

---

---

**THE TRADITION AT STILLWATERS  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS**

---

---

This instrument prepared by and  
upon recording should be returned to:

Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
2001 Park Place, Suite 1400  
Birmingham, Alabama 35203  
(205) 521-8429

**TABLE OF CONTENTS**  
**THE TRADITION AT STILLWATERS**  
**DECLARATION OF COVENANTS, CONDITIONS AND**  
**RESTRICTIONS**

**ARTICLE DEFINITIONS**

1.01	Additional Property.....	1
1.02	Affiliate.....	2
1.03	ARC.....	2
1.04	Architectural Standards.....	2
1.05	Articles of Incorporation.....	2
1.06	Assessment.....	2
1.07	Association.....	2
1.08	Board.....	2
1.09	Bylaws.....	2
1.10	Club Owner.....	2
1.11	Common Areas.....	2
1.12	Common Expenses.....	3
1.13	Declaration.....	3
1.14	Developer.....	3
1.15	Dwelling.....	3
1.16	Exclusive Areas.....	3
1.17	Golf Club.....	3
1.18	Golf Club Property.....	4
1.19	Governmental Authority.....	4
1.20	Improvement.....	4
1.21	Institutional Mortgagee.....	4
1.22	Living Space.....	4
1.23	Lot.....	4
1.24	Maintenance Charge.....	5
1.25	Mortgage.....	5
1.26	Mortgagee.....	5
1.27	Multi-Family Area.....	5
1.28	Multi-Family Association.....	5
1.29	Multi-Family Declaration.....	5
1.30	Occupant.....	5
1.31	Original Covenants.....	5
1.32	Overall Development.....	5
1.33	Owner.....	6
1.34	Person.....	6
1.35	Probate Office.....	6
1.36	Property.....	6
1.37	Specific Development.....	6

1.38	Specific Development Association .....	6
1.39	Specific Development Covenants .....	6
1.40	SWRA .....	6
1.41	SWRA Common Areas .....	7
1.42	Turnover Date .....	7
1.43	1987 Covenants .....	7

## **ARTICLE II PROPERTY SUBJECT TO THE DECLARATION**

2.01	General Declaration .....	7
2.02	Additional Property .....	8
2.03	Right of Developer to Modify Restrictions with Respect to Lots and Multi-Family Areas Owned by Developer .....	8
2.04	Mutuality of Benefit and Obligation .....	8
2.05	Multi-Family Associations and Exclusive Areas .....	9
2.06	Golf Club .....	9
2.07	Development of Property .....	9
2.08	Subdivision Plats .....	10
2.09	Effect of Original Covenants and 1987 Covenants .....	10

## **ARTICLE III EASEMENTS**

3.01	Grant of Non-Exclusive Easements to Owners .....	11
3.02	Grant of Easement to Governmental Authorities .....	11
3.03	Reservation of Controlled Access Easement. ....	11
3.04	Reservation of General Access Easement .....	12
3.05	Reservation of Easements With Respect to Common Areas .....	12
3.06	Reservation of Easements for Utilities and Trails .....	13
3.07	Reservation of Easements for Signs, Walks, Trails, Walls and Fences .....	14
3.08	Reservation of Maintenance Easement .....	14
3.09	Reservation of Environmental Easement .....	14
3.10	Easements With Respect to Golf Club Property .....	15
3.11	Grant of Easements by SWRA and Payment of Maintenance Charges .....	17

## **ARTICLE IV ASSOCIATION**

4.01	Membership .....	18
4.02	Board .....	19
4.03	Voting Rights .....	19
4.04	Duties and Powers of Association. ....	19

4.05	Agreements .....	20
4.06	Management by Developer or its Affiliates .....	20
4.07	Rules and Regulations.....	20
4.08	Indemnification .....	21
4.09	Membership in SWRA.....	21
4.10	Transfer Fees.....	21

## **ARTICLE V ARCHITECTURAL REVIEW COMMITTEE AND ARCHITECTURAL STANDARDS**

5.01	Committee Composition .....	21
5.02	Appointment and Removal of ARC Members.....	21
5.03	Procedure and Meetings.....	22
5.04	Architectural Standards.....	22
5.05	Approval of Plans and Specifications .....	22
5.06	Landscaping Approval .....	25
5.07	Construction Without Approval.....	25
5.08	Inspection .....	26
5.09	Subsurface Conditions .....	26
5.10	Limitation of Liability.....	26
5.11	Commencement and Completion of Construction.....	26
5.12	Sales and Construction Activities .....	27
5.13	Enforcement and Remedies .....	27
5.14	Compliance Certification .....	27
5.15	Indemnification .....	27
5.16	Grant of Authority by SWRA .....	28

## **ARTICLE VI USE AND DEVELOPMENT RESTRICTIONS**

6.01	Use Restrictions .....	28
6.02	Plan Approval .....	28
6.03	Underground Utilities .....	28
6.04	Building Setbacks .....	29
6.05	Siting of Dwellings .....	29
6.06	Trees.....	29
6.07	Height Limitations .....	29
6.08	Minimum Living Space .....	29
6.09	Landscaping .....	30
6.10	Roofing .....	30
6.11	Exterior Lighting.....	31
6.12	Exterior Materials and Finishes .....	31
6.13	Chimneys. ....	32

6.14	Driveways and Off Street Parking .....	32
6.15	Fences .....	32
6.16	Windows, Window Treatments and Doors .....	33
6.17	Mailboxes.....	33
6.18	Utility Meters and HVAC Equipment .....	33
6.19	Satellite Dishes and Antennae .....	33
6.20	Soil Erosion and Drainage .....	33
6.21	Outdoor Furniture, Recreational Facilities and Clotheslines .....	34
6.22	Pets and Animals.....	35
6.23	Trash, Rubbish and Nuisances .....	35
6.24	Recreational Vehicles and Machinery and Equipment .....	36
6.25	Signage.....	37
6.26	Above Ground Tanks and Wells .....	37
6.27	Temporary Structures.....	37
6.28	Construction of Improvements.....	38
6.29	Subdivision .....	39
6.30	Swimming Pools and Tennis Courts.....	39
6.31	Traffic Regulations .....	39
6.32	Golf Course Lots .....	39
6.33	Waterfront Lots .....	40
6.34	Compliance with Governmental Regulations .....	42
6.35	Additional Regulations .....	42
6.36	Variances.....	43
6.37	Enforcement and Remedies .....	43
6.38	Club Owner Enforcement Rights.....	43

#### **ARTICLE VII MAINTENANCE RESPONSIBILITIES**

7.01	Responsibilities of Owners, Multi-Family Associations and Specific Development Associations .....	44
7.02	Responsibilities of Association.....	45

#### **ARTICLE VIII COMMON AREA ASSESSMENTS**

8.01	Assessments and Creation of Lien .....	46
8.02	Uniform Rate of Assessments.....	47
8.03	Computation of Annual Assessments .....	47
8.04	Special Assessments .....	49
8.05	Individual Assessments .....	49
8.06	Date of Commencement of Assessments.....	50
8.07	Effect of Non-Payment; Remedies of the Association .....	50
8.08	Subordination of Lien .....	52

8.09	Certificates .....	52
------	--------------------	----

#### **ARTICLE IX CASUALTY, CONDEMNATION AND INSURANCE**

9.01	Damage or Destruction to Common Areas .....	52
9.02	Damage or Destruction to Lots, Dwellings or Exclusive Areas .....	53
9.03	Condemnation of Common Areas .....	54
9.04	Condemnation of Lots, Dwellings or Exclusive Areas .....	54
9.05	Insurance .....	55

#### **ARTICLE X TERM AND AMENDMENTS**

10.01	Term .....	56
10.02	Amendments Prior to Turnover Date .....	56
10.03	Amendments After Turnover Date .....	57
10.04	Restrictions on Amendment .....	57
10.05	Special Termination Rights Reserved by Developer .....	57

#### **ARTICLE XI ENFORCEMENT**

11.01	Authority and Enforcement .....	58
11.02	Procedure .....	58
11.03	Non-Exclusive Remedies .....	58

#### **ARTICLE XII MISCELLANEOUS PROVISIONS**

12.01	Control by Developer .....	59
12.02	Legal Expenses .....	59
12.03	Severability .....	59
12.04	Captions and Headings .....	59
12.05	Pronouns and Plurals .....	59
12.06	Binding Effect .....	59
12.07	Conflict or Ambiguity .....	59
12.08	No Reverter .....	60
12.09	Interpretation .....	60
12.10	Rights of Third Parties .....	60
12.11	No Trespass .....	60
12.12	No Partition .....	60

12.13	Assignment and Reservation of Rights .....	60
12.14	Standards for Review .....	60
12.15	Oral Statements .....	61
12.16	Notices .....	61
12.17	Further Assurances.....	61
12.18	No Waiver .....	61
12.19	Perpetuities.....	61





# **THE TRADITION AT STILLWATERS RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS THE TRADITION AT STILLWATERS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 1st day of September, 1998 by STILLWATERS DEVELOPMENT COMPANY LIMITED PARTNERSHIP, an Arizona limited partnership ("Developer").

## **RECITALS:**

Developer is the owner of the Property, as described in Section 1.36 below, and desires to own, develop, improve, lease and sell the Property for single-family attached and detached residential housing purposes and for any of the other uses specified in Section 6.01 below, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration and maintenance of the Property. The Property is presently subject to the terms and provisions of the 1987 Covenants, as defined in Section 1.43 below, and each Owner of any Lot of Dwelling comprising a part of the Property is a member of SWRA as defined in Section 1.40 below.

Developer has heretofore caused the Association, as defined in Section 1.07 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.11 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.06 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Tallapoosa County, Alabama which is more particularly described in ***Exhibit A*** attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described in ***Exhibit A*** attached hereto and any of the Additional Property, as defined in Section 1.01 below (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

## **ARTICLE I**

### **DEFINITIONS**

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

**I.1 Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

RETYPE FOR CLARITY

**I.2     Affiliate.** The term “Affiliate” shall mean and refer to (a) any Person which directly or indirectly through one or more intermediaries controls or is controlled by or under common control with the specified person, (b) any Person who is an officer of, partner in, member or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, general or limited partner, member or trustee, or with respect by which the specified Person serves in a similar capacity and (c) any Person who, directly or indirectly through one or more intermediaries, is the beneficial owner of more than ten percent (10%) of any class of voting security or interest in the specified Person or of which the specified Person is directly or indirectly through one or more intermediaries the owner of more than ten percent (10%) of any class of voting security or any interest therein.

**I.3     ARC.** The term or letters “ARC” shall mean the architectural review committee appointed by the Board for the Association pursuant to Article V hereof, which committee has the rights and obligations conferred upon such architectural review committee pursuant to this Declaration and any additional rights as may be authorized by the Board.

**I.4     Architectural Standards.** The term “Architectural Standards” shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area.

**I.5     Articles of Incorporation.** The term “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

**I.6     Assessment.** The term “Assessment” shall mean, collectively, the Annual Assessments (as defined in Section 8.03 below), Special Assessments (as defined in Section 8.04 below), and Individual Assessments (as defined in Section 8.05 below).

**I.7     Association.** The term “Association” shall mean The Tradition at StillWaters Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

**I.8     Board.** The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

**I.9     Bylaws.** The term “Bylaws” shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

**I.10    Club Owner.** The term “Club Owner” shall mean and refer to the owner of the Golf Club Property upon which the Golf Club is or shall be situated and its successors and assigns.

**I.11    Common Areas.** The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. In addition, the Common Areas shall also include (regardless of whether legal title to the same has been conveyed to the Association) (a) any other real or personal property utilized by the Association by virtue of any lease, license, easement or use agreement between the Association and any Person (including Developer) and (b) all areas (other than Exclusive Areas or SWRA Common Areas) which have been or may in the future be designated as Common Areas within any portion of the Property. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. Notwithstanding anything provided herein to the contrary, Common Areas do not include any of the rights-of-way (or easements) for any of the roads or streets owned or maintained by SWRA or any of the Open Spaces, as defined in the 1987

Covenants. **THE GOLF CLUB AND GOLF CLUB PROPERTY AND THE SWRA COMMON AREAS ARE NOT PART OF THE COMMON AREAS AND COMMON AREAS SHALL NOT INCLUDE ANY OF THE EXCLUSIVE AREAS.**

**I.12 Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.03(c) below.

**I.13 Declaration.** The term “Declaration” shall mean and refer to this The Tradition at StillWaters Declaration of Covenants, Conditions and Restrictions and all amendments thereto.

**I.14 Developer.** The term “Developer” shall mean StillWaters Development Company Limited Partnership, an Arizona limited partnership, and its successors and assigns.

**I.15 Dwelling.** The term “Dwelling,” with an initial capital letter, shall mean and refer to both (a) any improved Lot or Multi-Family Area intended for use as a single-family detached residential housing unit or attached or detached single-family, two-family or multi-family residential dwellings, including, without limitation, any townhouses, condominiums, cooperatives, duplexes, zero-lot-line homes and cluster and patio homes which may be constructed or situated upon any portion of any Lot or Multi-Family Area and (b) any residential housing unit constructed, to be constructed or which may be under construction on any Lot. Common Areas, SWRA Common Areas and Exclusive Areas shall not constitute Lots or Dwellings.

**I.16 Exclusive Areas.** The term “Exclusive Areas” shall mean and refer to any common areas within a Specific Development which are created, established or designated at any time for the exclusive use and benefit of the owners of those portions of the Property within such Specific Development or for any other persons who satisfy any of the requirements of the Specific Development Covenants applicable to such Exclusive Areas. Exclusive Areas are not part of the SWRA Common Areas or the Common Areas established under this Declaration and (a) no Owner, by virtue of owning any Lot or Dwelling within the Property, shall be entitled to exercise any rights or otherwise utilize any of the Exclusive Areas within a Specific Development unless and only to the extent that such Owner owns a Lot or Dwelling within such Specific Development or otherwise satisfies all the terms and provisions of the Specific Development Covenants applicable to such Specific Development and (b) the Specific Development Association established for such Specific Development in which any such Exclusive Areas are located shall be solely responsible for maintaining such Exclusive Areas.

**I.17 Golf Club.** The term “Golf Club” shall mean and refer to the golf course and related facilities developed by Club Owner on the Golf Club Property, including the 36-hole golf course, golf driving range, putting greens, golf cart paths, tennis courts, swimming pools, clubhouses, locker rooms, tennis and golf proshops, food and beverage facilities, maintenance areas, buildings and any other related facilities or amenities which may be built or constructed on the Golf Club Property from time to time. **THE GOLF CLUB IS NOT PART OF THE COMMON AREAS NOR IS IT TO BE GOVERNED BY THE PROVISIONS OF THIS DECLARATION EXCEPT FOR THE RIGHTS GRANTED HEREIN TO THE CLUB OWNER AND THE GOLF CLUB PROPERTY. NO OWNER, OCCUPANT, MULTI-FAMILY ASSOCIATION, SPECIFIC DEVELOPMENT ASSOCIATION OR THE ASSOCIATION SHALL HAVE ANY RIGHTS IN AND TO THE GOLF CLUB BY VIRTUE OF THIS DECLARATION OR BY VIRTUE OF OWNERSHIP OR OCCUPANCY OF ANY LOT, DWELLING OR MULTI-FAMILY AREA. OWNERSHIP OF ANY PORTION OF THE PROPERTY OR ANY LOT, DWELLING OR MULTI-FAMILY AREA SITUATED THEREON SHALL NOT ENTITLE SUCH OWNER TO ANY RIGHTS IN OR TO OR THE USE OF THE GOLF CLUB OR THE GOLF CLUB PROPERTY.**

**I.18 Golf Club Property.** The term “Golf Club Property” shall mean and refer to that certain real property described in *Exhibit B* attached hereto and incorporated herein by reference on which the Golf Club is or will be located.

**I.19 Governmental Authority.** The term “Governmental Authority” shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any Improvements thereto.

**I.20 Improvement.** The term “Improvement,” with an initial capital letter, shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot, Multi-Family Area, Common Area or Exclusive Area which in any way affects the exterior appearance of any Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, treehouses, playhouses, swingsets, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area. “Improvements” shall also mean any grading, excavation or fill on any Lot or Dwelling, the volume of which exceeds eight (8) cubic yards.

**I.21 Institutional Mortgagee.** The term “Institutional Mortgagee” shall mean and refer to 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 and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot, Dwelling or Multi-Family Area which has been duly and properly recorded in the Probate Office.

**I.22 Living Space.** The term “Living Space” shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

**I.23 Lot.** The term “Lot” shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon (other than any lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by Developer pursuant to the provisions of Section 2.08 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots. Common Areas, SWRA Common Areas and Exclusive Areas shall not constitute Lots or Dwellings.

**I.24 Maintenance Charge.** The term “Maintenance Charge” shall mean and refer to the annual Maintenance Charge or fee payable to SWRA by the owners of all lots subject to the 1987 Covenants. For the 1998 calendar year, such Maintenance Charge is \$253.00 per Lot or Dwelling as provided in the 1987 Covenants, which sum is subject to annual increase each year after the 1998 calendar year as provided in the 1987 Covenants. The Maintenance Charge constitutes part of the Annual Assessment and is payable to SWRA by the Association in accordance with but subject to the terms and provisions of Section 3.11(b) below.

**I.25 Mortgage.** The term “Mortgage,” with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot, Dwelling or Multi-Family Area or any interest therein and which shall have been duly and properly recorded in the Probate Office.

**I.26 Mortgagee.** The term “Mortgagee,” with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

**I.27 Multi-Family Area.** The term “Multi-Family Area” shall mean and refer to any portion of the Property designated or approved by Developer upon which or it is intended that there shall be constructed thereon, attached or detached townhouses, condominiums, duplexes, zero-lot-line homes or cluster or patio homes for residential dwelling purposes. Each Lot within a Multi-Family Area shall be deemed a Lot until such time as any Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof and, upon such completion, each dwelling unit situated thereon shall be deemed a Dwelling.

**I.28 Multi-Family Association.** The term “Multi-Family Association” shall mean and refer to any corporation or unincorporated association whose members are comprised entirely of Owners of Dwellings within a Multi-Family Area.

**I.29 Multi-Family Declaration.** The term “Multi-Family Declaration” shall mean and refer to any instrument or document and any amendments thereto which are recorded in the Probate Office with respect to any Multi-Family Area and which creates or imposes covenants, conditions, easements, restrictions, assessments, charges and liens with respect to such Multi-Family Area. The terms and provisions of any Multi-Family Declaration shall be in addition to the terms and provisions of this Declaration; provided, however, that in the event of any conflict or ambiguity between the terms and provisions of the Multi-Family Declaration and this Declaration, then the terms and provisions of this Declaration shall at all times control.

**I.30 Occupant.** The term “Occupant” shall mean and include any Owner, 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 Lot or Dwelling within the Property. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot or Dwelling.

**I.31 Original Covenants.** The term “Original Covenants” shall mean and refer to the Restrictions and Protective Covenants for Chinquapin Cove Area, Unit 4, StillWaters, recorded on August 6, 1971 in Volume 202, Page 131 in the Probate Office, as amended by First Amendment thereto dated April 11, 1974 and recorded in Volume 212, Page 319 in the Probate Office and by Second Amendment thereto dated June 14, 1974 and recorded in Volume 213, Page 39 in the Probate Office.

**I.32 Overall Development.** The term “Overall Development” shall mean and refer collectively to all of the following: (a) all of the Property and any Additional Property submitted to the terms and provisions of this Declaration, (b) all of the real property subject to the terms and provisions of the Original Covenants and the 1987 Covenants, (c) the SWRA Common Areas, (d) the Golf Club Property and (e) all other real property situated adjacent to or in close proximity with the Property which is owned by Developer or any Affiliate thereof.

**I.33 Owner.** The term “Owner,” with an initial capital letter, shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot, Dwelling or Multi-Family Area, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot, Dwelling or Multi-Family Area at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot, Dwelling or Multi-Family Area solely by virtue of a lease, contract, installment contract or other agreement.

**I.34    Person.** The term “Person,” with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

**I.35    Probate Office.** The term “Probate Office” shall mean and refer to the Office of the Judge of Probate of Tallapoosa County, Alabama and any successor thereto which serves as the official public registry for the public recording of real estate documents in Tallapoosa County, Alabama.

**I.36    Property.** The term “Property,” with an initial capital letter, shall mean and refer to that certain real property situated in Tallapoosa County, Alabama which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference, together with the rights-of-way (or easements) for all private roadways within the Property which constitute SWRA Common Areas and any Common Areas, if any, depicted on any of the subdivision plats for any of the Property. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof. **The Property does not include the Golf Club or the Golf Club Property.**

**I.37    Specific Development.** The term “Specific Development” shall mean and refer to any portion of the Property which is subject to Specific Development Covenants. All Multi-Family Areas shall be deemed a Specific Development.

**I.38    Specific Development Association.** The term “Specific Development Association” shall mean and refer to any corporation or unincorporated association whose members are comprised entirely of Owners of Lots or Dwellings within a Specific Development.

**I.39    Specific Development Covenants.** The term “Specific Development Covenants” shall mean and refer to any additional covenants or restrictions (including, without limitation, a declaration of condominium or other covenants or use restrictions for any Multi-Family Areas) which are established by Developer for any Specific Development within the Property which are either (a) recorded as a separate instrument in the Probate Office or (b) included in the deed of conveyance by Developer to any third-party. Any Multi-Family Declaration shall be deemed to be Specific Development Covenants. Any Specific Development Covenants shall be in addition to the terms and provisions of this Declaration; provided, however, that in the event of any conflict or ambiguity between the terms and provisions of the Specific Development Covenants and this Declaration, then the terms and provisions of this Declaration shall at all times control.

**I.40    SWRA.** The term or initials “SWRA” shall mean and refer to the StillWaters Residential Association, Inc., an Alabama nonprofit corporation.

**1.41    SWRA Common Areas.** The term “SWRA Common Areas” shall mean and refer to all real and personal property now or hereafter owned by SWRA for the common use of the owners of any and all property subject to the terms and provisions of the 1987 Covenants (which will include the Owners of each Lot and Dwelling under this Declaration as a result of the Property being subjected to the terms and provisions of the 1987 Covenants). In addition, the SWRA Common Areas shall also include (regardless of whether legal title to the same has been conveyed to SWRA) (a) all rights-of-way (or easements) within the boundaries of the Property and the Overall Development upon which private roadways providing ingress to and from the Property or any other portions of the Overall Development have been constructed other than any such private roadways which constitute Exclusive Areas pursuant to the terms and provisions of this Declaration, (b) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses and, to the extent authorized by SWRA, any landscaping or other areas located within the rights-of-way (or easements) of all public or private roadways within the Property and the Overall Development (excluding, specifically, any of the foregoing areas which constitute Common Areas under this

Declaration or Exclusive Areas under Specific Development Covenants), (c) any and all other real or personal property utilized by SWRA by virtue of any lease, license, easement or use agreement between SWRA and any person (including Developer and the Association) (d) all other areas (other than Exclusive Areas) which have been or may in the future be designated as "Open Spaces" on any of the subdivision plats for any of the Property or any other portions of the Overall Development and (e) all other areas which constitute "common areas" under the terms and provisions of the 1987 Covenants.

**1.42     Turnover Date.** The term "Turnover Date" shall mean the earlier of (a) the date on which Developer no longer owns any of the Property or (b) the date on which Developer elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Board pursuant to Section 4.02 below and (ii) all voting rights in the Association reserved to Developer pursuant to Section 4.03(c) below.

**1.43     1987 Covenants.** The term "1987 Covenants" shall mean and refer to the Amended and Restated Declaration of Restrictions and Protective Covenants for StillWaters dated April 21, 1987 and recorded on Card No. 41595 in the Probate Office, as amended by First Amendment thereto dated as of July 12, 1995 and recorded on Card No. 103205 in the Probate Office, Second Amendment thereto dated as of November 7, 1995 and recorded on Card No. 106307 in the Probate Office and all subsequent amendments thereto.

## ARTICLE II

### PROPERTY SUBJECT TO THE DECLARATION

**II.1     General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, Multi-Family Area, Common Area and Exclusive Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling, Multi-Family Area, Common Area and Exclusive Area thereof. **Except for the specific rights created or granted by this Declaration to Club Owner and the Golf Club Property, this Declaration shall not apply to or affect the Golf Club Property. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer) but this Declaration shall not apply to any other portion of the Overall Development or to any other real property owned by Developer unless the same is subjected specifically to this Declaration by a written instrument which has been recorded in the Probate Office.**

**II.2     Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot, Dwelling or Multi-Family Area) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as

Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to this Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, then this Declaration may be amended in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of any Owner, Mortgagee, or Multi-Family Association be obtained.

**II.3 Right of Developer to Modify Restrictions with Respect to Lots and Multi-Family Areas Owned by Developer.** With respect to any Lot or Multi-Family Area owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.02 above, modify the provisions of this Declaration as the same apply to any such Lot or Multi-Family Area; provided, however, that this Declaration may not be modified or amended to (a) increase the voting rights in the Association attributable to such Lot, Multi-Family Area or any Dwellings situated thereon or (b) except as otherwise provided herein to the contrary, exempt any Lot, Dwelling or Multi-Family Area from the payment of Assessments.

**II.4 Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Dwelling, Multi-Family Area and Common Area within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot, Dwelling and Multi-Family Area, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot, Dwelling or Multi-Family Area within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**II.5 Multi-Family Associations and Exclusive Areas.** It is presently contemplated that Developer may establish Multi-Family Associations which would be limited to the owners of Lots or Dwellings within the Multi-Family Areas within such portion or portions of the Property which Developer designates as Multi-Family Areas in order to promote the health, safety and social welfare, as well as to provide for the development and maintenance of Dwellings and/or common areas owned by such Owners and/or the Multi-Family Association established for such Multi-Family Areas. Such Multi-Family Areas may be subject to Multi-Family Declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby and such Multi-Family Associations may levy additional assessments and make and enforce supplemental covenants, restrictions, rules and regulations with respect to all such Multi-Family Areas. Notwithstanding anything provided herein to the contrary, the Owner of any Lot or Dwelling within any Multi-Family Areas of the Property shall also be a member of the Association and all Lots and Dwellings within such Multi-Family Areas shall continue to be subject to the terms of this Declaration. It is also contemplated that Developer may establish Exclusive Areas within a Specific Development which may be limited to use by only those Owners who own a Lot or Dwelling within the Specific Development for which such Exclusive Areas have been established and for other persons who satisfy the requirements of the Specific Development Covenants applicable to such Exclusive Areas. The Specific



Development Covenants for any portion of the Property are in addition to, but not in abrogation or substitution of, those imposed hereby and such Specific Development Associations may levy additional assessments and make and enforce supplemental covenants, restrictions, rules and regulations with respect to such Specific Development. Notwithstanding anything provided herein to the contrary, the Owner of any Lot or Dwelling within any Specific Development of the Property shall also be a member of the Association and all Lots and Dwellings within such Specific Development shall continue to be subject to the terms of this Declaration.

**II.6     Golf Club.** Club Owner intends to develop, own, operate and maintain the Golf Club on the Golf Club Property. Club Owner, in its sole and absolute discretion, may operate the Golf Club on a public, private or semi-private basis or any combination of the foregoing. The Golf Club and the Golf Club Property are not subject to any of the terms and provisions of this Declaration; however, certain provisions of this Declaration are for the benefit of Club Owner and provide that Club Owner has the right to approve various uses and Improvements contemplated on any Lot or Dwelling adjacent to the Golf Club Property and otherwise create certain enforcement rights in favor of Club Owner. The Golf Club is distinctly separate from the Association and is governed by its own rules, regulations and requirements.

**II.7     Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot, Dwelling or Multi-Family Area within the Property, to make improvements and changes to all Common Areas and Exclusive Areas and to all Lots, Dwellings or Multi-Family Areas owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas and Exclusive Areas, (b) changing the location of the boundaries of any Lots, Dwellings or Multi-Family Areas owned by Developer or the boundaries of any of the Common Areas and Exclusive Areas, (c) changing the boundaries between the Golf Club Property and any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) installation and maintenance of any water, sanitary sewer, storm sewer and any other utility systems and facilities within the Common Areas and Exclusive Areas and (e) installation of mailboxes or kiosks, security gates, guard houses and other devices and trash and refuse facilities on or within any of the Common Areas for the common use by all or any portion of the Property. Furthermore, Developer shall have the right, but not the obligation, to (i) make improvements and changes to all Lots, Dwellings and to any other portions of the Property owned by Developer and (ii) change the location of the property lines or boundaries of any Lots, Dwellings or any other portion of the Property owned by Developer. The exercise by Developer of any of the rights set forth in this Section 2.07 may be exercised solely by Developer without any requirement that the consent or approval of any Owners be obtained. **Each Owner, by acceptance of a deed to any Lot or Dwelling, acknowledges and agrees that (1) the Property will constitute a mixed-use development whereby detached single-family residential areas comprising any portion of the Property may be located directly adjacent to a Multi-Family Area, (2) Developer or affiliates thereof may either own or in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration (unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the terms and provisions of Section 2.02 above) and which real property may be developed by Developer or affiliates thereof for any uses and purposes whatsoever, including, without limitation, office and commercial use, (3) Club Owner may, in its sole discretion, construct, erect, place, operate, maintain, repair and replace on the Golf Club Property any of the improvements described in Section 1.17 above and (4) the applicable Governmental Authorities have approved the spraying of treated wastewater effluent, commingled with water from Lake Martin and Beaver Lake (which is within the Overall Development), onto the Golf Club Property and Club Owner has and will continue to irrigate the Golf Club Property by such methods.**

**II.8     Subdivision Plats.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more subdivision plats setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the

locations and dimensions of all Lots, Dwellings, Multi-Family Areas, Common Areas, Exclusive Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats and any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plats were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.08 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Dwellings, Common Areas and other portions of the Property owned by Developer, (b) amend from time to time and at any time ***Exhibit A*** to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property and (c) amend from time to time and at any time ***Exhibit B*** to this Declaration to reflect any changes in the legal description of the Golf Club Property.

**II.9 Effect of Original Covenants and 1987 Covenants.** This Declaration shall apply only to the Property and any Additional Property subjected to the terms hereof pursuant to the provisions of Section 2.02. Each Lot and Dwelling within the Property will be bound by and subject all of the covenants, agreements, rights, liabilities, easements, restrictions, reservations, charges and liens created by the 1987 Covenants. However, neither the Property nor any Additional Property which may be subjected to the terms of this Declaration pursuant to the provisions of Section 2.02 hereof shall be subject to or otherwise bound by any of the terms and provisions of the Original Covenants. In the event of any conflict or ambiguity between the terms and provisions of the Declaration and the terms and provisions of the 1987 Covenants, then the terms and provisions of this Declaration shall at all times control. This Declaration shall be deemed an amendment to the 1987 Covenants; however, the terms and provisions of this Declaration shall only be binding on the Property and any Additional Property submitted to the terms and provisions hereof. The Owner of each Lot or Dwelling within the Property shall be obligated to pay to SWRA any and all charges and assessments which may be levied from time to time by SWRA to all of the owners of any of the property subject to the terms and provisions of the 1987 Covenants. The Association will each year attempt in good faith to collect as part of the Common Expenses hereunder the then applicable annual Maintenance Charge then in effect under the 1987 Covenants and remit the same to SWRA annually in accordance with, but subject to, the terms and provisions of Section 3.11(b) below. Neither SWRA nor any Persons who are owners of any of the real property subject to the Original Covenants or the 1987 Covenants shall have any rights, either express or implied, to enforce any of the terms or provisions of this Declaration.

## ARTICLE III

### EASEMENTS

**III.1 Grant of Non-Exclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to, and the use and enjoyment of, the Common Areas in common with Developer, the Association, their respective successors and assigns, and all other Owners and Occupants. Subject to the provisions of Sections 3.03 and 8.07(d) hereof, the easement and rights granted pursuant to this Section 3.01(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot, Dwelling and Multi-Family Area. The easements and rights granted pursuant to this Section 3.01(a) are expressly subject to the rights reserved by (i) Developer to restrict access to the Property as provided in Section 3.03 below and to take any action necessary or desired in order to cause any of the private roadways within the Property to be dedicated to and accepted as a public roadway by any Governmental Authority, as provided in Section 3.03 below and (ii) the Association to restrict, limit and prohibit the use of certain Common Areas pursuant to the provisions of Section 8.08(d) below.

**III.2 Grant of Easement to Governmental Authorities.** Subject to the provisions of Section 3.03 below, Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon all of the private roadways within the Property for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

### **III.3 Reservation of Controlled Access Easement.**

(a) Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, Dwelling or Multi-Family Area, does hereby waive all rights of uncontrolled and unlimited access, ingress to and egress from such Lot, Dwelling or Multi-Family Area and acknowledges and agrees that (i) in order to provide a secure and safe environment, access and ingress to and egress from the Property and the Overall Development may be controlled, restricted and limited to exclude the general public therefrom and (ii) access, ingress to and egress from such Owner's Lot, Dwelling or Multi-Family Area shall be limited to the roads, sidewalks, walkways, paths, trails and bicycle and jogging paths and lanes which constitute SWRA Common Areas or constitute Common Areas or Exclusive Areas; provided, however, that, subject to the terms and provisions of this Declaration, vehicular and pedestrian access to and from all Lots, Dwellings and Multi-Family Areas shall be provided at all times.

(b) Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, Dwelling or Multi-Family Area, does further acknowledge and agree that pursuant to the terms and provisions of the 1987 Covenants, the roadways with the Overall Development are private roadways.

(c) Notwithstanding anything provided to the contrary in this Declaration, each Owner does hereby acknowledge and agree that SWRA (i) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate any of the private roadways within the Overall Development as public roadways to any Governmental Authority designated by SWRA without requirement that the approval or consent of any Owner, Occupant, Mortgagee or other Person be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments

and subdivision plats pursuant to which any of the private roadways within the Property are submitted for dedication as public roadways. Each Owner, by acceptance of any deed to a Lot, Dwelling or Multi-Family Area, and each Mortgagee, by the acceptance of any Mortgage on any Lot, Dwelling or Multi-Family Area, shall be deemed to, and each does hereby, irrevocably appoint SWRA as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of any of the private roadways within the Overall Development to any Governmental Authority as public roadways for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and any one having any interest in any Lot, Dwelling, Multi-Family Area, Common Areas, Exclusive Areas or in any of the easement rights created or granted in this Declaration.

(d) The easements, rights and privileges granted in Sections 3.01 and 3.03 shall pass with each Lot, Dwelling and Multi-Family Area as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot, Dwelling or Multi-Family Area.

**III.4 Reservation of General Access Easement.** Developer does hereby establish and reserve for itself, and the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot, Dwelling and Multi-Family Area for the purpose of providing ingress to and egress from each Lot, Dwelling and Multi-Family Area for (a) inspecting each Lot, Dwelling and Multi-Family Area and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then, except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot, Dwelling or Multi-Family Area directly affected thereby.

**III.5 Reservation of Easements With Respect to Common Areas.**

(a) Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots, Dwellings and Multi-Family Areas, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the ARC or the Association have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Dwelling within the Property, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, non-exclusive 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.

(b) Developer does hereby establish and reserve for itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas and any Lots, Dwellings or Multi-Family Areas owned by Developer and, with the written consent of Club Owner, the Golf Club Property; provided, however, that Club Owner shall have no obligation to consent to any boundary change which would reduce the width of any fairway or the overall width of any hole, fairway and adjacent

rough, inclusive. The exercise of the rights reserved by Developer pursuant to this Section 3.05(b) may be exercised by Developer without any requirement that the consent or approval of any of the Owners or Mortgagees be obtained. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

### **III.6 Reservation of Easements for Utilities and Trails.**

(a) Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and Exclusive Areas and all Lots, Dwellings and Multi-Family Areas which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property adjacent thereto or in close proximity therewith. 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 3.06 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.06(a) shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot or within any Multi-Family Area, (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.06(a) to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein and (iii) the establishment and reservation of easements pursuant to this Section 3.06 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.06.

(b) Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through, under and upon all portions of the Common Areas and those portions of any Lots, Dwellings and Multi-Family Areas which, pursuant to any subdivision plats recorded in the Probate Office which affect such Lots, Dwellings and Multi-Family Areas, have been designated for utility easements, which areas may also be used for the purpose of installing, maintaining, operating and replacing walkways and trails thereon for use by all Owners; provided, however, that (i) the provisions of this Section 3.06(b) shall not be applicable to any of the Exclusive Areas and (ii) neither Developer nor the Association shall have any obligation to construct, install, maintain, operate or replace any walkways or trails thereon. The easements established and reserved in this Section 3.06(b) shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate and fill and otherwise take all action reasonably necessary to install, maintain, operate and replace walkways and trails within any of the easement areas established and reserved pursuant to this Section 3.06(b).

(c) If Developer, the Association or any of their respective successors or assigns exercise the easement rights granted pursuant to this Section 3.06(b) by constructing and installing any walkways or trails on the easement areas described herein, then the Association (or its successors and assigns) shall, subject to the provisions of this Declaration, maintain such walkways or trails as part of the Common Areas; provided, however, that the Association (or its successors and assigns) may, in its sole discretion, elect to abandon such

walkways or trails by removing any asphalt, concrete or other materials used by either the Developer, the Association or any of their respective successors and assigns to construct such walkways or trails and otherwise allowing such areas to return to their condition as existed immediately prior to the installation of such walkways or trails.

### **III.7 Reservation of Easements for Signs, Walks, Trails, Walls and Fences.**

(a) Developer does hereby establish and reserve for itself, the Association, SWRA 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 lying parallel to and running along the common exterior boundary between each Lot, Dwelling or Multi-Family Area and any public or private roadway which is directly adjacent to and abuts such Lot, Dwelling or Multi-Family Area for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use thereon of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs and related improvements; provided, however, that neither Developer, the Association nor SWRA shall have any obligation to construct or maintain any of the foregoing improvements.

(b) 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 running parallel to and along the boundary of any Lot, Dwelling or Multi-Family Area which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Property; provided, however, that neither Developer nor the Association shall have any obligation to construct or maintain any such perimeter wall, fence, mound or berm.

**III.8 Reservation of Maintenance Easement.** Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot, Dwelling or Multi-Family Area 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.

**III.9 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots and all unimproved portions of any Dwellings and Multi-Family Areas for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any applicable watershed, soil erosion, stormwater discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the ARC or the Association of the rights reserved in this Section 3.09 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot or Multi-Family Area.

### **III.10 Easements With Respect to Golf Club Property.**

(a) Developer does hereby establish and reserve and grant to Club Owner, its agents, employees, successors and assigns, a permanent, perpetual and non-exclusive easement over, across, through, upon and under all of the Common Areas and Exclusive Areas and all Lots, Dwellings and Multi-Family Areas for the purpose of installing, erecting, maintaining, operating, repairing, replacing and relocating master television and/or cable systems, security systems and all utilities necessary or convenient for the use of any of the portion of the Golf Club Property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, water wells and any and all lines, pipes, pumps, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required to obtain any such utility or other services for any portion of the Golf Club Property. The easement granted herein to Club Owner shall include (i) an easement for the drainage and discharge of surface water onto and across any portions of the Property provided that such drainage and discharge shall not materially and adversely damage or affect any portion of the Property, (ii) the right to install water wells and any necessary pumping apparatus within any of the lakes, retention ponds, or water basins located on any portion of the Property and to utilize all water flowing into such lakes, retention ponds, or water basins for the irrigation of the Golf Club Property and (iii) the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation or replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.10(a) to the contrary, (1) the utilization of any of the easements and rights granted, established and reserved pursuant to this Section 3.10(a) shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, (2) Club Owner shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights granted, reserved or established pursuant to this Section 3.10(a) to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any of the rights granted, established or reserved herein and (3) the grant, establishment and reservation of easements pursuant to this Section 3.10(a) shall not create any obligation, responsibility or liability of Club Owner to undertake any of the actions allowed or permitted pursuant to the terms and provisions of this Section 3.10(a).

(b) Developer does hereby establish and reserve and grant to Club Owner, its agents, employees, successors and assigns, a permanent, perpetual and non-exclusive right and easement over, across, through, and upon all the Common Areas and those portions of any Lot, Dwelling or Multi-Family Area lying within a strip of land ten (10) feet in width running along and parallel to the common boundary line between any Common Areas, Lot, Dwelling or Multi-Family Area and any portion of the Golf Club Property for (i) constructing, installing, erecting, maintaining, operating, repairing and replacing thereon pedestrian and golf cart paths for use by all members, guests and other authorized users of the Golf Club and Golf Club Property and (ii) constructing, installing, erecting, maintaining, operating, repairing and replacing thereon such Improvements as Club Owner may from time to time desire to place thereon, including, without limitation, signage relating to use of the Golf Club (including, without limitation, no trespassing signs) as well as directional signage for the Golf Club Property. If Club Owner exercises any of the easement rights granted pursuant to this Section 3.10(b) by constructing or installing any improvements within the easement areas described herein, the Club Owner shall maintain all such Improvements at its sole cost and expense; provided, however, that (1) Club Owner shall have no obligation to maintain any such Improvements damaged or destroyed by any Owner or Occupant and (Club Owner shall have the right to recover from such Owner or Occupant all costs and expenses, including attorneys' fees, incurred by Club Owner as a result of such damage or destruction caused by any Owner or Occupant) and (2) Club Owner may, in its sole discretion, elect to abandon such easement areas by removing any Improvements constructed thereon by Club Owner and otherwise allowing such easement areas to return to the condition as existed immediately prior to the installation of any such Improvements thereon.

(c) Developer does hereby establish and reserve and grant to Club Owner, its agents, employees, successors and assigns, a permanent, perpetual, and non-exclusive easement appurtenant over, across, through and upon those portions of any of the Common Areas and Exclusive Areas and any Lots, Dwellings and Multi-Family Areas which are located within thirty (30) feet from the water's edge of any lake, pond, creek or other body of water located on or adjacent to the Golf Club Property for purposes of mowing such area and keeping the same free and clear from unsightly growth and trash and maintaining such bodies of water, including the right the dredge and maintain reasonable water quality standards therefor; provided however, that Club Owner shall have no obligation to undertake any of the foregoing actions.

(d) Developer does hereby establish and reserve and grant to Club Owner, its agents, employees, successors and assigns, a permanent, perpetual and non-exclusive right and easement over, across, through, and upon a strip of land thirty (30) feet in width along the boundary of all Common Areas, Exclusive Areas, Lots, Dwellings and Multi-Family Areas which are adjacent to or contiguous with any portion of the Golf Club Property, which right and easement shall permit, but not obligate, Club Owner, its agents, employees, successors and assigns, to enter upon such portions of the Common Areas, Exclusive Areas, Lots, Dwellings or Multi-Family Areas to maintain or landscape the area subject to such easement, including, without limitation, (i) the planting of grass and shrubbery, watering, application of fertilizer and mowing and (ii) the removal of underbrush, stumps, trash, debris, dead or diseased vegetation (including trees), and any trees which are two (2) inches or less in diameter at a point of three (3) feet above ground level.

(e) Developer does hereby establish and reserve and grant to Club Owner, its members, guests employees, agents and invitees, a permanent, perpetual and non-exclusive right and easement over, across, through and upon a strip of land thirty (30) feet in width along the boundary of all Common Areas, Exclusive Areas, Lots, Dwellings and Multi-Family Areas which are directly adjacent to or contiguous with any portion of the Golf Club Property, which right and easement shall permit the entry thereon by golf course players and their caddies to remove balls, without such entry being deemed a trespass. In the exercise of the easement and rights granted by this Section 3.10(e), golf course players and their caddies shall not be entitled to enter upon such portions of any Lot, Dwelling or Multi-Family Area or any of the Common Areas or Exclusive Areas with a golf cart or other vehicle nor shall the golf course players or their caddies spend an unreasonable amount of time on any such Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area or otherwise commit a nuisance while on any portion of the Property.

(f) Developer does hereby establish and reserve and grant to Club Owner, its successors and assigns, a permanent, perpetual and non-exclusive easement for light, air and view over those portions of the Common Areas and Exclusive Areas and each Lot, Dwelling and Multi-Family Area which are within thirty (30) feet of any portion of the Golf Club Property. **NOTWITHSTANDING ANYTHING PROVIDED IN THIS DECLARATION TO THE CONTRARY, IN NO EVENT SHALL ANY RECIPROCAL EASEMENT FOR LIGHT, AIR OR VIEW BE DEEMED TO EXIST IN FAVOR OF THE OWNER OR OCCUPANT OF ANY LOT, DWELLING OR MULTI-FAMILY AREA WITHIN THE PROPERTY.**

### **III.11 Grant of Easements by SWRA and Payment of Maintenance Charges.**

(a) SWRA, by execution hereof, does hereby grant to Developer, the Association, each Owner, Occupant and Mortgagee of any Lot, Dwelling or Multi-Family Area within the Property (including all Additional Property added to the terms and provisions of this Declaration from time to time) and each of their respective heirs, executors, successors and assigns, a permanent, perpetual and non-exclusive easement (i) over, across, through, upon and under all existing and future private roadways owned or maintained by SWRA within the Overall Development (including, without limitation, all existing and future private roadways within the Property) whether pursuant to the terms and provisions of the Original Covenants and the 1987 Covenants or any other written agreement entered into by SWRA at any time on or after the date of this Declaration and



(ii) to use, in common with all members of SWRA, all of the Open Spaces, as defined in the 1987 Covenants, and any other common areas owned or maintained by SWRA for the use and benefit of its members; provided, however, that the use and exercise of the easements and rights of use granted herein by SWRA shall be subject to any and all rules, regulations and requirements of SWRA which are applicable to all members of SWRA and which are applied and charged on a non-discriminatory basis by SWRA to its members and to each Owner, Occupant and Mortgagee of any Lot, Dwelling or Multi-Family Area on or within the Property. SWRA covenants and agrees to provide to the Owner of each Lot and Dwelling within the Property an entrance decal, pass or access card or key which is the same as any decal, pass or access card or key provided to all members of SWRA to be used to gain entrance within and use of the private roadways in the Overall Development which are either owned or maintained by SWRA. The costs of any such decal, pass or access card or key provided by SWRA to the Owner of each Lot, Dwelling or Multi-Family Area within the Property shall be the same as that charged by SWRA on a non-discriminatory basis to each member of SWRA; provided, however, that in no event shall any charge of any nature be levied or collected by SWRA against Developer or any of its guests, invitees, contractors, subcontractors, suppliers, vendors, successors or assigns in connection with the use of the easement rights granted herein or in the issuance of entrance decals, passes or access cards or keys.

(b) Developer does hereby establish and reserve for itself, the Association, the ARC and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon all of the private roadways and rights-of-way thereto situated on or within any portion of the Property for the purposes of (i) providing pedestrian and vehicular ingress and egress to and from the Property and any other real property situated adjacent to or in close proximity with any portion of the Property, (ii) constructing, installing, erecting, maintaining and operating thereon signage, street lights, lighting, walkways, sidewalks, paths, gates, walls, fencing and landscaping areas; provided, however, that neither Developer, the Association, the ARC nor any of their respective successors or assigns shall be obligated to construct, install, erect, maintain or operate any of the foregoing within any such private roadways or the rights-of-way for the same and (iii) installing, erecting, replacing, relocating, maintaining and operating in, on, upon or under such private roadways and the rights-of-way thereto master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property (and any other real property situated adjacent to or in close proximity with the Property), including, without limitation, public or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required to provide any utility service to any portion of the Property or any other real property adjacent thereto or in close proximity therewith. 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 the 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.

(c) SWRA, by execution of this Declaration, does hereby covenant and agree to assume all maintenance responsibilities with respect to any and all of the private roadways situated on or within any portion of the Property and any Additional Property submitted to the terms of this Declaration (other than any such private roadways which constitute and are specifically identified as Exclusive Areas by Developer) and covenants and agrees to at all times maintain the same in good repair and condition and in accordance with all applicable rules, regulations, standards and requirements of all Governmental Authorities having jurisdiction thereof.

(d) The Maintenance Charge shall commence as to each Lot or Dwelling on the date on which such Lot or Dwelling was subjected to the 1987 Covenants and shall be prorated for the remainder of the calendar year in which such Lot or Dwelling was subjected to the 1987 Covenants. The Owner of each Lot or Dwelling (including Developer or any Affiliates thereof), by acceptance of a deed or other instrument conveying any right or interest therein, shall be deemed to covenant and agree to pay to the Association the

Maintenance Charge each year from and after the date on which such Lot or Dwelling was subjected to the 1987 Covenants. The Association, by execution hereof, covenants and agrees that it will use good faith efforts to collect and, following such collection, remit to SWRA the Maintenance Charge (subject to proration as provided above) promptly after collection of such annual Maintenance Charge

(e) The terms and provisions of this Section 3.11 may not be amended or modified without the prior written consent and approval by SWRA, the Association and Developer.

## **ARTICLE IV**

### **ASSOCIATION**

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

**IV.2 Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the date of this Declaration and continuing until the Turnover Date, the number of members of the Board shall be three (3), all of whom shall be appointed and subject to removal by Developer. From and after the Turnover Date, the number of members of the Board shall increase to five (5) and the Owners shall have the exclusive right to appoint and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot or Dwelling, vests in Developer the authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date. Except as otherwise specifically provided herein to the contrary, 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.

### **IV.3 Voting Rights.**

(a) Subject to the rights reserved by Developer in Section 4.03(c) below and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, following the Turnover Date, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matter submitted to the members of the Association for approval. To the extent any matter is presented to the members of the Association for a vote or approval at any time following the Turnover Date (or if, prior to the Turnover Date, a Special Assessment is contemplated pursuant to Section 8.04 below which requires the vote of the Owners), then the voting requirements specified in the Bylaws shall at all times govern. Subject to the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, only those Owners who hold legal title to a Lot or Dwelling shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.03, at all times prior to and after the Turnover Date, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

(b) Each Owner consents and agrees to the dilution of his or her voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.08 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted.

(c) Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, until the occurrence of the Turnover Date, Developer shall have the sole and exclusive right to exercise all voting rights in the Association; provided, however, that with respect to any Special Assessments to be made pursuant to Section 8.04 hereof which would require the consent and approval of a specified percentage in interest of the Owners, then, except for voting rights held by Developer by virtue of its ownership of a Lot or Dwelling, Developer shall submit to the Owners for approval (in accordance with the voting requirements set forth in the Bylaws) any Special Assessments which would be made in accordance with the terms and provisions of Section 8.04.

**IV.4 Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**IV.5 Agreements.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be affiliates of Developer, such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Common Areas, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically reserved to the Board

or the officers of the Association by this Declaration, the 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 cost of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the administration and operation of the Property and the Association or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

**IV.6 Management by Developer or its Affiliates.** Developer or any Affiliate thereof may be employed as the manager of the Association and the Common Areas, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Property. Each Owner shall be deemed to ratify the provisions of this Section 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any Affiliate thereof.

**IV.7 Rules and Regulations.** In addition to the terms and provisions set forth in this Declaration, the Board may establish and enforce reasonable rules and regulations governing the use, improvement, maintenance and repair of all Lots, Dwellings, Multi-Family Areas and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas by Owners and Occupants, including, specifically, rules and regulations which (a) allow persons other than Owners the right, subject to the payment of any applicable fees, to utilize the Common Areas, (b) restrict or limit the number of guests of any Owner utilizing the Common Areas, (c) specify the hours and days on which the Common Areas may be used and (d) prohibit the use of all or any portion of the Common Areas by those Owners who have violated the rules and regulations of the Association or who have not paid all Assessments hereunder. In addition, the Board may adopt rules and regulations which establish bird sanctuaries, wildlife and wild flower areas within Property and rules and regulations limiting, restricting or prohibiting the application of fertilizers, pesticides and other chemicals within the Property. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the vote of members of the Association entitled to vote thereon at any regular or special meeting of the Association or any ballot vote held in accordance with the terms and provisions of the Bylaws.

**IV.8 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent and representative of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding) to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent or representative of the Association. The members of the Board and the officers, agents and representatives of the Association shall not be liable for any mistake in judgment, negligence or otherwise except for their own wilful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the Board and the officers, agents and representatives of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent and representative of the Association harmless from and against any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any member of the Board or any officer, agent or representative of the Association may be entitled, including anything provided to the contrary in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and, to the extent feasible, officers' and

directors' liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

**4.09    Membership in SWRA.** The Owner of each Lot or Dwelling within the Property shall also be a member of SWRA and shall be entitled to all rights and benefits in SWRA as any other member thereof.

**4.10    Transfer Fees.** The Board may adopt and establish a transfer fee in an amount which is subject to change from time to time, as determined by the Board, in its sole discretion, which will be charged to each transferee of any Lot or Dwelling, which transfer fee shall be charged to partially defer the costs and expenses of the Association or its management agent in updating the Association's membership rolls and otherwise providing copies of the Articles, Bylaws or this Declaration to any such transferee.

## **ARTICLE V**

### **ARCHITECTURAL REVIEW COMMITTEE AND ARCHITECTURAL STANDARDS**

**V.1    Committee Composition.** The Board shall appoint not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below to serve as agents of the Association on the ARC. The Persons designated by the Board to serve, on behalf of the Association, on the ARC shall be agents and representatives of the Association and may, but shall not be required to, be members of the Association or Owners of any Lot or Dwelling. The regular term of office for each Person designated by the Board to serve, on behalf of the Association, on the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any Person appointed or elected as provided in Section 5.02 below may be removed with or without cause in the manner provided in Section 5.02 below. Each Owner, by acceptance of a deed to a Lot or Dwelling, shall be deemed to ratify the provisions of Section 5.02 below.

**V.2    Appointment and Removal of ARC Members.** The Board shall have the sole and exclusive right to appoint and remove all Persons who serve as agents and representatives of the Association on the ARC. Any Person appointed to serve as an agent and representative of the Association on the ARC may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of any Person serving on the ARC, then the Board shall appoint a substitute Person to serve as an agent and representative of the Association on the ARC to fill the vacancy of such deceased or resigned Person.

**V.3    Procedure and Meetings.** The ARC shall elect a chairperson and he or she, or in his or her absence, any vice-chairperson so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairperson or vice-chairperson and all such meetings shall be held at such places as may be designated by the chairperson or vice-chairperson. The presence, either in person or by proxy, of a majority of the total number of Persons designated to serve as agents and representatives of the Association on the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses and shall be paid by the Association. Each Person designated to serve as an agent and representative of the Association on the ARC shall be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. Furthermore, any third party who serves on the ARC who is not an Owner and who is not employed in an employer-employee relationship with Developer or any of its Affiliates may also be paid a stipend, as approved by the Board of Directors, for services rendered with respect to serving on the ARC. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary

concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) Person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

**V.4 Architectural Standards.** The ARC 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, Dwelling, Multi-Family Area, Common Area or Exclusive Area, 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, Dwelling, Multi-Family Area, Common Area or Exclusive Area are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

**V.5 Approval of Plans and Specifications.**

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS, THE MULTI-FAMILY AREAS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT, DWELLING, MULTI-FAMILY AREA, COMMON AREA OR EXCLUSIVE AREA BY ANY OWNER, MULTI-FAMILY ASSOCIATION OR SPECIFIC DEVELOPMENT ASSOCIATION, OTHER THAN DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT, DWELLING, MULTI-FAMILY AREA, COMMON AREA OR EXCLUSIVE AREA UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES GUEST OR SERVANT'S 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 ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW.**

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property, including, specifically, all Common Areas and Exclusive Areas (but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required). Prior to the commencement of any Dwelling or other Improvements on any Lot, Dwelling or Multi-Family Area, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which shall include the following:

(i) Two (2) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any setback requirements applicable to the Lot or Dwelling.

(ii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Dwelling or other Improvements to be constructed on the Lot.

(iii) Two (2) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, lumber, roofing and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwelling.

(iv) Two (2) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) Two (2) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.06 below.

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

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable in accordance with the terms and provisions of this Declaration, the Architectural Standards and any other guidelines or rules and regulations of the Association or the ARC. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot or Multi-Family Area, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ARC for Improvements to one particular Lot, Dwelling or Multi-Family Area shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot, Dwelling or Multi-Family Area within the Property. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner or Specific Development Association submitting the same marked "approved," "approved as noted" or "disapproved." Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within such Owner's Dwelling that do not affect the exterior appearance of such Dwelling and a Multi-Family Association and Specific Development Association may make interior improvements and alterations within any buildings or structures it maintains or

owns that do not affect the exterior appearance of such Improvements and, in each case, without the necessity or requirement that the approval or consent of the ARC be obtained.

(d) The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot or Dwelling to deposit a construction escrow/security deposit with the ARC at the time the ARC approves plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association in a non-interest bearing account, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot or Dwelling and the compliance with all of the terms, conditions and provisions of this Declaration. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot or Dwelling and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her agents, employees or independent contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her agents, employees, or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration.

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

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

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

(h) The ARC may establish such other or different guidelines and requirements for the construction of any Improvements on or within any of the Common Areas or Exclusive Areas which must be satisfied by the applicable Multi-Family Association or Specific Development Association prior to commencement of any Improvements thereon.

## **V.6 Landscaping Approval.**

(a) 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,



Multi-Family Association or Specific Development Association, other than Developer, on any Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area unless and until landscaping plans therefore have been submitted to and approved by the ARC. The provisions of Section 5.05 above regarding the method that such plans are to be submitted to the ARC, 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. Notwithstanding anything provided herein to the contrary, the ARC may, in its discretion, adopt from time to time landscaping guidelines which may establish approved plant life and plant materials for use within the Property, which guidelines shall be binding on each Lot or Dwelling.

(b) In addition to the requirements of Section 5.06(a) above, the landscaping plan for any Lots, Dwellings, Multi-Family Areas, Common Areas or Exclusive Areas adjacent to the Golf Club Property shall also be subject to the terms of Section 3.10 above and the provisions of Section 6.33 below (which require, among other things, a natural, undisturbed buffer of thirty (30) feet along each Lot or Dwelling adjacent to any of the Golf Club Property).

**V.7 Construction Without Approval.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot, Dwelling or Multi-Family Area without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot, Dwelling or Multi-Family Area are not being complied with, then, in either event, the Owner of such Lot, Dwelling or Multi-Family Area shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.13 below.

**V.8 Inspection.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot, Dwelling or Multi-Family Area or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

**V.9 Subsurface Conditions.** The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot, Dwelling or Multi-Family Area shall not be construed in any respect as a representation or warranty by the ARC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot, Dwelling or Multi-Family Area are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot, Dwelling or Multi-Family Area for the construction of any contemplated Improvements thereon.

**V.10 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association nor any agent, employee, representative, member, shareholder, partner, officer or director thereof shall have any liability of any nature whatsoever for, and (b) the Owner of each Lot or Dwelling does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (iv) the construction or performance of any work related to such plans, drawings and

specifications, (v) 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 member s, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot, Dwelling or Multi-Family Area) and (vi) 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, Dwelling, Multi-Family Area or any Improvements situated thereon.

**V.11 Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year following the date on which the ARC has approved the plans and specifications for such Dwelling, which completion shall be evidenced by the issuance of a final certificate of occupancy by the applicable Governmental Authorities or, if no such certificates of occupancy are issued by any Governmental Authorities, then the ARC, in its sole discretion, shall determine if and when completion of construction occurs.

**V.12 Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration 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 and/or Dwellings or the development of Lots, Dwellings, Multi-Family Areas, Common Areas, Exclusive Areas and the Additional Property, 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 5.12 shall be subject to ARC 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/or Dwellings and for any related activities.

**V.13 Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements, (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach and/or (c) levy fines against such Owner and such Owner's Lot or Dwelling in accordance with the terms and provisions of Section 11.01 below. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the

Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in Sections 6.38, 8.07, 11.01, 11.02 and 11.03 hereof.

**V.14 Compliance Certification.** The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

**V.15 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each member of the ARC harmless from and against any and all costs and expenses, including court costs and reasonably attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding) to which such person may be made a party by reason of being or having been a member of the ARC. The members of the ARC shall not be liable for any mistake in judgment, negligence or otherwise except for their own wilful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the ARC shall be deemed agents of the Association and shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC and the Association shall and does hereby indemnify, agree to defend and hold each member of the ARC harmless from any and all liability to others on account of any such contract or commitment entered into by any member of the ARC in furtherance of their respective duties and responsibilities under this Declaration. The Association shall maintain adequate general liability and, to the extent financially feasible, directors' and officers' liability insurance (which shall also name the members of the ARC as agents of the Association as additional insureds thereunder), in order to fulfill its obligations under this Section 5.15 and the costs of such insurance shall constitute a Common Expense.

**5.16 Grant of Authority by SWRA.** SWRA, by execution hereof, does hereby irrevocably grant to the ARC the full, complete and absolute right to exercise any and all rights which would otherwise be exercisable by SWRA or any architectural review committee established pursuant to or under the 1987 Covenants with respect to the review and approval of any Improvements of any kind to be built, constructed, altered or replaced on any portion of the Property and any Additional Property . As a result of the foregoing grant of authority, SWRA does hereby covenant and agree with Developer, the ARC, the Association and the Owner of each Lot or Dwelling within any portion of the Property that the terms and provisions of this Article V shall supersede and replace in their entirety all of the terms and provisions of the 1987 Covenants which apply to the Property and any Additional Property with respect to the approval of plans and specifications for any improvements or dwellings by the architectural review committee established pursuant to the 1987 Covenants.

## ARTICLE VI

### USE AND DEVELOPMENT RESTRICTIONS

**VI.1 Use Restrictions.** Except as otherwise provided to the contrary in Section 5.12 above and in this Section 6.01, each Lot and Dwelling shall be used for single-family residential purposes only; provided, however, that (a) any of the Multi-Family Areas within the Property may be used for attached or detached townhouses, condominiums, duplexes, zero-lot-line homes and cluster or patio homes for residential dwelling purposes and (b) any portion of the Property may be used for Common Areas or Exclusive Areas to the extent approved by either Developer or the ARC. No trade or business of any kind may be carried on in or from any Lot, Dwelling or Multi-Family Area; provided, however, that the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof, including, specifically, any Lots or Dwellings, may be used and developed for (1) any of the uses included in the definition of Common Areas and (2) any other uses so long as any such other uses have been approved in writing by the ARC.

**VI.2 Plan Approval.** No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot, Dwelling, Multi-Family Area, Common Area or Exclusive Area unless such Dwelling and/or Improvements have been approved by the ARC in the manner set forth in Article V above.

**VI.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.

#### **VI.4 Building Setbacks.**

(a) Subject to the provisions of Sections 6.04(c), 6.05 and 6.33 below, minimum building setback lines for all Dwellings (including Dwellings in a Multi-Family Area) shall be established either (i) by the ARC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development of the Property), (iii) in the Multi-Family Declaration for any Multi-Family Area, (iv) in the Separate Development Covenants, if any, applicable to such Lot or Dwelling or (v) in the deed from Developer to the Owner of such Lot or Dwelling.

(b) No Dwelling or permanent, semi-permanent or temporary structures of any nature, as determined by the ARC in its sole and absolute discretion, shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above or Section 6.04(c) below. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.04.

(c) With respect to any Lot, Dwelling or Multi-Family Area which is located adjacent to the Golf Club Property, the additional building setback requirements set forth in Section 6.33 below shall be applicable.

**VI.5 Siting of Dwellings.** Prior to commencing any construction-related activities on any Lot or Multi-Family Area (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.05(b) above. Notwithstanding anything provided in Section 6.04 above to the contrary, the ARC may require building setback requirements different from those described in or established pursuant to Section 6.04, including building setbacks which are greater than those specified in or established pursuant to Section 6.04 above.

**VI.6 Trees.** Unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner, Multi-Family Association or Specific Development Association, other than Developer, shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to (a) prohibit the cutting and removal of any dead or diseased trees certified as such by the ARC, (b) prohibit Developer from cutting or removing trees to the extent required to construct any roads or Common Areas within the Property or the installation of utilities within the Property or (c) release any Owner from the provisions of Sections 6.09 and 7.01 below.

**VI.7 Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. Except for Dwellings in Multi-Family Areas (which shall be subject to such height limitations as determined by the ARC from time to time), no Dwelling shall exceed either (a) three (3) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway or (b) a maximum height of 50 feet measured from the highest point of the roof of said Dwelling to the finished grade of the Lot on the front of the Dwelling from a street or roadway; provided, however, that notwithstanding the foregoing, the ARC may, in its sole discretion, require that the height of a Dwelling be less than the limitations set forth herein.

**VI.8 Minimum Living Space.** Minimum Living Space requirements shall be established either (a) by the ARC, (b) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development of the Property), (c) in the Multi-Family Declaration for any Multi-Family Area, (d) in the Separate Development Covenants, if any, applicable to such Lot or Dwelling or (e) in the deed from Developer to the Owner of a Lot or Dwelling.

#### **VI.9 Landscaping.**

(a) The initial landscaping plan for each Lot or Dwelling in the Property shall be submitted to the ARC for approval pursuant to the provisions of Section 5.06 above. Each Lot or Dwelling in the Property situated adjacent to the Golf Club Property shall also be subject to the additional landscaping and other requirements set forth in Section 6.33 below. 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.

(b) All front and side yards of each Lot, Dwelling or Multi-Family Area shall, unless otherwise approved by the ARC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(c) All initial landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC no later than the date of occupancy of any Dwelling situated thereon.

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

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

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot, Dwelling or Multi-Family Area or in the rear (back) yard of any Lot, Dwelling or Multi-Family Area if the same would be visible from any public or private roadway within the Overall Development or from any of the Golf Club Property.

(g) The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot, Dwelling or Multi-Family Area.

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

(i) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling within 30 days following the date of such holiday.

#### **VI.10 Roofing.**

(a) The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling.

(b) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot, Dwelling or Multi-Family Area, including, without limitation, the roof of any Dwelling, if the same would be visible from any public or private roadway within the Overall Development.

(c) 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 painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, not be visible from any public or private roadway within the Overall Development.

(d) 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.

**VI.11 Exterior Lighting.** All exterior lighting for any Lot or Dwelling, including, without limitation, free standing lighting, accent lighting and utility (e.g., flood) lighting, must be approved by the ARC. All lighting shall, to the greatest extent practicable, illuminate only the Lot and Dwelling on which such lighting is located and shall be positioned in such a manner so as, to the greatest extent practicable, not to constitute a nuisance or hazard to any other Lots or Dwellings within the Overall Development.

**VI.12 Exterior Materials and Finishes.**

(a) Approved exterior building material finishes for any Dwelling shall be determined by the ARC and may include brick, stone, stucco, synthetic plaster (e.g., dryvit), solid wood siding (e.g., cypress or other solid wood) and such other materials as may be approved by the ARC. All exterior colors for any Dwelling must be approved by the ARC. All wood surfaces utilized on the exterior of any Dwelling shall be painted or stained utilizing a paint or stain color approved by the ARC; provided, however, that, except as provided below with respect to decks which are constructed as part of a Dwelling abutting the Golf Club Property, the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted or stained. Notwithstanding the foregoing, all wooden surfaces (other than flooring) on all decks and porches on Dwellings abutting or adjacent to the Golf Club Property shall be either painted or stained (as approved by the ARC). All painted or stained surfaces on the exterior of any Dwelling, including any decks and porches which are required to be painted or stained as provided in this Section 6.12(a), shall at all times be maintained in strict accordance with all rules, regulations and requirements of the ARC and the Association, including, specifically, repainting and restaining of such exterior surfaces as may be required from time to time by either the ARC or the Association.

(b) All brick, stonework and mortar, as to type, size, color and application, must be approved by the ARC. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roofing shingles, brick, stone, stucco, synthetic plaster (e.g., dryvit), wood, trim, cornices, eaves, railings, doors and shutters shall be subject to ARC approval.

(c) 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.).

(d) Metal flashing, valleys, vents and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

**VI.13 Chimneys.** The exterior of all chimneys shall be constructed of either brick, stone, stucco or synthetic plaster (e.g., dryvit). If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

**VI.14 Driveways and Off Street Parking.**

(a) Each Dwelling, other than Dwellings in a Multi-Family Area, shall provide for off-street parking for at least two (2) automobiles in enclosed garages which must be equipped with garage doors. The location of all driveways must be approved by the ARC. All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited; provided, however, that gravel and loose stone walkways at the rear of a Dwelling and which are not visible from any roadways within the Overall Development shall be allowed if approved by the ARC.

(b) Garage doors shall be constructed of such materials as are approved by the ARC. All garage doors shall at all times be kept closed except when in use. No garage shall be converted to any other use other than for the parking of vehicles therein without the approval of the ARC. Unless specifically approved in writing by the ARC, no garage door shall open onto or front any public or private roadways within the Overall Development. All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in such garages to the extent that garage space is available and 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.

(c) In no event shall any automobiles or other vehicles, machinery or equipment be parked or left unattended on or within (i) any areas of a Lot or Dwelling which are not paved driveways or enclosed garages, (ii) any Common Areas or Exclusive Areas or (iii) any of the public or private roadways or road rights-of-way within the Overall Development unless parking on or within such roadways or rights-of-way is required for guests or invitees of any Owner or Occupant due to full utilization of any off-street parking for such Lot or Dwelling and then, only to the extent that such vehicles do not remain parked on or within such roadways or rights-of-way for more than 24 hours.

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

**VI.15 Fences.** No chain link, vinyl coated or wire fences or deer or other animal fencing shall be permitted within the Property except with regard to maintenance areas within the Common Areas, tennis courts approved by the ARC and those fences erected by Developer. No fences shall be allowed in front yards other than for architectural accent and then, only to the extent approved by the ARC. 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 ARC.



#### **VI.16 Windows, Window Treatments and Doors.**

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be constructed on any Dwelling. Cantilevered bay windows shall be approved by the ARC (which may require additional landscaping in front of such bay windows). 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.

(c) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. All window treatments (whether draperies, shutters, blinds or other types of window treatments) which are visible from the exterior of a Dwelling must be either white or a neutral color.

**VI.17 Mailboxes.** Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or as approved by the ARC. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by the ARC, but no further inscription, paintings, ornaments or artistry shall be allowed. In lieu of mailboxes, Developer or the Association may provide within any of the Common Areas a kiosk or community mail center.

**VI.18 Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall be located at the rear of all Dwellings. All exterior heating, ventilating and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of a Dwelling and, if the same are visible from any of the public or private roadways within the Overall Development or from the Golf Club Property, such compressor units and equipment shall be screened from view by either walls or landscaping to be approved by the ARC. No window mounted heating or air conditioning units or window fans shall be permitted.

**VI.19 Satellite Dishes and Antennae.** No satellite dishes shall be allowed on any Lot, Dwelling or Multi-Family Areas; provided, however, that one (1) satellite dish no more than two (2) feet in diameter may be installed on a Dwelling so long as (a) the same is not visible from any public or private roadway within the Overall Development or from the Golf Club Property and (b) the location of such satellite dish is approved by the ARC. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot, Dwelling, Multi-Family Area or any other portion of the Property unless the same is contained entirely within the interior of a building or other structure, is not visible from any public or private roadway within the Overall Development, and adjacent Lot or Dwelling or from the Golf Club Property and is approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot, Dwelling or Multi-Family Area which may interfere with the reception of radio or television signals within the Overall Development or the Golf Club Property; provided, however, that Developer shall not be prohibited from installing and operating any equipment necessary for master antenna, cable television, security, mobile radio or similar systems within the Property or any portion of the Overall Development.

**VI.20 Soil Erosion and Drainage.** Each Owner shall provide and maintain on his or her Lot and Dwelling adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff resulting from any Improvements being or having been constructed on such Owner's Lot or Dwelling. Each Owner shall also insure that his or her Lot or Dwelling and any Improvements thereto are at all times in strict

compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all stormwater drainage and runoff 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. Each Owner shall be required to install and maintain culverts under all driveways on such Owner's Lot or Dwelling of such size and design to properly and adequately accommodate all stormwater runoff and other water flow utilizing such materials and in such sizes as the ARC or the Association may from time to time require. Furthermore, each Owner shall, at his or her sole cost and expense, maintain all such driveway culverts by properly removing all leaves, grass, dirt, limbs and other debris which may from time to time gather or collect in such driveway culverts. **Each Owner, by acceptance of a deed to his or her Lot or Dwelling, shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association, the Club Owner 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 ARC, the Association, the Club Owner 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 of any of the terms and provisions of this Section 6.20.**

#### **VI.21 Outdoor Furniture, Recreational Facilities and Clotheslines.**

(a) Unless otherwise specifically approved by the ARC, any yard (exterior) furniture placed, kept, installed, maintained or located in or on any Lot, Dwelling or Multi-Family Area shall, to the greatest extent practicable, be located so that the same will not be visible from any public or private roadway within the Overall Development or from the Golf Club Property. No interior furniture or furnishings (i.e., sofas, appliances, etc.) shall be allowed outside any Dwelling.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from any public or private roadway within the Overall Development and from the Golf Club Property and, to the extent practicable, from adjacent Lots and Dwellings.

(c) Children's toys, swingsets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any public or private roadway within the Overall Development; provided, however, that, as provided in Section 6.33 below, no children's toys, swingsets, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances shall be placed, installed or allowed to remain on any portion of any Lot which is contiguous to the Golf Club Property.

(d) Free-standing playhouses and treehouses shall be permitted but only after ARC approval of all plans, specifications and the location of the same.

(e) Basketball backboards shall be located so as not to be visible from any public or private roadway within the Overall Development or from the Golf Club Property and shall otherwise be located on such Lot or Dwelling in a location approved by the ARC. Basketball goal backboards should be of clear plexiglass or acrylic.

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from any public or private roadway within the Overall Development, from the Golf Club Property and from any adjacent Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any exterior railing, fence, wall, deck, porch or other area of any Lot or Dwelling.

(g) 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 public or private roadway within the Overall Development or from the Golf Club Property.

(h) Unless specifically approved in writing by the ARC, bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front or side yards of any Lot or Dwelling or which would be visible from any of the Golf Club Property 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 at the rear of a Dwelling and shall not be visible from any public or private roadway within the Overall Development or from the Golf Club Property.

**VI.22 Pets and Animals.** No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, Dwelling, Multi-Family Area or other portion of the Property; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot or Dwelling so long as they are not kept for breeding or commercial purposes; provided further, however, that any puppies or kittens may be kept and maintained on a Lot or Dwelling for not more than ten (10) weeks after their birth without constituting a violation of forgoing restriction so long as such puppies or kittens are removed from such Lot or Dwelling no later than ten (10) weeks from the date of their birth. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas or spaces) shall be constructed or maintained on any part of the Common Areas; all such structures or areas shall be located at the rear of a Dwelling, shall not be visible from any public or private roadway within the Overall Development or from the Golf Club Property and shall be constructed of materials in a location and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Overall Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash; provided, however, that as provided by the terms and provisions of Section 6.33 below, the ARC and Club Owner have the right, each in their sole and absolute discretion, to approve or prohibit any fencing, walls or other Improvements of any nature to be constructed, installed, placed or installed on or within any portion of a Lot or Dwelling abutting the Golf Club Property. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. 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.

**VI.23 Trash, Rubbish and Nuisances.**

(a) Each Owner of a Lot or Dwelling and each Multi-Family Association for each Multi-Family Area shall be solely responsible for contracting for and paying for the removal of all trash, garbage, rubbish, refuse, waste and debris (including, without limitation, tree and shrubbery clippings, grass clippings and dead or diseased trees and other vegetation) from the Lot or Dwelling of any area of the Multi-Family Areas for which such Multi-Family Association is responsible for the maintenance thereof.

(b) No trash, garbage, rubbish or debris (organic or inorganic) of any kind shall be dumped, placed or permitted to accumulate upon any Lot, Dwelling, Multi-Family Area, Common Area, Exclusive Area or any other portion of the Overall Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot, Dwelling or Multi-Family Area which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots, Dwellings or Multi-Family Areas within the Property or any other areas of the Overall Development. Noxious or offensive activities shall not be carried on in or from any Lot, Dwelling or Multi-Family Area or in any part

of the Common Areas or Exclusive Areas, and each Owner and Occupant shall refrain from any act or use of a Lot, Dwelling or Multi-Family Area which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot, Dwelling, Multi-Family Area or other portion of the Property; provided, however, that the foregoing shall not apply to Developer, Club Owner or to the use of any of the foregoing devices within any recreational areas of the Common Areas such as swimming pools. Any Owner, Occupant, Multi-Family Association, Specific Development Association or any of the respective family members, guests, invitees, servants, agents, employees or contractors of such Owner, Occupant, Multi-Family Association or Specific Development Association who dumps, places or allows trash or debris to accumulate on his or her Lot or Dwelling or on or within any Multi-Family Area, Common Area, Exclusive Area, on any other portion of the Property or the Overall Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(c) Trash, garbage and any other refuse or waste shall not be kept on any Lot, Dwelling or Multi-Family Area 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 any public or private roadway within the Overall Development and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers may be moved to the side or front yard of any Dwelling on trash collection days for such Lot, Dwelling or Multi-Family Area.

(d) No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot, Dwelling, Multi-Family Area or other portion of the Property or the Overall Development without the prior approval of the Association and the Still Waters Fire and Rescue Department or any other fire district or authority having jurisdiction over the Property; provided, however, that all outdoor burning may be prohibited at any time if the Association, in its sole discretion, determines that an acceptable alternative disposal method becomes available.

#### **VI.24 Recreational Vehicles and Machinery and Equipment.**

(a) Except as expressly authorized by the terms and provisions of Section 6.28 below, mobile homes, motor homes, trailers of any kind, campers, vans, recreational vehicles, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any type or nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment, including, without limitation, any vehicles, machinery or equipment which exceed dimensions of either 222 inches in length or 75 inches in height, shall not be permitted, stored or allowed to remain on any Lot, Dwelling or Multi-Family Area unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot, Dwelling or Multi-Family Area. Any such enclosed structure must be approved by the ARC. Neither the Common Areas, Exclusive Areas, any of the public or private roadways within the Overall Development nor any of the Open Spaces, as defined in the Existing Covenants and the 1987 Covenants, shall, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment; provided, however, that the foregoing provisions shall not be applicable to Developer.

(b) Each Lot, Dwelling or Multi-Family Area shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot, Dwelling or Multi-Family Area). Vehicles shall be parked only in driveways or in garages constructed in accordance with the provisions of

Section 6.14 above. Vehicles shall not be parked on any landscaped or natural areas of a Lot, Dwelling or Multi-Family Area.

(c) Any vehicle which is inoperable shall be immediately removed from the Property and the Overall Development. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot, Dwelling or Multi-Family Area or within any portion of the Common Areas or Exclusive 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 and the Overall Development.

(d) 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), motor homes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation or recreation on or within the Property or the Overall Development.

**VI.25 Signage.** No “for sale,” “for lease” or similar signs shall be allowed on any Lot or Dwelling. No other signs or advertising posters of any kind (including, without limitation, security or security alarm signs) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC, in its sole and absolute discretion. Notwithstanding the foregoing, (a) the restrictions set forth in this Section 6.25 shall not be applicable to (i) Developer or to any signs erected by Developer pursuant to Sections 3.07 and 6.28(c) hereof or (ii) Club Owner or to any signs erected by Club Owner pursuant to Section 3.10(b) hereof and (b) Developer and the Association shall have 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 3.07 above.

**VI.26 Above Ground Tanks and Wells.** No above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot, Dwelling, Multi-Family Area or within any of the Common Areas or Exclusive Areas. No private water wells may be drilled or maintained on any Lot, Dwelling or Multi-Family Area except for wells maintained solely for irrigation purposes. All such irrigation wells must be approved in writing by the ARC prior to the installation of the same.

**VI.27 Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, storage shed, utility building, portable building, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind shall be permitted, constructed, installed or allowed to remain on any Lot, Dwelling or Multi-Family Area; 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, (b) any detached garages or other structures which are approved in writing by the ARC, (c) dog houses for not more than two (2) dogs so long as such dog houses are visibly screened from view from all public or private roadways within the Property and adjacent Lots, Dwellings or Multi-Family Areas and (d) construction trailers and/or sales offices erected or placed on any part of the Property by Developer pursuant to Section 5.12 above.

**VI.28 Construction of Improvements.**

(a) During the construction of any Improvements on any Lot, Dwelling or Multi-Family Area, (i) such Lot, Dwelling or Multi-Family Area shall at all times 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 public or private roadway within the Property or the Overall Development and (iii) all

construction trash, debris and rubbish on each Lot shall be properly removed and disposed of outside the Property and the Overall Development at least weekly or any earlier basis to the extent needed, as determined by the ARC, in its sole discretion. Construction materials, trees, rubbish and other debris may not be burned or buried on or beneath any Lot, Dwelling, Multi-Family Area or any other portion of the Property or the Overall Development; provided, however, that the foregoing shall not be applicable to Developer. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any of the public or private roadways within the Overall Development. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any public or private roadways within the Overall Development.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas, (ii) utilize off-street parking only, (iii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling, (iv) not damage trees or other vegetation within any of the Common Areas or on such Lot which, pursuant to the provisions of Section 6.06 above, are to be preserved and (v) be subject to such road tolls, if any, established from time to time by SWRA.

(c) No signage, banners, flags or advertising posters shall be allowed on any Lot or Dwelling without obtaining ARC approval. In no event shall any signage approved by the ARC be attached, nailed or otherwise adhered to any tree or other plant life on a Lot, Dwelling or Multi-Family Area.

(d) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any of the Common Areas or any of the public or private roadways within the Overall Development. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

(e) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Furthermore, the construction or alteration of any Improvements of any nature on any Lot shall be undertaken and completed by the Owner of such Lot in accordance with the standards of the Southern Building Code Congress, as the same may be amended from time to time. 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.

**VI.29 Subdivision.** No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.29 shall not be applicable to the subdivision, resubdivision or combination of any Lots or other real property owned by Developer.

**VI.30 Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot, Dwelling or Multi-Family Area subject to the prior written approval of the plans for the same by the ARC and the restrictions contained herein. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities and tennis courts within the Property.

**VI.31 Traffic Regulations.** All vehicles owned or used by Owners and Occupants and their respective guests within the Property must be registered with the SWRA and Association for so long as SWRA or the Association requires the registration of vehicles and shall otherwise be operated within the Property pursuant to all rules and regulations of SWRA and the Association, including, specifically, any regulations of the Association which require that permits (or guest passes) be obtained prior to entry onto any of the Property or any of the Overall Development. All vehicular traffic on the private streets and roads in the Property shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board is 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 private roads within any portion of the Property and denying or limiting access to the Overall Development by any guests or invitees of any Owners or Occupants who violate any traffic rules or regulations or any other rules and regulations which may be adopted from time to time by the Board. The Board shall be entitled to enforce such rules and regulations by establishing such enforcement procedures as it deems appropriate, including hiring security or traffic patrols which shall have the right to levy fines for the violation of any traffic rules and regulations. 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 rules and regulations of the Association shall govern. Only drivers licensed to operate motor vehicles by the State of Alabama or by any other state in the United States may operate any type of motor vehicle, including golf carts, within the Property. In order to operate a golf cart in the Property, the owners or users thereof shall comply with any regulations and requirements for the operation thereof as may be required by the Association. All vehicles of any kind and nature which are operated on the streets in the Property shall be operated in a careful, prudent, safe and quiet manner, with due consideration for the rights of all residents of the Property.

**VI.32 Golf Course Lots.**

(a) In addition to the provisions of Sections 5.06, 6.04 and 6.09 hereof and subject to the remaining terms and provisions of this Section 6.32(a), (i) a thirty (30) foot natural, undisturbed buffer, free from any Improvements of any nature shall remain and at all times be maintained on that portion of any Lot, Dwelling and Multi-Family Area which abuts and is contiguous to the Golf Club Property and (ii) no trees, shrubbery, bushes, vegetation or other plant life lying within the aforesaid thirty (30) foot natural, undisturbed buffer area may be cut, pruned, removed, damaged or mutilated without the prior written consent (or unless otherwise required by) the ARC and Club Owner; provided, however, that any and all dead vegetation, stumps, weeds, rubbish, debris, trash, refuse, garbage and waste material shall be properly removed from such thirty (30) foot natural, undisturbed buffer area by the Owner of such Lot or Dwelling. Notwithstanding anything provided to the contrary in this Section 6.32, each Owner, by acceptance of a deed to any Lot, Dwelling or Multi-Family Area which abuts and is contiguous to the Golf Club Property acknowledges and agrees that (1) the ARC or Club Owner may require additional landscaping, berming and screening to be placed, replaced and maintained in and along the aforesaid thirty (30) foot natural, undisturbed buffer area, and otherwise cause such buffer area to be compatible with the landscaping of any adjacent Lot or Dwelling, (2) unless expressly approved in writing by the ARC and Club Owner, no construction activities of any nature, including, without limitation, grading or excavation work, installation of storm sewers or other types of pipes, lines, drains or conduit shall be allowed or permitted in or upon the aforesaid thirty (30) foot natural, undisturbed buffer area, unless approved in writing by the ARC and Club Owner and (3) unless expressly approved in writing by both the ARC and Club Owner, no fences, walls, berms, mounds, barriers, decks, docks, piers, terraces, patios, tennis courts, swimming pools, outdoor furniture, swingsets, jungle gyms, trampolines, treehouses, doghouses, dog or other animal runs or pens, outdoor recreational facilities and equipment or any other devices, equipment, tools, machinery, buildings, structures, Improvements or appurtenances of any nature (other than the Dwelling for such Lot as approved by the ARC) shall be erected, constructed, built, placed, installed or

permitted to remain in or upon any portion of any Lot, Dwelling or Multi-Family Area which abuts and is contiguous to the Golf Club Property.

(b) Owners and Occupants of Lots, Dwellings and Multi-Family Areas adjacent to any portion of the Golf Club Property, as well as their respective family members, guests, agents and invitees, shall refrain from any actions or activities which would distract the playing qualities on any golf course located on the Golf Club Property or which would create a nuisance or annoyance, as determined by the ARC or Club Owner, each in their sole discretion. Such prohibited activities shall include, without limitation, burning materials, maintenance of dogs or other pets which interfere with golf course play due to their loud barking or odors, entrance onto the Golf Club Property, playing of loud radios, televisions, stereos or musical instruments, running or walking on the fairways, picking up golf balls or similar interference with play, the maintenance of any outdoor recreational or fitness Improvements which cause or result in noises, whether by the persons using the same or by the Improvements themselves, which interfere with the play of golf or allowing trash, rubbish, weeds or undergrowth to remain or grow on any Lot, Dwelling or Multi-Family Area which is unsightly, all as determined by the ARC or Club Owner, each in their sole discretion.

**(c) The Owner and Occupant of any Lot, Dwelling and Multi-Family Area situated adjacent to any of the Golf Club Property, together with their respective family members, guests, agents and invitees, do, by acceptance of a deed to such Lot, Dwelling or Multi-Family Area or their entrance onto such Lot, Dwelling or Multi-Family Area, hereby waive and release Developer, the ARC, the Board, Club Owner, the operators of the Golf Club and their respective officers, directors, shareholders, members, partners, employees, agents and invitees from any and all liability of any nature whatsoever arising out of or in connection with any damage or injury (including death) to person or property caused by any golf balls entering onto such Lot, Dwelling or Multi-Family Area.**

#### **VI.33 Waterfront Lots.**

(a) In addition to the provisions of Section 5.06(b) hereof, the Owner of each Lot, Dwelling and Multi-Family Area which abuts and is contiguous to any lakes or other water features or parks within the Property shall at all times maintain all such lakefront or waterfront areas of such Owner's Lot, Dwelling or Multi-Family Area in a safe and attractive condition.

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

(c) In addition to the easements and rights established and reserved by Developer pursuant to Article III hereof, Developer does hereby establish and reserve for itself and 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 lying parallel to and running along the common boundaries of any Lots, Dwellings or Multi-Family Areas lying directly adjacent to and contiguous with any lakes or water features within the Property which do not constitute Exclusive Areas, which easement shall allow and be used for (i) the flow and drainage of surface water accumulating in, upon or as a result of the construction and maintenance of any such lakes or water features on or within the Property and to otherwise allow for the rise and fall of the water level of such lakes or water features and (ii) to the extent set forth on the subdivision plat



for any such Lots, Dwellings or Multi-Family Areas situated directly adjacent to any such lakes or water features, for the construction and maintenance of a walking trail around such lake or water feature for use by the Association and all of its members; provided, however, that the foregoing easements shall not apply to any lakes or water features which are Exclusive Areas within a Specific Development.

- (d) No Improvements of any kind or nature shall be built, erected, maintained or placed on or within fifty (50) feet of any lakes or water features without the prior written consent of the ARC. Furthermore, the Board may, in its sole absolute discretion, establish and modify from time to time rules and regulations for the use of any lakes and water features within the Property which do not constitute Exclusive Areas, which rules and regulations may limit, restrict or prohibit any activities on, about or adjacent to such lakes or water features, including, without limitation, swimming or boating activities on or within such lakes or water features.

(e) The Owner of each Lot, Dwelling or Multi-Family Area abutting any lake or water feature within the Property, for himself or herself, any Occupant of such Lot, Dwelling or Multi-Family Area and their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns, by acceptance of a deed to such Lot, Dwelling, or Multi-Family Area and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot, Dwelling or Multi-Family Area, for themselves and their respective successors and assigns, do hereby:

**(i) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association, all Multi-Family Associations, all Specific Development Associations and each Governmental Authority and their respective officers, directors, members, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, demands, claims, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of:**

**(1) any loss, damage or injury to person or property, including death, as a result of any entry onto any lakes or water features by any such Owner, Occupant, Mortgagee or any of their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns; and**

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

**(ii) Acknowledge and agree that:**

**(1) neither Developer, the ARC, the Association, any Multi-Family Association, any Specific Development Association, any Governmental**

Authority nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about any such lakes or water features,

(2) the use of such lakes or water features by any such Owner or Occupant or any of their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns, shall be at the sole risk and expense of the Person using such lakes or water features;

(3) neither Developer, the Association, the ARC, any Multi-Family Association, any Specific Development Association, any Governmental Authority nor any of their respective agents, employees, representatives, successors or assigns, shall be obligated to take any action to maintain a specific water level for any such lakes or water features; and

(4) any lakes and water features on, within or adjacent to the Property, as with any other body of water, pose a potential threat of life-threatening harm and each Owner or Occupant and their respective family members, guests and invitees should exercise utmost care and safety precautions in and around any such lakes or water features.

**VI.34 Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

**VI.35 Additional Regulations.** In addition to the restrictions set forth in this Declaration, the (a) ARC 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, Dwellings and Multi-Family Areas, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling and (b) Board shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots, Dwellings and Multi-Family Areas.

**VI.36 Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article V above and this Article VI with respect to any Lot, Dwelling or Multi-Family Area except as to Sections 5.06 and 6.33 as affect the Golf Club and Golf Club Property (in which event the consent of Club Owner shall be required for any variances granted with respect to Sections 5.06 and 6.33). Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairperson or vice chairperson of the ARC. The provisions of Section 5.03 above concerning meetings, a quorum of members and the number of votes necessary to approve action taken by the ARC shall be binding upon the ARC in any matters regarding the granting of variances.

**VI.37 Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance, (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot, Dwelling or Multi-Family Area and take all action necessary to extinguish or correct such violation or

breach and/or (c) levy fines against such Owner and such Owner's Lot or Dwelling in accordance with the terms and provisions of Section 11.01 below. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in Sections 5.13, 6.22, 6.23(a), 6.32, 7.02(b), 7.03, 8.05, 8.07 and 11.01 hereof.

#### **VI.38 Club Owner Enforcement Rights.**

(a) The Association, by execution hereof, covenants and agrees (i) to promptly enforce all of the terms and provisions of this Declaration which in any way relate to the Golf Club Property and (ii) not to grant any variances with respect to any of the terms and provisions of this Declaration which, in any way, relate to the Golf Club Property or any Lot or Dwelling abutting the Golf Course Property, without the express prior written consent or approval of the same by the Club Owner.

(b) If, at any time, Club Owner determines that any of the provisions of Article V or Article VI hereof which are applicable to any Lots, Dwellings or Multi-Family Areas situated adjacent to the Golf Club Property are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then Club Owner shall first notify the Association or the ARC, as the case may be, in writing of such violation and breach and if the Association or ARC, as the case may be, has not caused such Owner to remedy the same within a reasonable period of time following the giving of such written notice by Club Owner, then Club Owner shall have the right (which shall be in addition to the rights granted to the ARC and the Association pursuant to Section 6.38 above), at its option, to (a) enjoin such violation or non-compliance and/or (b) through its designated agents, employees, representatives and independent contractors, enter upon such Lot, Dwelling or Multi-Family Area and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by Club Owner in enforcing any of the provisions of Article V and Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any such non-compliance or the removal of such violation or in any judicial proceeding, together with any other costs and expenses incurred by Club Owner in connection therewith, shall be paid to Club Owner by such Owner who has violated or breached any of the provisions of Article V or this Article VI with respect to any Lot, Dwelling or Multi-Family Area situated adjacent to the Golf Club Property. The Association covenants and agrees to assist Club Owner in the enforcement and of any and all of the rights granted in this Declaration including, to the extent reasonably requested by Club Owner, the exercise by the Association of any and all of its rights and remedies under this Declaration.

### **ARTICLE VII**

#### **MAINTENANCE RESPONSIBILITIES**

##### **VII.1 Responsibilities of Owners, Multi-Family Associations and Specific Development Associations.**

(a) Unless specifically identified herein as being the responsibility of the Association or in either a Multi-Family Declaration or any Specific Development Covenants as being the responsibility of a Multi-Family Association or a Specific Development Association, respectively, 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 or Dwelling. Unless otherwise provided to the contrary in the appropriate Multi-Family Declaration or in any Specific Development Covenants, the maintenance and repair of all (i) common areas or common elements located within the Multi-Family Areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Multi-Family Areas) shall be the responsibility of the Multi-Family Association for such Multi-Family Area and (ii) Exclusive Areas shall be the responsibility of the Specific Development Association which has been established under the Specific Development Covenants for such Exclusive Areas. Each Owner or Multi-Family Association shall be responsible for maintaining his, her or its Lot, Dwelling or Multi-Family Area, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Dwellings and Improvements thereto. Each Specific Development Association shall be solely responsible for maintaining all Exclusive Areas in a neat, clean and sanitary condition. 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 or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot, Dwelling, Multi-Family Area or Exclusive Area without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot, Dwelling, Multi-Family Area and Exclusive Area, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ARC pursuant to Section 5.06(b) above. All areas of any Lot, Dwelling, Multi-Family Area or Exclusive Area which are not improved by the construction of a Dwelling thereon (except for the natural, undisturbed buffer area on any Lot, Dwelling, Multi-Family Area or Exclusive Area as described in Sections 5.06(b) and 6.33 above) shall at all times be maintained by the Owner, Multi-Family Association or Specific Development Association thereof, as the case may be, in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot, Dwelling, Multi-Family Area or Exclusive Area up to the edge of the pavement of any roadway abutting such Lot, Dwelling, Multi-Family Area or Exclusive Area and shall be binding on the Owner of each Lot, Dwelling or Multi-Family Area and the applicable Specific Development Association at all times, either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot or within any Multi-Family Area or Exclusive Area 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, trash, refuse, garbage and waste material shall be promptly removed from any Lot, Dwelling, Multi-Family Area or Exclusive Area and properly disposed of outside of the Overall Development. In no event shall any dead trees, shrubs, vines, plants and other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot or Dwelling nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas, including, specifically, any of the rights-of-way (or easements) of any of the public or private roads within the Property or the Overall Development.

(c) No Owner, Multi-Family Association or Specific Development Association shall (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other Improvements within a Lot, Dwelling, Multi-Family Area or Exclusive Area unless such decoration, change or alteration is first approved, in writing, by the ARC or (ii) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Property, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the ARC.

## **VII.2 Responsibilities of Association.**

(a) Except as may be otherwise provided herein to the contrary and subject to the provisions of this Section 7.02, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of (i) all private streets and roads within the Property, walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, landscaped areas, recreational 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, Dwellings or Multi-Family Areas as provided in Sections 3.05 through 3.09, inclusive, above, (ii) such security systems, guardhouses, entrance gates and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility or other person, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas and (iv) all retention lakes, ponds and other water areas and facilities constructed by Developer or the Association (but only to the extent such lakes, ponds and other water areas do not constitute Exclusive Areas) within or adjacent to the Property, including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or as may otherwise be required by any Governmental Authorities. The Association shall not be liable for injuries or damages to any person or property (1) caused by the elements, acts of God or any Owner, Occupant or other person, (2) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot, Dwelling, Multi-Family Area or Exclusive Area or (3) resulting from theft, burglary or other illegal entry onto the Property or any Lot, Dwelling, Multi-Family Area or Exclusive Area thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities. **IN NO EVENT, HOWEVER, SHALL THE ASSOCIATION BE RESPONSIBLE FOR MAINTAINING ANY EXCLUSIVE AREAS.**

(b) In the event that the Board determines that (i) any Owner, Multi-Family Association or Specific Development Association 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 any Owner or Occupant, or the respective family members, guests, servants, employees, invitees or contractors of such Owner or Occupant, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may, (but without any obligation to do so) give such Owner, Multi-Family Association or Specific Development Association 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, Multi-Family Association or Specific Development Association, as the case may be, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner, Multi-Family Association or Specific Development Association, as the case may be, shall have fourteen (14) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fourteen (14) 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, Multi-Family Association or Specific Development Association 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, Multi-Family Association or Specific Development Association, as the case may be, and said cost shall be a personal obligation of such Owner or all Owners who are members of such Multi-Family Association or Specific Development Association, as the case may be, shall constitute an Individual Assessment to such Owner or all Owners who are members of such Multi-Family Association or Specific Development Association and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.09 below. If and to the extent the Association undertakes any action pursuant to this Section 7.02(b) on behalf of any Owner, Multi-Family Association or Specific Development Association, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonably administrative costs and expenses incurred by or on behalf of the Association, shall be due and payable by such Owner, Multi-Family Association or the applicable Specific Development Association, as the case may be, and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

## ARTICLE VIII

### COMMON AREA ASSESSMENTS

**VIII.1 Assessments and Creation of Lien.** Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) Annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.07(a) 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 or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.07(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he or she is the Owner of a Lot or Dwelling and his or her grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.07(a) 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 or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall commence as to each Lot or Dwelling as provided in Section 8.06 below and shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Multi-Family Area, Common Area or any other portion of the Property or any other cause or reason of any nature. **IN NO EVENT SHALL THE GOLF CLUB PROPERTY OR THE CLUB OWNER BE SUBJECT TO ANY ASSESSMENTS.**

### **VIII.2 Uniform Rate of Assessments.**

(a) Both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against each Lot or Dwelling at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as determined by a fraction, the numerator of which shall be the total number of Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings within the Property at the time such Annual or Special Assessment is levied. Each Lot or Dwelling shall be subject to equal Annual and Special Assessments. For purposes of calculating Annual Assessments and Special Assessments, each dwelling unit within a Multi-Family Area shall be deemed a separate and individual Dwelling.

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then the Lots and/or Dwellings within the Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Property.

(c) Each Owner of a Lot or Dwelling by acceptance of a deed to such Lot or Dwelling, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or any Lot or Dwelling are combined, subdivided or resubdivided by Developer pursuant to Section 2.08 above and (ii) any portion of the Property becomes Common Areas or Exclusive Areas.

### **VIII.3 Computation of Annual Assessments.**

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a contribution or reserve account, if necessary, for the capital needs of the Association and (ii) the amount of Annual Assessments which shall be payable by each Lot or Dwelling within the Property. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for the then applicable year for all of the Property and each Owner shall pay his or her prorata share of the same as provided in Section 8.02 above. As used herein, the term “Annual Assessments” with respect to each Lot or Dwelling shall mean the sum of (1) the prorata portion of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of this Section 8.03 and Section 8.02 above and (2) the Maintenance Charge payable each calendar year by each Owner in accordance with the provisions of Section 3.11 hereof. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

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

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

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

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property and security charges for security services provided to the Property;

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

(v) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas for which the Association is responsible and all other areas within the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

(vi) The payment of annual Maintenance Charges payable to SWRA by each Lot or Dwelling;

(vii) The voluntary reimbursement to SWRA of costs and expenses relating to the maintenance, repair, operation, use and replacement of any of the private roads owned or maintained by SWRA or any of the other SWRA Common Areas which the Board, in its sole and absolute discretion, determines to be in the interest of the Association and the Owners; provided, however, that nothing contained in this Agreement shall be deemed or construed to create any obligation or liability on the part of the Association, the Board or Developer to pay or fund any of the foregoing costs or expenses;

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

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

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

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

(vii) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (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.

**VIII.4 Special Assessments.** In addition to the Annual Assessments authorized in Section 8.03 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs, including, without limitation, costs which are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below) must be approved by a majority of the members of the Association voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term “Special Assessments” shall mean those assessments made to all Owners pursuant to this Section 8.04 or Sections 9.01(b) and 9.03(a)(i) below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board’s discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

**VIII.5 Individual Assessments.** The Association may, in its sole discretion, at any time and from time to time levy and assess as Individual Assessments (collectively, “Individual Assessments”) (a) the plan review fee payable by an Owner pursuant to Section 5.05(b) hereof, (b) the transfer fee payable by the transferee of any Lot or Dwelling pursuant to Section 4.10 above, (c) fines against an Owner and such Owner’s Lot or Dwelling in accordance with the terms and provisions of Sections 6.22, 6.32 and 11.01 hereof, (d) any costs or expenses, including, without limitation, collection costs, attorneys’ fees, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of (i) the failure of any Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association pursuant to Sections 5.13, 6.20, 6.22, 6.23(a), 6.38, 7.02(b) or 8.07 hereof, (ii) the failure of any Multi-Family Association to maintain any of the Multi-Family Areas for which it is responsible or (iii) the failure of any Specific Development Association to maintain any Exclusive Areas for which it is responsible and (e) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board. Any costs or expenses incurred by the Association as a result of the failure of a Multi-Family Association or a Specific Development Association to properly maintain Multi-Family Areas or Exclusive Areas, respectively, for which each may be responsible shall be deemed Individual Assessments against the individual Owners of each Lot or Dwelling within the applicable Multi-Family Area or Specific Development, respectively. The Individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner.

**VIII.6 Date of Commencement of Assessments.** Assessments shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a Person other than Developer or any affiliate thereof and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board, subject to proration for the remainder of the then calendar year in which such Lot or Dwelling was conveyed to a person other than Developer. Assessments for Lots and Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a Person other than Developer or any affiliate thereof, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such Additional Property was added to the terms of this Declaration. Notwithstanding anything provided herein to the contrary, (a) Developer shall not be responsible for the payment of any Assessments on any Lots or Dwellings owned by Developer or any of its affiliates and (b) in no event shall Club Owner or the Golf Club Property be subject to any Assessments.

#### **VIII.7 Effect of Non-Payment; Remedies of the Association.**

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid in full within fifteen (15) days from the due date of such Assessments (which due date shall be set forth in the notice of such Assessments given to the Owners), then (i) the Owner of such Lot or Dwelling shall be deemed in default hereunder and (ii) 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 fifteenth (15th) day from the due date of such Assessments until the same has been paid in full. In the event any Assessments or any portion thereof are not paid within fifteen (15) days from the due date of such Assessments, then the unpaid portion of such Assessment shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by or on behalf of the Association, including, without limitation, any and all administrative expenses incurred by or on behalf of the Association in connection with attempts to collect such unpaid Assessments. The lien and equitable charge upon each Lot or Dwelling for Assessments 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 Association including, without limitation, any and all administrative expenses incurred by or on behalf of the Association in connection with attempts to collect such unpaid Assessments.

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

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

(ii) The Association may enforce the lien created pursuant to Sections 8.01 and 8.07(c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than thirty (30) days from the due date of such Assessments, then the Association, through the Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office:

(i) The name of the delinquent Owner;

(ii) The legal description and street address, if any, of the Lot or Dwelling upon which the lien claim is made;

(iii) 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

(iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

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

(d) In addition to the other rights and remedies provided herein, in the event any Owner fails to pay any Assessments within 30 days from the due date for such Assessments, then (i) all voting rights of such Owner under this Declaration, the Articles and the Bylaws shall be suspended (and such Owner shall not be counted in determining a quorum or the minimum number of Owners voting in a ballot vote) until all Assessments due and owing by such Owner have been paid in full and (ii) the Association shall have the right to suspend the privileges of such Owner, his or her Occupants, family members, guests and invitees from using any of the Common Areas.

**VIII.8 Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling 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 any such Institutional Mortgagee has been recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) 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 or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and 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 or Dwelling.

**VIII.9 Certificates.** The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any

Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

## **ARTICLE IX**

### **CASUALTY, CONDEMNATION AND INSURANCE**

#### **IX.1 Damage or Destruction to Common Areas.**

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

(b) Notwithstanding anything to the contrary provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such Special Assessments shall be levied against each Owner equally as provided in Section 8.02 above. Further Special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

(c) Notwithstanding anything provided to the contrary in this Section 9.01, the Board may, in its sole discretion, determine that the Common Areas damaged or destroyed by such fire or other casualty should not be restored or replaced, in which event all insurance proceeds received by the Association shall be retained by and for the benefit of the Association and the Common Areas so damaged or destroyed shall be cleared of all debris and damaged Improvements thereto and left in a clean, orderly, safe and sightly condition.

#### **IX.2 Damage or Destruction to Lots, Dwellings or Exclusive Areas.**

(a) In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to at least the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty (or such longer period of time

as may be determined by the Board) and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

(b) In the event of any fire or other casualty which damages or destroys any portion of any Exclusive Areas, then the Specific Development Association for such Specific Development shall promptly repair and otherwise restore such Exclusive Area to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration. Notwithstanding provided to the contrary in this Section 9.02, the Specific Development Association for any Exclusive Areas damaged or destroyed by fire or other casualty may, in its sole discretion, determine that the Exclusive Areas so damaged or destroyed no be restored or replaced, in which event all insurance proceeds received by the Specific Development Association shall be retained by and for the benefit of such Specific Development Association and the Exclusive Areas so damaged or destroyed shall be cleared of all debris and damaged Improvements thereto and left in a clean, orderly, safe and sightly condition.

### **IX.3 Condemnation of Common Areas.**

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (ii) levied against each Owner equally as provided in Section 8.02 above. Further Special Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

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

(b) If any such taking or sale in lieu thereof includes all or any part of a Lot, Dwelling or Multi-Family Area 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, Dwelling or Multi-Family Area which is subject to any such taking and the Board may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

#### **IX.4 Condemnation of Lots, Dwellings or Exclusive Areas.**

(a) In the event that all or any portion of a Lot, Dwelling or Exclusive Area 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 or the Specific Development Association responsible for the maintenance and repair of such Exclusive Area, as the case may be, shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of such Lot, Dwelling or Exclusive Area as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot, Dwelling or Exclusive Area is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner or Specific Development Association, as the case may be, shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot, Dwelling or Exclusive Area and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

(b) In the event that all or any portion of any Exclusive Areas is taken as the 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 Specific Development Association, if any, established to maintain such Exclusive Areas or the Owners within any Specific Development who have the right to use and enjoy the Exclusive Areas, as the case may be, shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of such Exclusive Areas as nearly as practicable to the condition to which the same existed prior to such taking; provided, however, that any such restoration shall be subject to all the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. In the event that restoration of such Exclusive Areas is impracticable or would otherwise violate any of the terms of the revisions of this Declaration, then the Specific Development Association, if any, established for such Exclusive Areas or those Owners who are entitled to the use and benefit of such Exclusive Areas, as the case may be, shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Exclusive Areas and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

#### **IX.5 Insurance.**

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

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association, its Board and all members, officers, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority 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.

(d) All insurance coverage authorized hereunder 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 Association, the Owners and the family members, servants, agents, tenants and guests of the Owners and shall also name Developer as an additional insured.

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











**SEQ Article1\_0 \\* ROMAN \XIX. SEQ Article1\_1 \\* Arabic \r??01\_\_\_\_\_Tem .** Subject to the provisions of Section 10.05 below, the terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least seventy-five percent (75%) of all Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article III and in Sections 6.33 and 6.34 hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

**XI.1 Amendments Prior to Turnover Date.** At any time prior to the Turnover Date (but subject to the provisions of Section 10.04 below), Developer may, in its sole discretion, amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee; provided, however, that, except as otherwise provided in Section 10.05 below, in the event any amendment proposed by Developer materially and adversely alters or changes the rights of any Owner to the use and enjoyment of his or her Lot, Dwelling or Multi-Family Area, as determined solely by Developer, in its reasonable discretion, then such amendment shall be valid only upon the written consent or ballot vote of both (a) Developer and (b) fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any amendment made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions 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 Lots, Dwellings or Multi-Family Areas, (iii) reasonably required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot, Dwelling or Multi-Family Area or (iv) necessary to enable any Governmental Authority or reputable private insurance company to insure Mortgages on any Lots, Dwellings or Multi-Family Areas within the Property. Except as specifically provided in Section 10.04 below and in this Section 10.02 (with respect to any amendments to this Declaration proposed by Developer which materially and adversely alter or change the rights of any Owner to the use or enjoyment of his or her Lot), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

**XI.2 Amendments After Turnover Date.** After the occurrence of the Turnover Date but subject to the provisions of Section 10.04 below, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating

unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

**XI.3 Restrictions on Amendment.** Notwithstanding anything provided in this Declaration to the contrary, (a) in no event shall any amendments to Sections 1.17, 1.18, 2.01, 2.06, 3.01(b), 3.10, 5.06(b), 6.04(c), 6.33, 6.39, 8.01 and 8.06 of this Declaration be effective unless the same are consented to by Club Owner, which consent of Club Owner may be withheld in the sole discretion of Club Owner, with or without any reason, (b) Section 3.11 hereof may not be amended or modified unless any such amendment is consented to or approved in writing by SWRA, the Association and Developer and (c) none of the provisions of Article III hereof may be amended or modified without the prior written consent of Developer.

**10.05 Special Termination Rights Reserved by Developer.** Notwithstanding anything provided in this Declaration to the contrary, Developer, for itself and its successors and assigns, does hereby reserve the right, in its sole and absolute discretion, to elect to terminate this Declaration and dissolve the Association at any time on or after the date of this Declaration if, in the opinion of Developer, the 1987 Covenants are amended, with the written consent and approval of Developer, to provide and include covenants, conditions and restrictions substantially similar to those which are set forth in this Declaration and for Assessments payable to SWRA which are substantially similar to the provisions set forth in Article VIII hereto. In order to effect the termination of this Declaration in accordance with the terms and provisions of this Section 10.05, Developer shall have the right to unilaterally file in the Probate Office a declaration of termination terminating this Declaration and to otherwise take any and all action necessary or required in order to dissolve the Association. To the extent the Association is dissolved, all amounts then held by the Association shall be paid to SWRA and SWRA shall have the right to utilize all such monies for the benefit of the Overall Development.

## ARTICLE XII

### ENFORCEMENT

**XII.1 Authority and Enforcement.** In addition to the provisions of Sections 5.13, 6.22, 6.23(a), 6.32, 6.38, 7.02(b), 8.07 and 11.04 hereof, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board from time to time, then the Association shall have the power and right, at its option, to (a) enjoin such violation or noncompliance, (b) impose reasonable monetary fines which may be established and revised from time to time by the Board, which fines shall constitute an Individual Assessment, (c) suspend an Owner's right to vote in the Association, (d) suspend or terminate an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members and guests) to use all or any portion of the Common Areas, (e) exercise any other rights and remedies available at law or in equity available to the Association or (f) impose all or any combination of any of the foregoing sanctions. Any such suspension or termination of rights may be for the duration of the infraction as well as for any additional time after the cure of such infraction as the Board, may in its sole discretion, determine.

**XII.2 Procedure.** In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Association shall not impose a fine, suspend voting rights or infringe upon or suspend or terminate any other rights pursuant to Section 11.01 above 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:

- (a) The alleged violation;
- (b) The action required to abate such violation; and

(c) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the 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 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration. Notwithstanding anything provided herein to the contrary, in the event any Owner or Occupant or their respective agents, contractors or invitees violates any of the terms and provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the rules and regulations of the Association within thirty (30) days from the date such Owner or Occupant has been notified of a prior violation of the same terms or provisions, then such subsequent violation shall be deemed a continuing violation and no additional notices or opportunity to cure shall be given or provided to such Owner or Occupant.

**XII.3 Non-Exclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**12.01 Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (A) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (B) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT THE OWNERS ARE ENTITLED TO VOTE ON SPECIAL ASSESSMENTS PURSUANT TO SECTION 8.04 ABOVE AND EXCEPT AS OTHERWISE PROVIDED TO THE CONTRARY IN SECTION 10.02 ABOVE).

**12.02 Legal Expenses.** In addition to the rights and remedies set forth in Sections 5.13, 6.22, 6.23(a), 6.32, 6.38, 7.02(b), 8.07 and in Article XI above, in the event either Developer, the ARC, the Board, the Association or any of their respective agents and representatives undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The Association and its agents and representatives 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 the Association to cure such violation or breach.

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

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

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

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

**12.07 Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any

rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency.

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

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

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

**12.11 No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot, Dwelling or Multi-Family Area, 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.

**12.13 Assignment and Reservation of Rights.** Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot, Dwelling or Multi-Family Area by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

**12.14 Standards for Review.** Whenever in this Declaration Developer, the Association or the ARC 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 Developer, the Association or the ARC, as the case may be.

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

**12.16 Notices.** Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot or Dwelling of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot or Dwelling shall have been designated in writing, then all



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

The Tradition at StillWaters Association, Inc.  
1816 StillWaters Drive  
Dadeville, Alabama 36853-5630

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

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

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

**12.19 Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

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

**STILLWATERS DEVELOPMENT COMPANY  
LIMITED PARTNERSHIP**, an Arizona limited  
partnership

By: HFD, INC., an Arizona corporation, Its General  
Partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  :  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that  
\_\_\_\_\_ whose name as \_\_\_\_\_ of HFD, INC., an Arizona corporation,  
which serves as General Partner of STILLWATERS DEVELOPMENT COMPANY LIMITED  
PARTNERSHIP, an Arizona limited partnership, is signed to the foregoing instrument and who is known to  
me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such  
officer with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as  
General Partner as aforesaid.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CONSENT OF SWRA**

StillWaters Residential Association, Inc., an Alabama nonprofit corporation, does hereby join in the execution of this Declaration in order to grant the rights granted herein by SWRA and does hereby agree to be bound by all of the terms and provisions of this Declaration.

Dated as of the \_\_\_\_ day of \_\_\_\_\_, 1998.

**STILLWATERS RESIDENTIAL ASSOCIATION,  
INC., an Alabama nonprofit corporation**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  :  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of STILLWATERS RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## CONSENT OF ASSOCIATION

THE TRADITION AT STILLWATERS ASSOCIATION, INC., an Alabama nonprofit corporation, does hereby join in the execution of this Declaration for the purpose of acknowledging and agreeing to all of the terms and provisions hereof, including, specifically, the obligation of the Association pursuant to Section 3.11(b) hereof to pay to SWRA the Maintenance Charges in accordance with and subject to the terms and provisions thereof.

Dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

**THE TRADITION AT STILLWATERS  
ASSOCIATION, INC.**, an Alabama nonprofit  
corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 :  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of THE TRADITION AT STILLWATERS ASSOCIATION, INC., an Alabama nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 1998.

Notary Public

My Commission Expires: \_\_\_\_\_