelling, construction work thereon shall be undertaken diligently and continuously and shall be completed, including landscaping, within three hundred sixty-five (365) days of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities. In addition to all other rights and remedies for breach of these Covenants, in the event the Owner of any Lot shall fail to commence construction of a Dwelling within one hundred eighty (180) days from the date of purchase of such Lot from Developer, then Developer shall have the option, but not the obligation, to repurchase such Lot for an amount equal to the purchase price paid to Developer for such Lot, without interest. In the event that the Owner fails to complete work begun, Declarant, Developer or the Association may complete the ACC approved work and levy any recovery cost against the Owner. These provisions do not preclude, negate, diminish or in any other way affect the right and remedies of the Declarant, Developer or the Association otherwise allowed by law.
- 5.14 **Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in these covenants to the contrary, Developer, its agents, employees, successors and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots or the development of Lots, Dwellings, and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 5.14 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and for any related activities.
- 5.15 **Enforcement and Remedies.** In the event any of the provisions of this Section 5 are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guest, invitees, agents, employees or contractors of any Owner or Occupant, then the ACC and the Association shall each have the right but not the obligation at their option to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ACC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ACC or the Association in enforcing any of the provisions of this Section 5, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any

other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ACC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provision of this Section 5, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.6 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.9 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ACC or the Association may exercise at law or in equity or any of the enforcement rights specified in Section 6.37, 8.9, 11.1, 11.2 and 11.3 below.

5.16 **Compliance Certification.** The ACC or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ACC approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of these Covenants. Any such approval shall not be construed in any respect as a representation or warranty of the ACC and/or Developer and/or the Association that all applicable rules, regulations and requirements of all Governmental Authorities with respect to any such Lot or Dwelling have been fulfilled.

5.17 **Repurchase Option.** In the event the Owner of any Lot desires to convey such Lot prior to the expiration of one-hundred-twenty (120) days after the purchase of such Lot from Developer, and in the event the Owner has not then commenced construction of a Dwelling thereon, Developer shall have and retains the option, but not the obligation, to purchase such Lot for an amount equal to the purchase price paid to Developer for the Lot, without interest. Any such Owner shall give Developer written notice of such Owner's desire to sell such Lot, and Developer shall have thirty (30) days after receipt thereof to exercise Developer's option to repurchase such Lot.

## 6. USE AND DEVELOPMENT RESTRICTIONS

In order to keep the Property in a desirable condition for the Owners and their invitees, the following requirements and limitations are made a part of these Covenants, Conditions and Restrictions, and in addition to other pertinent items contained herein, shall be considered as the initial Rules and Regulations of the Development.

6.1 **Use Restrictions.** Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.1, each Lot and Dwelling shall be used for Residential Use only and no trade or business of any kind may be carried on in or from any Lot or Dwelling. The use of any portion of a Dwelling as an office or a "home office" by an Owner shall not be considered a violation of this covenant provided such use does not create regular customer, client or employee traffic, causes no disturbance, commerce is not apparent from the street or common area, and further provided any such use is in compliance with all applicable rules, regulations and ordinances of any Governmental Authority having jurisdiction thereof. Notwithstanding anything provided in this Section 6.1 to the contrary, the

Property or any portion thereof, including specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas or single-family detached residential purposes, then such use must first be approved in writing by the ACC and the Developer. In addition, no immoral, improper, offensive, or unlawful use shall be made of or on any Lot or Common area, and all laws of governmental agencies shall be observed. No trade, business, or commercial activity, including "yard sales" or "garage sales" shall be permitted anywhere on the Property, except rental of the property and home offices.

- 6.2 **ACC Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot unless such Dwelling and/or Improvements have been approved by the ACC in the manner set forth in Section 5 above.
- 6.3 **Underground Utilities.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.
- 6.4 **Building Setbacks.**
- 6.4.1 Subject to the provisions of Section 6.5 below, minimum building setback lines for all Dwellings shall be established either (i) by the ACC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of the Development), or (iii) in the deed from Developer to the Owner of such Lot, all in accordance with applicable rules, regulations and ordinances of any Governmental Authority having jurisdiction thereof.
- 6.4.2 No Dwelling shall be built within the setback areas described in Section 6.4.1. All porches, terraces, decks, and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.4.
- 6.5 **Siting of Dwellings.** Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling or Improvements to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ACC pursuant to the provisions of Section 5.7 above.
- 6.6 **Trees.** No Owner other than Developer, shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of six inches or more, and located on any Lot prior to any construction or clearing activity on such Lot, without first obtaining the approval of the ACC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such by the ACC nor shall the foregoing be deemed to release any Owner from the provisions of Section 7.1 below.
- 6.7 **Height Limitations.** No Dwelling shall exceed thirty-five (35) feet in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway to the mid-point of the roof gable.
- 6.8 **Minimum and Maximum Living Space.** Minimum Living Space requirements for the



main structure of any Dwelling, exclusive of open porches and open garages, shall be fifteen hundred fifty (1,500) gross square feet with garage a minimum of four hundred (400) square feet.

**6.9 Landscaping.**

- 6.9.1 The landscaping plan for each Lot within the Property shall be submitted to the ACC for approval pursuant to the provision of Section 5.7 above. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his or her Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot.
- 6.9.2 All front, side and back yards of each Lot shall be sodded with grass, unless approved by the ACC as a natural area or unless the same is landscaped with shrubbery and other approved plant life.
- 6.9.3 All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ACC no later than the date of occupancy of any Dwelling situated thereon.
- 6.9.4 No hedge or shrubbery planting shall be placed or permitted to remain on any Lot where such hedge or shrubbery interferes with traffic sight lines for roadways within or adjacent to the Property. The determination of whether any such obstruction exists shall be made by the ACC, whose determination shall be final, conclusive and binding on all Owners.
- 6.9.5 No rocks or other substances shall be placed on any Lot as a front or side yard border or for the purpose of preventing vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit Access to the same. No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot.
- 6.9.6 No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or in the rear (back) yard of any Lot if the same would be visible from any street.
- 6.9.7 The ACC may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot, which rules and regulations may require that either a minimum dollar amount be established and utilized as the landscaping budget for each Lot, or that a minimum number of plantings of certain sizes, types and specifications be used on any Lot.
- 6.9.8 No Owner shall allow the lawn grass on his or her Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground.
- 6.9.9 Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins,

Easter decorations) shall be promptly removed from each Lot within fifteen (15) days after such holiday.

**6.10 Roofing.**

- 6.10.1 The ACC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling.
- 6.10.2 No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot, including, without limitation, the roof of any Dwelling if the same would be visible from any street.
- 6.10.3 No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and shall (i) be either painted the same color as the roofing material used for such Dwelling or finished in copper, and (ii) to the extent practicable, not be visible from any street.
- 6.10.4 No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

**6.11 Exterior Lighting.** All exterior lighting for Dwellings, including, without limitation, free standing lighting and lights attached to the exterior of a Dwelling, must be of a design and in a location approved by the ACC.

**6.12 Exterior Materials and Finishes.**

- 6.12.1 Approved exterior building material finishes for any Dwelling shall include brick, stone, stucco, solid wood siding (e.g., cypress or other solid wood), and such other materials as may be approved by the ACC. All wood surfaces utilized on the exterior of any Dwelling shall be painted or stained. Prohibited exterior finish materials shall include particle board, plywood, or any other type of pressed, laminated or fabricated siding, vertical siding, simulated brick or stone and any other materials as the ACC may from time to time determine, unless otherwise approved by the ACC.
- 6.12.2 All brick, stonework and mortar, as to type, size, color and application, must be approved by the ACC. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors and shutter shall be subject to ACC approval.
- 6.12.3 No wooden steps shall be allowed on the front or sides of any Dwelling. Concrete steps must be finished in tile, brick or stone. The ACC may limit the number of steps serving the front entrance door of any Dwelling that is visible from any street.
- 6.12.4 No concrete, concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same

materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc.).

6.12.5 Metal flashing valleys, vents and gutters installed on a Dwelling shall be either painted to blend with the color of the exterior materials to which it is adhered or installed or finished in copper.

6.13 **Chimneys.** The exterior of all chimneys shall be constructed of either brick, stone or stucco. No cantilevered chimneys or chimneys with siding shall be permitted unless approved by the ACC. If a fireplace utilizes a metal spark arrester or other metal venting apparatus at the top of the chimney, then a painted metal or copper cowling or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be either painted to blend with the color of the roofing material used for such Dwelling, or finished in copper.

6.14 **Garages.**

6.14.1 Garage doors shall be constructed of such materials as are approved by the ACC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ACC.

6.14.2 All automobiles or other passenger vehicles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein. The parking of vehicles in driveways is permissible.

6.15 **Fences.** All backyards shall be enclosed with vinyl fencing. No chain link or wire fences shall be permitted within the Property except with regard to maintenance areas within the Common Areas and those fences erected by Developer. No fences shall be allowed in the front yard of any Lot. Above ground electric fences shall not be permitted. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ACC.

6.16 **Windows, Window Treatments and Doors.**

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

6.16.2 The ACC may adopt guidelines for the types of windows and materials from which windows may be constructed on any Dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

6.17 **Mailboxes.** Only one (1) mailbox shall be allowed for any Lot. All mailboxes shall be of

the type, design, color and location as may be established in the Architectural Standards or as approved by the ACC. Mailboxes shall contain only the name and address of the Owner or Lot. No further inscription, paintings, ornaments or artistry shall be allowed. In lieu of mailboxes, the Association may, at its option, provide within any of the Common Areas, and require all Owners' use of, a community mail center. If the U.S. Postal Service requires Colby Manor to have a cluster mailbox, the Developer shall be responsible for installation of the cluster mailbox.

- 6.18 **Soil Erosion and Drainage.** Each Owner shall provide and maintain on his or her Lot adequate soil erosion measures and drainage facilities to accommodate any storm water runoff resulting from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also ensure 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 storm water drainage and runoff requirements and regulations of all applicable Governmental Authorities, and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any Governmental Authority. No Owner shall construct, install or maintain or authorize any third party to construct, install, or maintain on such Owner's Lot any drainage facility which, in the sole opinion of ACC, would result in any damage or possible damage to the Property or would otherwise be unsightly. Each Owner, by Acceptance of a deed to his or her Lot, shall and does hereby indemnify, defend and agree to hold Developer, the ACC, the Association, and their respective agents, employees, officers, directors, shareholders, members 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 Developer, the ACC, the Association, and their respective agents, employees, officers, directors, shareholders, members and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 6.18.
- 6.19 **Satellite Dishes and Antennae.** No satellite dishes shall be allowed on any Lot; provided, however, that one (1) satellite dish of no more than two feet in diameter may be installed on a Dwelling so long as (a) the same is not visible from any street within the Property, and (b) the location of such satellite dish is approved by the ACC. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling unless the same is (i) contained entirely within the interior of a building or other structure, (ii) not visible from any street within the Property or adjacent Lot or Dwelling, and (iii) approved by the ACC. No radio or television signals or other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.
- 6.20 **Driveways and Sidewalks.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of concrete, stone or brick. All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited. To the extent any Owner or Occupant or any of their respective builders, contractors, subcontractors, agents, employees, guests or invitees damage or destroy any sidewalks, curbing or gutters within

the Property which constitutes part of the Common Areas, then the Owner of such Lot shall promptly cause, at his, her or its sole cost and expense, such damaged sidewalk, curbing or gutters to be repaired and replaced in accordance with any and all requirements of the Association. Installation and maintenance of sidewalks for each Lot or Dwelling shall be the responsibility of the builder or contractor who is constructing the Dwelling and/or Improvements on the Lot. Once construction is complete, the owner of the Lot shall be responsible for maintenance of the sidewalk for his or her Lot. Sidewalks in Colby Manor shall not be deemed to be Common Areas.

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

6.21.1 No furniture shall be placed, kept, installed, or located in or on the front or side yards or areas of a Lot. Any furniture placed, kept, installed, maintained or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

6.21.2 Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots.

6.21.3 Any children's toys, swing sets, jungle gyms, trampolines, free-standing playhouses and treehouses, and other outdoor and recreational equipment and appurtenances may be permitted in the rear yard of a Dwelling, but only upon ACC approval of same.

6.21.4 Basketball backboards shall be located so as not to be visible from any street and shall otherwise be located on such Lot in a location approved by the ACC.

6.21.5 No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

6.21.6 Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from any street.

6.21.7 Bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front or side yards of any Lot nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of homecrafts shall be located only in the rear yard of a Dwelling and shall not be visible from any street.

**6.22 Pets and Animals.** Subject to the limitations of this paragraph, dogs, cats, fish, domestic birds, gerbils, and hamsters will be allowed. All other animals, reptiles, fowl, and dinosaurs are prohibited on any Lot or common area. No commercial activities regarding animals will be allowed. No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, in any Dwelling or on any other portion of the Property; provided, however, that no more than two (2) domesticated animals, except in the case of any new-born litter of any such animal, may be kept on a Lot, so long as they

are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Except as provided herein, no structure or area for the care, housing or confinement of any pet shall be constructed or maintained on any Lot. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot, as approved by the ACC, or otherwise under leash. All pets must be ON LEASH while outside the boundary of the Lot Owner. Pets on leash must be restrained from being a nuisance to other users of any Common Area. Pets shall not be permitted to leave excrement on the Lot of any other Owner or within any street or any portion of the Common Areas, and the Owner of any pets shall immediately remove the same. All waste, litter and excrement created by pets shall be immediately collected by the pet's owner and properly disposed of. Placing such waste, litter or excrement in storm drains, on the surface of any Lot, or containers not belonging to the pet's owner is not proper disposal. Animal breeds deemed by the Declarant, Developer, ACC or the Association to be dangerous breeds shall not be allowed to be kept anywhere on any Lot or at any location within Colby Manor, regardless of the individual pet's alleged history. The Declarant, Developer, ACC or the Board of Directors of the Association is hereby authorized to have any pet violating these covenants, after one notice to Owner, professionally removed from any Lot, Dwelling, or other location within Colby Manor, at the expense of the Owner, such expense being levied against the pet Owner's Lot as a Special Assessment. Properly trained and registered Service Animals are exempt from the "dangerous breed" rule, provided Owner or a resident in Owner's Dwelling is medically required to rely on such dog. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Property, including the right to assess fines for violations of such rules and regulations

**6.23 Trash, Rubbish and Nuisances.** No nuisances, whether audible, visual, odorous, or unsafe shall be permitted to exist or operate within any Lot or upon any Common Area, including but not limited to:

6.23.1 No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkempt conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no horns, whistles, bells, speakers or other sound devices, other than reasonable security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot. Any Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees or contractors of such Owner or Occupant who dumps, places or allows trash or debris to accumulate on his or her Lot, Dwelling, or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove

the same

- 6.23.2 Trash, garbage and any other refuse or waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from streets and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ACC provided, however, that trash cans and containers may be moved to the side yard or curb of the street in front of any Dwelling on trash collection days for such Lot.
- 6.23.3 No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or other portion of the Property.

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

- 6.24.1 No boat or recreational vehicle shall be parked on any Lot or Common Area except temporarily for loading or unloading, and in no case for more than forty-eight (48) hours at a time, unless it is of small enough size to be garaged out of sight of the street and Common Areas, and is so garaged.
- 6.24.2 Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of water craft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing, sides and doors, on such Lot. Any such enclosed structure must be approved by the ACC. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.
- 6.24.3 Each Lot shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 6.20 above. Vehicles shall not be parked on any landscaped or natural areas of a Lot.
- 6.24.4 Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or on any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.
- 6.24.5 Subject to the prior written approval of the Association which may be withheld in the sole discretion of the Association, the Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motorhomes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized

campers or trailers, boats or other water craft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

- 6.24.6 No mopeds, off road, or other power-driven vehicles shall be permitted to be operated on any Lot or Common Area. This restriction does not apply to automobiles, passenger vans and pick-up trucks traveling upon the street or upon the paved surface of any driveway with the Owner's permission. This prohibition also does not apply to bicycles or to motorized vehicles in use by the disabled persons.
- 6.25 **Automobiles, Passenger Vans and Pick-Up Trucks.** No more than two (2) automobiles, passenger vans or pick-up trucks shall be parked regularly in the driveway of any Lot. No disabled or unlicensed vehicles shall be parked on any Lot. Automobiles, vans of any type, pick-up trucks or service trucks displaying signs or advertisements will not be allowed to be parked anywhere in Colby Manor, provided such vehicles may be parked for no more than eight hours at a time, and during the time, required to perform the service for which the vehicle is intended.
- 6.26 **Signage.** No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or elsewhere on any portion of the Property without the express written permission of the ACC, and except as permitted by applicable rules, regulations and ordinances of any Governmental Authority having jurisdiction thereof. The ACC may promulgate rules, regulations and standards for the use and design of any sign to be posted within the Property, including but not limited to, name and address signs and the signs referred to in Section 6.30.3. Notwithstanding the foregoing, (a) the restrictions set forth in this Section 6.26 shall not be applicable to Developer or to any signs erected pursuant to Section 6.30.3 below and (b) Developer and the Association shall the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 3.6 above.
- 6.27 **Tanks and Wells.** No exposed above-ground tanks or underground storage tanks for the storage of fuel, water or any other substances shall be located on any Lot or within any of the Common Areas. No private water wells may be drilled or maintained on any Lot or Dwelling except for wells maintained solely for irrigation purposes. All such irrigation wells must be approved in writing by the ACC prior to the installation of the same.
- 6.28 **Soliciting.** No soliciting shall be permitted at any time, under any circumstances, except as permitted or required to be permitted under state or federal law.
- 6.29 **Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, playhouse, stable, poultry house or yard, rabbit hut, temporary or portable toilet (except as provided in Section 6.30.1 below), treehouse or other outbuilding or structure of any kind shall be permitted, constructed, installed or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board of the Association, (b) any detached garages or other structures which are approved in writing by the ACC, (c) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all streets and adjacent Lots, and (d) construction trailers and/or sales offices,



or other temporary structures, erected or placed on any part of the Property by Developer pursuant to Section 5.14 above, or otherwise permitted in these Covenants, Conditions and Restrictions.

**6.30 Construction of Improvements.**

- 6.30.1 During the construction of any Improvements or Dwelling, (i) all Lots subject to such construction shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street, (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly, and (iv) any temporary or portable toilet will be placed out of view from any street. Used construction materials shall not be burned on-site. In no event shall any used construction materials be buried on or beneath any Lot or any other portion of the Property. No Owner shall allow dirt, mud, concrete, gravel or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, concrete, gravel and other substances to be removed from the treads, wheels and concrete unloading chutes of all vehicles used in or related to the construction of Improvements on a Lot prior to such vehicles traveling on any streets within the Property.
- 6.30.2 During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) utilize off-street parking only, (ii) enter the Lot on which such Improvements are being constructed from the driveway for such Lot, and (iii) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.6 above, are to be preserved.
- 6.30.3 A maximum of two (2) signs, in size and color to be approved by the ACC, may be posted on a Lot upon a single sign slab approved by the ACC, at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ACC approval. The location of such signage shall be established by the ACC but in no event shall any signage authorized by this Section 6.30 or which may be approved by the ACC be attached, nailed or otherwise adhered to any tree or other plant life on a Lot.
- 6.30.4 No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked on any streets or roads within the Property. Upon completion of construction of any Improvements or any Dwelling, any construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot and such Lot shall be kept and maintained in a clean and uncluttered condition.
- 6.30.5 All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards, all applicable federal, state, county and local laws,

ordinances, rules, regulations, and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

6.30.6 When any Owner submits to the ACC plans and specifications for construction of a Dwelling in accordance with Section 5.7 above, the name of the building contractor selected by such Owner for construction of such Dwelling shall also then be submitted to the ACC; however, if the identity of the building contractor is not known at that time, then the name of the building contractor will be submitted when determined prior to construction. The ACC shall have the right, in its sole discretion, to approve or disapprove of any building contractor so selected by such Owner. Each building contractor approved by the ACC in accordance with this Section 6.30.6 will be required to remit to the ACC a refundable damage/clean up deposit (the "Deposit") in an amount established by the Association or the ACC. Should such building contractor damage or fail to properly clean up the Property or Common Areas as required herein, or any supplemental rules or regulations promulgated by the ACC, the ACC may, in its sole discretion, initiate appropriate action to remediate any such condition at such building contractor's expense. The cost of any such remediation shall be deducted from the Deposit and any amount expended by the ACC in excess of the Deposit in remediating such condition shall be billed to such building contractor. Within thirty (30) days of the completion of such Dwelling (as evidenced by the issuance of the Certificate of Occupancy), the ACC shall refund to such building contractor any unexpended portion of the deposit.

6.31 **Subdivision and Interval Ownership.** No Lot may be subdivided or re-subdivided; provided, however, that the provisions of this Section 6.31 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.32 **Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, or lap pools may be constructed, installed and maintained on any Lot, subject to the prior written approval of the plans for the same by the ACC. above-ground pools shall not be permitted. The ACC shall have the right to adopt further rules and regulations governing the construction of swimming pools, or other outdoor water features or amenities within the Property.

6.33 **Traffic Regulations.** All vehicular traffic on the streets and roads in the Property shall be subject to the applicable provisions of the laws of the State of Alabama and any city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the roads within any portion of the Property. The Association shall be entitled to enforce such rules and regulations by

establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic rules and regulations promulgated by the Association, the more restrictive shall govern.

- 6.34 **Compliance with Governmental Regulations.** Each at all times comply with all applicable laws, ordinances, requirements and code provisions of the Governmental Authorities.
- 6.35 **Additional Regulations.** In addition to the restrictions set forth in these Covenants, the (i) ACC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or different requirements or restrictions which shall be binding on all Owners and Lots, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot, and (ii) the Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Association, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners and Lots.
- 6.36 **Variances.** The ACC, in its sole and absolute discretion, shall have the exclusive right to grant variances and exceptions with respect to the provisions of Section 5 above and this Section 6 with respect to any Lot. Any request for a variance or exception submitted to the ACC shall be in writing and, upon approval of the same by the ACC, shall be evidenced by a written document executed by either the chairman or vice chairman of the ACC. The provisions of Section 5.4 above concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the ACC shall be binding upon the ACC in any matters regarding the granting of variances.
- 6.37 **Enforcement and Remedies.** In the event any of the provisions of this Section 6 are breached or are not otherwise being complied with in all aspects by any Owner, Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ACC shall each have the right, but not the obligation, at their option to (a) enjoin such violation or noncompliance, and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs or expenses incurred by the ACC or the Association in enforcing any of the provisions of this Section 6, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ACC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Section 6, shall constitute an individual Assessment to such Owner pursuant to Section 8.6 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.9 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ACC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ACC or the Association

may exercise at law or in equity or any of the enforcement rights specified in Sections 5.15, 6.22, 6.23.1, 6.30, 7.2.2, 8.6, 8.9 and 11.1 below.

## **7. MAINTENANCE RESPONSIBILITIES**

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

- 7.1.1 Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his, her or its Lot or Dwelling, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ACC.
- 7.1.2 Each Lot shall be landscaped in Accordance with plans and specifications submitted to and approved by the ACC pursuant to Section 5.7 above. All areas of any Lot which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the owner in a fully and well-kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.1.2 shall apply to all portions of a Lot up to the edge of the pavement of any roadway abutting such Lot at all times, either prior to or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Development.
- 7.1.3 Any Owner may delegate his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, his guests or other persons who are invited to the use of his house on his Lot.
- 7.1.4 In the event any Common Area or amenity, or the property of other Owners, or the property of the Declarant, Developer, or the Association is damaged or destroyed by an Owner, or by any of his family members, his invitees, agents or employees as a result of negligence or misuse, or for any other reason, such Owner hereby authorizes Declarant, Developer, or the Association to repair the damaged area. The cost necessary to make such repairs or replacements shall be the responsibility of such Owner and shall become a Special Lot Assessment as herein defined, payable by the responsible Owner to the Declarant, Developer or the Association.

## **7.2 Responsibilities of the Association.**

- 7.2.1 Except as may be otherwise provided herein to the contrary, the Association shall maintain and keep in good repair and condition (i) all portions of the Common Areas, which responsibility shall include the maintenance, repair, upgrade, improvement and replacement of any private roads, walks, trails, paths, walkways and lanes, street lights, landscaped areas, and other Improvements made by Developer or the Association within any of the Common Areas or within any of the easements encumbering the Lots, (ii) the granite curbs on the streets throughout the Development and the decorative storm sewer covers which are part of the public improvements, but which are required to be maintained by the Association; (iii) such utility lines, pipes, plumbing, wires, conduits and related systems, sanitary sewage disposal system installed by Developer, in Developer's sole discretion, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a public authority, public serve district, public or private utility, or other person, (iv) all lawns, trees, shrubs, hedges, grass and other landscaping and all ponds situated within or upon the Common Areas and (v) all retention lakes, ponds and other water areas and facilities constructed by Developer or the Association. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God, or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling, or (3) resulting from thief, burglary or other illegal entry into the Property, any Lot or Dwelling. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder, or for inconvenience or discomfort arising from the making of Improvements or repairs which are the responsibility of the Association.
- 7.2.2 In the event that the Board of the Association determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder, or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association, with respect thereto, then, in either event, the Association, in addition to the exercise of any of its rights and remedies set forth in these Covenants, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good

and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.9 below.

## 8. ASSESSMENTS IN GENERAL

8.1 **Assessments and creation of Lien.** Each Owner of a Lot, by Acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to these Covenants, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in Section 8.4 below, (b) special Assessments, to be established and collected as provided in Section 8.5 below, and (c) individual Assessments against any particular Lot which are established or assessed pursuant to the terms of these Covenants, including, but not limited to any fines and/or Special Assessments as may be levied or imposed against such Lot or Dwelling in Accordance with the provisions of Section 5.15, 6.22, 6.23.1, 6.30, 6.37, 7.2.2, 8.9, or any other Section hereof. All Assessments, together with late charges and interest as provided in Section 8.9.1 below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.9.3 below. Each Owner shall be personally liable for the payment of all Assessments coming due while he, she or it is the Owner of any Lot and such Owner's grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his, her or its grantor any amounts paid by such grantee to the Association which were the legal obligations of such grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.9.1 below, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Association. All assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase of lieu thereof with respect to any Lot, Dwelling or Common Area or any other portion of the Property or any other cause or reason of any nature. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area, his Lot, or the abandonment of his Lot.

8.2 **Purpose of Assessments.** The annual (paid in twelve equal monthly installments) and special Assessments provided for herein shall be used for the payment of Common Expenses and for the general purposes of promoting the recreational, health, education, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property, and otherwise for the general upkeep and maintenance of the Property. As set

forth elsewhere herein, monthly Association dues are due and payable in advance on the first day of each month. Special Lot Assessments levied by the Declarant, Developer or the Association, upon written notice to the Owner, shall be due and payable in full within thirty (30) days of such notice. When delinquent, all Assessments and fines shall be the personal obligation of the person or entity that was the owner of the Lot at the time when the assessment was made. Declarant and Developer shall not be required to pay dues for lots owned by Declarant or Developer, but Declarant and Developer will be required to mow such lots regularly and keep them free of debris.

- 8.3 **Uniform Rate of Assessments.** Both annual and special Assessments, as described in Section 8.4 and 8.5 below, shall be assessed against each Lot in the Property at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his or her pro rata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots in the Property. Each Lot shall be subject to equal annual (paid in twelve equal monthly installments) and special Assessments.

8.4 **Computation of Annual Assessments.**

- 8.4.1 The Association shall determine and adopt an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve Account if the Board deems it necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his or her pro rata share of the same as provided in Section 8.3 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots for the following year shall be delivered by the Association to each Owner.
- 8.4.2 If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may assess special Assessments as provided in Section 8.5 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association for subsequent years' Common Expenses.
- 8.4.3 The Common Expenses to be funded by the annual and special Assessments may include, but shall not be limited to, the following:
- 8.4.3.1 Salaries, fringe benefits and other compensation and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, and any third-party contractors;
- 8.4.3.2 Management fees and expenses of administration, including legal and Accounting fees, incurred by the Association;
- 8.4.3.3 The costs of any insurance policies purchased for the benefit of the Association as required or permitted by these Covenants, if any, including, without limitation, public liability coverage and such other insurance

coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association or for any of the members of the ACC;

8.4.3.4 The expenses of maintaining, operating and repairing any other amenities and facilities serving the Property which the Association or the Board determines from time to time would be in the best interest of the Owners and the Property to so maintain, operate and/or repair;

8.4.3.5 The expenses of the ACC attributable to the Property which are not defrayed by applicable plan review charges;

8.4.3.6 The costs and expenses for conducting recreational, culture or other related programs for the benefit of the Owners and Occupants of the Property;

8.4.3.7 All other fees, costs and expenses incurred by the Association in Accordance with the terms and provisions of these Covenants or which the Board determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots; and

8.4.3.8 If the Board deems it economically prudent, the establishment and maintenance of a reasonable reserve fund or funds (1) to cover major repair, replacement or maintenance expenditures, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, or (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

8.5 **Special Assessments.** In addition to the annual Assessments authorized in Section 8.4 above and the special Assessments authorized in Section 9.1.2 and 9.3.1.1 below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association. The Board may make such special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in Accordance with the provisions of Section 8.3 above.

8.6 **Individual Assessments.** Any expenses of the Association which, in the opinion of the Board of the Association, is occasioned by the conduct of less than all of the Owners or by an Owner or Occupant, or the respective family members, agents, guest, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots. The individual Assessments provided for in this Section 8.6 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of



this Section 8.6 shall apply, without limitation, to any individual Assessments levied pursuant to Sections 5.15, 6.22, 6.23.1, 7.2.2, 8.6, and 8.9 hereof.

**8.7 Notice of Meetings and Quorum.**

8.7.1 Written notice of each annual meeting of the Association shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meeting. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, except as hereinafter provided, but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third (1/3) of the total vote of the Association. Any notice for any such subsequent meeting shall state that the necessary quorum therefor shall be one-third (1/3) of the total votes of the Association present in person or by proxy. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote.

8.7.2 Written notice of any meeting of the Association other than an annual meeting shall be sent to all Owners not less than five (5) days nor more than thirty (30) days in advance of such meeting. With respect to any such other meeting of the Association, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all the members of the Association.

**8.8 Date of Commencement of Assessments.** The annual Assessments provided for herein shall commence as to each Lot on January 1 of each year and prorated as of the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding special Assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is conveyed. Annual and special Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of these Covenants, or any other portion of the Property, shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or special Assessments on any Lot which it owns in the Property. Furthermore, for so long as Developer is the owner of any Lot in the Property, or until such earlier date as Developer may elect, in Developer's sole discretion, Developer shall have the option to either pay annual Assessments on unsold Lots in the Property or advance any deficits which may exist between the total amount of annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Property. At such time as Developer no longer has any interest in any Lot in the Property, Developer shall have no further obligation of any

nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses.

**8.9 Effect of Non-Payment; Remedies of the Association.**

8.9.1 Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Declarant, the Developer or Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due, the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner of such Lot or Dwelling shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Declarant, Developer or Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Declarant, Developer or Association. The lien and equitable charge upon each Lot for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Declarant, Developer or the Association in attempting to collect any unpaid Assessments.

8.9.2 In the event any Assessments or other amounts due to the Declarant, Developer or Association are not paid by any Owner when the same becomes due, then in addition to all other rights and remedies provided at law or in equity, the Declarant, Developer or the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

8.9.2.1 The Declarant, Developer or Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.9.1 above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Declarant, Developer or Association in collecting such unpaid Assessments; and/or

8.9.2.2 The Declarant, Developer or Association may enforce the lien pursuant to Section 8.1 above in the manner hereinafter provided.

8.9.3 There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Declarant, Developer or the Association of any and all Assessments levied against or upon such Lot, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.9.1 above and all attorneys' fees, court costs and all other expenses paid or incurred by the Declarant, Developer or Association in collecting any Assessments. If any Assessments remain unpaid for

more than sixty (60) days, then the Declarant, Developer or the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Declarant, Developer or the Association may file a claim which shall be executed by the Declarant, Developer or any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Lauderdale County, Alabama:

8.9.3.1 The name of the delinquent Owner.

8.9.3.2 The legal description and street address of the Lot upon which the lien claim is made;

8.9.3.3 The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

8.9.3.4 A statement that the claim of lien is made by the Declarant, the Developer or the Association pursuant to these Covenants and its claimed against such Lot in an amount equal to that stated therein. The lien provided for herein shall be in favor of the Declarant, the Developer or the Association as appropriate, shall be for the benefit of all other Owners (other than those Owners in default) and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Declarant, Developer, or the Association as appropriate shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Declarant, the Developer or the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Declarant, the Developer or the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.10 **Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot in the Property is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by such Institutional Mortgagee is recorded in the Probate Office of Lauderdale County, Alabama prior to the filing of a

claim of lien by the Association pursuant to Section 8.9.3 above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Institutional Mortgagee was recorded in the Probate Office of Lauderdale County, Alabama prior to the filing of claim of lien by the Declarant, the Developer or the Association pursuant to Section 8.9.3 above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Lauderdale County, Alabama prior to the filing of a claim of lien by the Declarant, the Developer or the Association pursuant to Section 8.9.3 above, but (b) be liable for all Assessments other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot.

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

## 9. CASUALTY, CONDEMNATION AND INSURANCE

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

- 9.1.1 In the Event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Section 9, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.
- 9.1.2 Notwithstanding anything provided in Section 9.1.1 above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association, if it deems it economically feasible and prudent, may levy a special Assessment against all Owners, which such special Assessments shall be in an amount sufficient to provide funds to pay a proportionate share of the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such Special Assessments shall be levied against each Lot equally as provided in Section 8.5 above. Any and all insurance proceeds received by the Association on Account of any damage to or

destruction of any of the Common Areas and any amounts collected as special Assessments shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Association or the Owner or Mortgagee of any Lot be entitled to any portion of any special Assessments or proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

- 9.2 Damage or Destruction to Lots and Dwellings.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore, as provided elsewhere herein, such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Section 5 above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred twenty (120) days following the occurrence of such fire or other casualty. The Owner of any such damaged Lot or Dwelling shall proceed diligently and complete all such restoration and repair no later than one (1) year following the occurrence of such fire or other casualty. In the event the restoration or repair of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of these Covenants, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such fire or other casualty and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and slightly manner.

**9.3 Condemnation of Common Areas.**

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

9.3.1.1 To the extent the Common Areas subject to such taking can either be restored or replaced, then to the extent practicable, the Association shall take such action, including the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of the Association may levy a special Assessment against all Owners, which such special Assessments shall be in an amount sufficient to provide funds to pay a proportionate share of the remaining costs of repair, restoration or reconstruction. Such special Assessments shall be levied against each Owner as provided in Section 8.5 above.

9.3.1.2 To the extent the Common Areas subject to such taking cannot be restored or replaced or if the Association shall determine that the portions of the

Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and used for the benefit of the Association.

9.3.2 If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and used for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.3.3 below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

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

**9.5 Insurance.**

9.5.1 The Association may, at the discretion of the Board, obtain and maintain property and casualty insurance in such form as the Association deems appropriate for the benefit of the Association insuring all insurable Improvements in and on the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage should be in an amount, with such insurance carriers, at such costs and with such deductibles as the Board of the Association, in its sole discretion, may determine.

9.5.2 The Board of the Association shall have the right and authority to obtain and maintain in effect at all times such public liability insurance coverage covering all of the Common Areas in such amounts, with such insurance carriers, at such costs

and with such deductibles as the Board of the Association, in its sole discretion, may deem necessary or desirable.

- 9.5.3 The Board of the Association shall have the right to obtain workman's compensation insurance, employer's liability insurance, and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.
- 9.5.4 All insurance coverage authorized in this Section 9.5 above shall be written in the name of the Association and all costs thereof shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the Association, the members of the Board and all officers, agents and employees of the Association, including the manager for the Development, the Association, the Owners and the family members, servants, agents, tenants and guests of the Owners and shall also name Developer as an additional insured.
- 9.5.5 Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his, her or its Lot and Dwelling. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies of certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot or Dwelling, does hereby waive and release Developer, the ACC, the Association, the manager of the Property and their respective agents, employees, representatives, partners, shareholders, members, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

## 10. TERMS AND AMENDMENTS

- 10.1 **Term.** The terms, covenants, conditions and restrictions set forth in these Covenants shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time 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 two-thirds (2/3) or more of the Lots within the Property agreeing to terminate or modify these Covenants has been recorded in the Probate Office of Lauderdale County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Section 3 hereof shall continue and

remain in full force and effect for the time periods and duration specified therein.

10.2 **Amendment by Developer.** For so long as Developer owns any Lot within the Property, or until such earlier date as Developer elects, in Developer's sole discretion, Developer may amend these Covenants by a written instrument filed and recorded in the Probate Office of Lauderdale County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 10.4 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his or her Lot or Dwelling or materially or adversely affects the title to any Lot or Dwelling, 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 Developer who shall have the voting rights attributable to any Lots owned by Developer), or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section 10.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Lauderdale 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 or Dwelling, agrees to be bound by all amendments permitted by this Section and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of these Covenants or any other instrument relating to the Property 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 or Dwelling, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lot or Dwelling within the Property.

10.3 **Amendments by Association.** After Developer ceases to own any Lots in the Subdivision, amendments to these Covenants shall be proposed and adopted by the Association in the following manner:

10.3.1 At any annual or special meeting of the members of the Association, upon proper notice an amendment to these Covenants may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds, (2/3) of the total votes in the Association; provided, however, that (i) for so long as Developer owns a Lot within the Property, or until such earlier date as Developer elects, in Developer's sole discretion, Developer must approve such proposed amendment, and (ii) to the extent the proposed amendment affects any of the matters described in Section 10.4 below, then the provisions of Section 10.4 below shall be applicable to such proposed amendment.

10.3.2 Any and all amendments which have been approved in Accordance with the provisions of Section 10.3.1 above shall be executed by all parties whose consent to



the same is required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without obtaining the signatures of all Owners or Mortgagees. Any such amendment shall be effective upon recording of the same in the Probate Office of Lauderdale County, Alabama.

- 10.4 **Restrictions on Amendment.** Notwithstanding anything provided in the Declaration to the contrary, so long as Developer owns any Lot in the Property no amendment shall be effective unless Developer consents in writing to any such amendment. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer with or without any reason.

## 11. ENFORCEMENT

- 11.1 **Authority and Enforcement.** In addition to the provisions of Sections 5.15, 6.22, 6.23.1, 6.30, 6.37, 7.2.2 and 8.9 above, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of these Covenants, the Articles of Incorporation, the Bylaws or any rules or regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and continuing lien upon the Lot and Dwelling and shall be a personal obligation of such Owner or Occupant who is guilty of such violation, (ii) suspend an Owner's right to vote in the Association, or (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the facilities located in or upon the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

- 11.2 **Procedure.** In the event any of the terms or provisions of these Covenants, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association are violated by an Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

11.2.1 The alleged violation;

11.2.2 The action required to abate such violation; and

11.2.3 A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of these Covenants, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be

applicable to the enforcement rights specified in Section 11.1 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provisions of these Covenants.

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

## 12. MISCELLANEOUS PROVISIONS

- 12.1 **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 PROPERTY, DEVELOPER 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 IN SECTION 4.3 ABOVE. Each Owner, by Acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer 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 12.1 and the provisions of Section 4.3 above. At such time as Developer no longer owns any interest in any portion of the Property, or at such earlier date as Developer elects, in Developer'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 Board which shall undertake the responsibilities of the Board and Developer or the former Board shall deliver all books, accounts and records of the Association, if any, which Developer has in its possession.
- 12.2 **Legal Expenses.** In addition to the rights and remedies set forth in Sections 5.15, 6.22, 6.23.1, 6.30, 6.37, 7.2.2, 8.9 and in Section 11 above, in the event either the ACC, its agents or representatives, or the Board, its agents and representatives, undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of these Covenants, then all costs and expenses incurred by them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in these Covenants shall be paid for by the Owner against whom such action was initiated. The ACC, its agents and representatives, and the Board, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by either the ACC or the Board of the Association to cure such violation or breach.
- 12.3 **Severability.** If any provision of these Covenants or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of these Covenants or the application of such provision to persons or circumstances other than

those as to which it is held invalid or unenforceable to the fullest extent permitted by law.

- 12.4 **Captions and Headings.** The captions and headings contained in these Covenants are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of these Covenants. The table of contents, cover page and any index to these Covenants are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.
- 12.5 **Pronouns and Plurals.** All personal pronouns used in these Covenants, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and use of the plural shall include the singular.
- 12.6 **Binding Effect.** The terms and provisions of these Covenants shall be binding upon each Owner, Occupant, and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner, Occupant and Mortgagee, and shall inure to the benefit of Developer, the ACC, the Association, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.
- 12.7 **Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of these Covenants, the general rules of construction against one party as a result of that party having drafted these Covenants are hereby waived by each Owner and, to the fullest extent provided by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.
- 12.8 **No Reverter.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of re-enter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.
- 12.9 **Interpretation.** In all cases, the provisions set forth and provided for in these Covenants shall be construed together and given that interpretation or construction which, in the opinion of Developer, the Association or the Board, as the case may be, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of these Covenants shall be the date hereof. These Covenants shall be construed under and in Accordance with the laws of the State of Alabama.
- 12.10 **Right of Third Parties.** These Covenants shall be recorded for the benefit of Developer, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or the Development or the operation and continuation of either, in the enforcement of any of the provisions of these Covenants or the right to consent to or approve any amendment or modification to these Covenants.
- 12.11 **No Trespass.** Whenever the Association, the Developer, the ACC, or their respective agents, employees, representatives, successors and assigns, are permitted by these

Covenants to enter upon and correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

- 12.12 **No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property or the Development.
- 12.13 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless reference is made in such instrument of conveyance to the specific rights created in these Covenants which Developer is transferring to any such third party.
- 12.14 **Standards for Review.** Whenever in these Covenants Developer, the Association or the ACC has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of the Developer, the Association or the ACC, as the case may be.
- 12.15 **Oral Statements.** Oral statements or representations by Developer, the Association, the ACC, or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the Association, or the ACC.
- 12.16 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand, by overnight courier, telecopier, or sent by registered or certified United States Mail, postage prepaid to the last known address of the recipient. Any notice so addressed and mailed shall be deemed to be given five (5) days after deposit in the United States Mail, and if delivered by hand, shall be deemed to be given when delivered, and if telecopier or delivered by overnight courier, shall be deemed to be given on the business day immediately following the day on which it was sent or delivered. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Property. All notices to the Association or the ACC shall be delivered or sent in care of Developer to J.C. Development Company, LLC, P.O. Box 632, Killen, Alabama 35645, or to such other address as the Association or the ACC may from time to time specify in a notice to the Owners. All notices to Declarant or Developer shall be sent or delivered to Declarant or Developer at the above address or to such other addresses as Declarant or Developer may notify the Association.
- 12.17 **Assignment.** Subject to the provisions of Section 12.13 above, Developer and the ACC shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer, the Association, and the ACC, respectively.
- 12.18 **Further Assurances.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Developer,

the Association or the ACC for the purpose of or in connection with the clarifying, amending or other consummating any of the transactions and matters herein.

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

[Remainder of page left blank intentionally]

[Signatures and notary acknowledgements on next page]

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

**J.C. DEVELOPMENT COMPANY, LLC,**  
an Alabama limited liability company

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By: Jason Greene  
Its: Authorized Member

STATE OF ALABAMA

COUNTY OF LAUDERDALE

I, the undersigned authority, a Notary Public in and for said County and in said State, hereby certify that Jason Greene, whose name as Authorized Member of J.C. Development Company, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, in his capacity as such member and with full authority, executed the same for and on behalf of the Company on the day the same bears date.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2025.

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Notary Public  
My Commission Expires: \_\_\_\_\_

**[NAME OF LENDER],**  
an Alabama [type of entity]

---

By: [Name of Authorized Signer]  
Its: [Title of Authorized Signer]

STATE OF ALABAMA

COUNTY OF LAUDERDALE

I, the undersigned authority, a Notary Public in and for said County and in said State, hereby certify that [Name of Signer], whose name as [Title of Signer] of [Name of Lender], an Alabama [type of entity], 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 this instrument, he, in his capacity as such [Title of Signer] and with full authority, executed the same for and on behalf of the Bank on the day the same bears date.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2025.

---

Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**[INSERT LEGAL DESCRIPTION]**