

**DECLARATION
OF PROTECTIVE COVENANTS
FOR
CLIFT'S COVE
SUBDIVISION**

Prepared By:

**Clift's Cove Homeowners Association
Board
201 Veranda Drive
Madison, AL 35758
www.cliftscovemadison.com**

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SUBDIVISION

Prepared by:

John Como
CLIFTS COVE HOMEOWNER'S
ASSOCIATION, INC.
MADISON, AL

CARTRON & JACOBS LLC
PICK UP

43 pages

**Cliff's Cove Subdivision Protective Covenants
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DECLARATION
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FOR
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WHEREAS, heretofore on the 30th day of July, 1998, Enfinger Steele Development, Inc., f/k/a Enfinger Development, Inc., an Alabama corporation, as Declarant, did promulgate and file for record a Declaration of Protective Covenants for Clift's Cove (hereinafter referred to as the "Existing Declaration"), a residential subdivision, which said Declaration of Protective Covenants is recorded in Deed Book 925, Page 980 in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, Enfinger Steele Development, Inc. has filed Amendments to the Declaration of Protective Covenants and Supplemental Declaration for Clift's Cove to subject such additional property to the Declaration. Said Amended Declarations are recorded in Deed Book 964, Page 635; Deed Book 976, Page 426; Deed Book 976, Page 936; Deed Book 1004, Page 692; Deed Book 1036, Page 368; Deed Book 1055, Page 722; Deed Book 1061, Page 301; Instrument Number 20041229000596960; Instrument Number 20050629000421610; and Instrument Number 20060217000101960, all being recorded in the Probate Records of Madison County, Alabama; and

WHEREAS, Clift's Cove Homeowners Association, Inc., an Alabama nonprofit corporation, has been formed as recorded on August 18, 1998, and recorded in Corporation Book 161, Page 717, in the Probate Judge's Office of Madison County, Alabama; and

WHEREAS, Enfinger Steele Development, Inc., by recording of Declarant's Notice of Termination of Declarant Rights as recorded December 2, 2010 in Document Number 20101202000696480, the said Declarant surrendered its authority and transferred management and control over Clift's Cove Homeowners Association, Inc., its members, Board of Directors and Officers; and

WHEREAS, Clift's Cove Homeowners Association, Inc., an Alabama nonprofit corporation (hereinafter referred to as the "Association"), has Bylaws which govern, among other things, the responsibility of the Board of Directors for the affairs of the Association, and to have all of the powers and duties necessary for the administration of the Association's affairs, including but not limited to, making assessments to defray the common expenses, establishing the means and methods of collecting such assessments; the making and amending of use restrictions and rules and regulations; and enforcing by legal means the provisions of the Declaration, the Bylaws and the rules and regulations adopted by the Board; and

WHEREAS, Article XIII, Section 4 of the Existing Declaration provides that the Declaration may be amended by an affirmative vote of three-fourths (3/4ths) of the Board, for so long as the Declarant has the option unilaterally to subject additional property to the Declaration pursuant to Article X thereof, the consent of the Declarant; and

WHEREAS, pursuant to Article X of the Existing Declaration, the Declarant had the unilateral right, privilege and option from time to time at any time until ten (10) years after the recording of the Declaration to subject all or any portion of the real property described in Exhibit "C", as it may be amended from time to time, to the Declaration by filing a Supplementary Declaration; and

WHEREAS, in lieu of the expiration of the ten year time frame for Declarant to subject additional property to the Declaration, along with the Declarant's Notice of Termination of Declarant's rights, the Board of Directors of Clift's Cove Homeowners Association, Inc. has determined that it would be feasible to amend the Declaration of Protective Covenants to eliminate certain terms and conditions as they pertain to the Declarant which are no longer applicable, and to amend, modify and add certain provisions of the Declaration and use restrictions, rules and regulations for the benefit of the Association.

NOW THEREFORE, in accordance with the Bylaws of the Association, and the Declaration of Protective Covenants for Clift's Cove Subdivision, the Board of Directors of CLIFT'S COVE HOMEOWNERS ASSOCIATION, INC., upon unanimous resolution, do hereby substitute, amend and modify the following amendments to the Declaration, and to the use restrictions, rules and regulations which shall constitute covenants running with the land, and shall be binding upon and inure to the benefit of all parties and persons owning lots within Clift's Cove Subdivision. This Declaration shall be considered and construed as a substitute Declaration, and shall replace that certain Declaration as recorded in Deed Book 985, Page 980, Probate Records of Madison County, Alabama, and become effective upon its filing of record.

THIS DECLARATION is made on the date hereinafter set forth by the Clift's Cove Homeowners Association, Inc., hereinafter sometimes referred to as the Declarant or the Association, and represented by the Board of Directors of the Association, hereinafter sometimes referred to as the Board.

I - Background Statement

The Association desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to maintain a residential community.

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

The Association hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding

on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

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

II - Property Subject to This Declaration

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

2. Other Property. Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; unless properly added by one or more Supplementary Declarations. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, and the affirmative vote of 2/3rds of the Association entitled to vote.

III - Association Membership and Voting Rights

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

2. Voting. Owners shall be entitled to one vote for each Residence owned. When more than one Person holds an ownership interest in any Residence, the vote for such Residence shall be exercised as those Owners themselves determine. In the event of a dispute, the vote shall be suspended if more than one Person seeks to exercise it. Those Owners of property, if any, which is exempt from assessments as provided in Article IV, Section 10, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

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

An Owner's right to vote may be suspended as provided in Article XII, Section 1, of this Declaration.

IV - Assessments

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

2. Type of Assessments. Each Owner of any Residence or Property, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 5; and (c) Specific assessments against any particular Residence which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 9, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all owners of Residences and lots in the Community.

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

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

4. Budget. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Fiscal Year shall be January 1 to December 31.

The Board shall cause the budget and the assessments to be levied against each Residence or Lot for the following year to be delivered to each Residence Owner or posted on the CCHOA website prior to the end of the current fiscal year. The Board may not, without the vote or written assent (to include email) of at least a Majority of the total Association entitled to vote thereon, impose a General Assessment per Residence which is more than 120% of the General Assessment for the immediately preceding fiscal year. In the event that the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

5. Special Assessments. In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special assessments

allocable to each Residence does not exceed the amount of the current General Assessment in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Residence to exceed this limitation shall be effective only if approved by a majority of the total Association entitled to vote thereon. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

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

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

7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be delinquent. Any assessment delinquent shall incur a late charge equal to ten percent (10%) of the annual general assessment per month, or in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Residence. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to delinquent assessments.

8. Date of Commencement of Assessments: A Residence shall become subject to assessment hereunder on the first day of the month following the month in which an Owner receives title to the property, whether such real estate is improved or unimproved. The first General Assessment shall be adjusted according to the number of months remaining in the fiscal year during which the Residence shall become subject to assessment.

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

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

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

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

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

(b) All property owned by non-profit organizations and restricted for use as private schools or churches; provided, however, the availability of the exemption for such non-profit organizations is contingent upon prior approval by the Board.

V - Maintenance

1. Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: Community hiking and biking trails; Community dock areas; grass and other landscaping along dedicated rights-of-way; sedimentation ponds; Community entrance features; and lakes and dams. The Association shall have the right and a perpetual easement is hereby granted to the Association, to enter upon all portions of the subdivision in order to effectuate the Association's maintenance responsibilities.

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

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

2. Maintenance Responsibility.

- (a) **Resident's Maintenance Responsibility.** Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements. Lake Lot Owners shall, in addition, maintain as described above the property located between the lake elevation and the property line of such Owners.
- (b) **Vacant Lot Maintenance Responsibility.** Owners of vacant or unimproved lots shall also maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; and complying with all governmental health and police requirements. Lake Lot Owners shall, in addition, maintain as described above the property located between the lake elevation and the property line of such Owners.
- (c) **Association Maintenance at the Owner's Expense.** In the event that the Board determines that (a) any Owner or designee of the Owner, has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have ten days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten day

period, to commence such work which shall be completed within a reasonable time, or in the event that such work cannot be completed within a ten day period, the Owner must receive approval of a reasonable time for completion from the Board or their designee. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner, including a \$50.00 fine per occurrence.

3. Party Fences. The cost of reasonable repair and maintenance of any party fence (including any brick or stone "wall") which serves and separates two adjoining lots shall be shared by the Owners who make use of the fence in equal proportions.

In the event of any dispute arising concerning a party fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

VI - Use Restrictions and Rules

1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) vote, may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. The Board may restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon.

2. Residential Use. All Residences shall be used for single-family residential purposes exclusively. No business, trade, garage sale, moving sale, or similar business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. An Owner or occupant of a Residence may conduct business activities within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Residence; (b) the business activity conforms to all zoning requirements for the subdivision; (c) the business activity does not involve regular visitation (more than one on a daily basis) of the Residence by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the subdivision; and (d) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of other residents of the subdivision, as may be determined in the sole discretion of the Board. The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation,

work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time; whether such activity is intended to or does generate a profit; or whether a license is required.

If at any time the Board notifies a Residence that an activity constitutes a business venture which the Board, in its sole discretion, is in violation of this Section, the Owner shall immediately cease and desist such activity, after notice and opportunity for hearing is provided to Owner as provided for as described in Section 36 herein below.

3. Signs No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs consistent with the Community-Wide Standard may be erected upon the Residence property. Directional signage of "For Sale" and "For Rent" on key corners within the community are restricted to weekends only pursuant to the City of Madison signage ordinance. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Residence as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

During home construction or any reconstruction requiring a Building Permit from the City of Madison, the Contractor may place one sign visible from the street for the purpose of identification of the project. Such signage must be removed within two days of completion of the work.

No sign of any kind shall be erected on common property in front of the Clift House without prior consent of the Board; this provision shall apply to that area within the boundary of the circular driveway that intersects in two locations with Veranda Drive.

See Section 36 for penalties for non-compliance with this requirement

4. Vehicles and Parking. The term "vehicles," as used herein, shall include, but is not limited to commonly state-licensed automobiles, trucks, buses, vans, sport utility vehicles, motorcycles, some motor scooters, some mini-bikes, recreational motor homes, campers, various flat-bed and fully enclosed trailers, boat trailers, and jet-ski trailers (with or without the boat or jet skis). The term "recreational vehicles" as used herein, shall include, but is not limited to those items that are not commonly licensed by the state, such as some motor scooters, some mini-bikes, go-carts, etc.

Occupants of a Residence shall limit their number of vehicles to the number of garage and driveway parking spaces serving their residence, since all vehicles must be routinely parked within such parking spaces and not on the street, common area parking lots, or on any grass within the community including on the grass at the resident's own property. Trailers of all sorts, Recreational Motor Homes, Campers, and other utility and recreational vehicles, other than normal transportation vehicles, may not be parked in driveways for more than 24 hours per month without prior approval from the CCHOA Board.

No vehicle may be left upon any street in the community, or in a common area parking area, other than infrequent visitors, unless the residence parking spaces are fully occupied and then, parking is limited to no more than 24 hours a week. Exceptions to this restriction will need to be requested by the home owner from the CCHOA Board.

In accordance with the Madison City Code, Section 18-43, Parking in Residential Zones, it is unlawful for any person, whether the owner or operator, to leave on any public street or thoroughfare in a residential zone, as defined in the official zoning code of the city, any recreational vehicle, mobile home, motor home, boat, or trailer.

No unlicensed or inoperable vehicle incapable of being operated on public highways may be parked in any portion of the Community, except in a garage or other area designated by the CCHOA Board.

Vehicles violating the street parking restriction or unlicensed/inoperable parking restriction shall be considered a nuisance and may be removed from the Community at the direction of the Board and at the expense of the home owner.

No vehicle or recreational vehicle as defined above may be stored in any residential backyard for more than 24 hours without prior approval from the CCHOA Board.

Except during periods of active occupancy, garage doors should routinely be kept closed at all times for security and appearance purposes.

No motorized vehicles shall be permitted on sidewalks, pathways, or unpaved Common Property except for motorized wheelchairs, mobility carts required due to medical disability, public safety vehicles, and vehicles authorized by the Board. Accordingly, the operation of motorized vehicles in the neighborhood is restricted to those licensed by the state and restricted to public streets. This precludes the operation of motorized motorcycles, motor-scooters, mini-bikes, go-carts, and motorized skateboards on neighborhood sidewalks and pathways.

Violators of this provision shall have a period of 24 hours from receipt of the notice of violation to remove non-complying vehicle restriction. Any Owner who has received more than three notices of the same non-compliance violation shall be subjected to the "repeat offender" provisions as contained in Section 36 herein below.

5. Leasing. Residences may be leased for residential purposes. All leases shall have a minimum term of six months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated there with against the Owner and the Owner's property.

6. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against

Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residence, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets in the sole discretion of the Board endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets are permitted to roam free. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal Control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law. All types of pet outside buildings and/or kennels must be approved by the Architectural Review Committee and will not be positioned in public view.

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

9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community. No automobile maintenance or repairs may be made in the streets and only minor repairs of short duration may be made in driveways.

10. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Board, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition erection, or alteration shall be made, including landscaping plans, unless and until plans and specifications showing at least the nature, kind, shape, color, size, height, materials, and location of all proposed structures shall have been submitted in writing to and approved in writing by an Architectural Review Committee established by the Board. The following items, without limitation, will be submitted to the Architectural Review Committee for new home construction: house plans, site plans, landscaping plans, and exterior color.

The Board may employ for the Architectural Review Committee architects, engineers, or other persons necessary to enable the Committee to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to pay any fees charged by such architects or other qualified persons.

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

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

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to

constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Any structure or improvement placed or made in violation of this Section shall be deemed to be nonconforming. Upon written request from the Architectural Review Committee, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, any authorized agent of the Architectural Review Committee or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed the Residence and collected as a Specific Assessment. In addition, the Architectural Review Committee, or the Association by and through its Board, shall have the right to exercise any means of enforcement as set forth in Article IV, Section 32, and as described in Article XII, Section 1, of this Declaration.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Residence, unless approval to modify any application has been obtained. In the event that any Owner fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner and an opportunity to be heard in accordance with the By-laws, to enter upon the proper and remove or complete any incomplete work and to assess all costs incurred against the Residence and the Owner thereof as a Specific Assessment.

Neither the Architectural Review Committee nor any Member of the Association, or their officers or directors shall be held liable to any person for exercising the rights granted by this Section. Any contractor, subcontractor, agent, employee or other invitee of the Owner who fails to comply with the terms and provisions of this Section or the design guidelines may be excluded by the Architectural Review Committee from the properties, subject to the notice and hearing procedures contained in the By-laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and the decision of the Architectural Review Committee. Should an injunction or other equitable action be filed by the Association, the Owner shall be responsible for any and all costs of such legal proceeding, including a reasonable attorney's fee incurred for services rendered on behalf of the Association.

11. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Residence without the prior written consent of the Board or its designee except for residential digital satellite dishes. No free-standing antennas other than residential digital satellite dishes shall be placed on any Residence. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision

despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

12. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions by fences, structures, or debris shall be placed in these areas. No Owner or Occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee. The Association hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at its sole expense.

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

14. Clotheslines, Garbage Cans, Woodpiles, Portable Utility Structures, Etc. All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except when done during the normal construction of a residence and in accordance with City Ordinances. Portable utility structures (i.e., sheds, buildings, bins, etc.) are allowed, but must be concealed from view of neighboring streets and property unless approved by the Board.

15. Subdivision of Residence. No Residence shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

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

17. Fencing. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Board or its designee. Fence will be compatible with in the home and have architectural interest. Flat wood/slab sided fencing that does not have architectural interest and visual relief will not be approved. No fence will be higher than six feet from the final ground level to the top of the fence except by special permission of the Architectural Review Committee. The exterior side of the fence has to be finished; specifically the structural characteristics must be covered. Within the construction of the fence there must be some brick or stone masonry, and stone or brick is the preferred material to use at the corner posts. No rough-sawn board of any kind will be used in the fence. All wood will be stained a neutral color as approved by the Architectural Review Committee and maintained in a satisfactory manner, which means that wood fencing must be re-stained periodically to eliminate its natural fading to gray. No chain link fence will be allowed within the

subdivision. Fences regardless of construction will not be permitted any nearer, to front lot line than the rear most corner of the dwelling except in special circumstances.

Except for approved privacy fences erected around pools and patios, there shall be no solid fences erected in the back yards of residences of Lake Lot Owners. Additionally, no other structure will be permitted closer than forty (40) feet to the back lot line of Lake Lot Owners. The intent of this regulation as related to Lake Lot Owners is to present an aesthetically pleasing, "non-walled off" appearance from, to, and in the vicinity of Lakes. With approval of the Board, a four (4) feet high wrought iron (open) fence may be erected.

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

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

20. Window Air-Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning/heating units may be installed.

21. Exterior Lighting. Except for approved lighting as originally installed on a Residence, exterior lighting shall not be permitted, except for (a) two (2) decorative post lights; (b) a street light in conformity with an established street lighting program for the Community; or (c) seasonal decorative lights during holidays. Landscape lighting and front house illumination will be permitted with the approval of the Architectural Review Committee.

22. Artificial Plants, Exterior Sculpture, and similar items. No artificial vegetation shall be permitted on the exterior of any property unless approved by the Board. Exterior sculpture, fountains, flags, and similar items in public view must be approved by the Board or its designee.

23. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Board or its designee, and must not be observable from the street.

24. Above-Ground Swimming Pools. Except as may be permitted by the Board or its designee, above ground swimming pools shall not be erected.

25. Driveways. Except as may be permitted by the Board or its designee, driveways shall be constructed with concrete, brick, cobblestone, or other Board-approved material. Driveways

may be stained or painted an earth-tone color, with the approval of the Architectural Review Committee.

26. Window Coverings. All exterior street-facing windows are required to have window coverings that shall be white or off-white or neutral, unless otherwise prior approved by the Board or its designee. Aluminum foil on window panes, mirrored or reflective glass is not allowed.

27. Chimneys. All chimneys that are on the exterior wall must have either brick or stone on the three exterior sides of the chimney. Interior chimneys may have either a siding or stucco product on all four sides of the chimney. All chimneys must be painted to match the color of the dwelling's roof.

28. Lake and Park Lot Restrictions. Notwithstanding any other subdivision restrictions, all dwellings and permitted accessory building constructed on lots that abut either the Community's lake or a designated park area shall have an exterior of at least 80% brick and/or stone construction, including gable ends. The provision may be specifically exempted by the Architectural Review Committee, but will only be considered because of unusual architectural constraints.

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

Guideline for Landscaping Planning:

- (a) Existing vegetation and trees should be preserved whenever possible to provide screening and lend an established feeling to the Community. No tree shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons; or (d) trees within five feet of a dwelling.
- (b) Shrubs should be well distributed, but not necessarily evenly spaced. Shrubs may be used for screening and to minimize the visual impact of driveways and parking areas.
- (c) Earth berms may be used to create a sense of enclosure and to screen driveways, especially if planted with shrubbery.
- (d) Unified mulched planting beds will be edged in materials such as brick, steel or wood, except mulched planting beds that also contain children's playground equipment may be edged with a plastic edging material (for safety reasons) with the prior written approval from the Architectural Review Committee.
- (e) Exterior building material colors should be considered when selecting flowering trees and shrubs so colors don't compete or negate each other.

General Landscape Requirements:

- (a) A landscape plan shall be included as part of the lot development package submittal. This plan will include the entire lot and indicate the following:
- (i) General information, including date, north arrow, and scale of one inch to no more than fifty feet; all property lines, locations of all easements and rights-of-way; name and telephone numbers of builder and owner.
 - (ii) Construction information, including the locations of buildings, driveways, walks, walls, fences, and terraces.
 - (iii) Locations, caliper, species (common name), and intended treatment (move, remove, or save) of existing trees six inches or greater at breast height.
 - (iv) A schedule of all new and existing required plants proposed for landscaping, including size (caliper and height, container size, etc.) common names (genus, species, and variety) of trees, shrubs, and ground cover, and type and amount of turf grasses.
- (b) The front yard of each lot shall be planted with three large trees (4.i, ii, iii) and three small trees (4.iv, v), to include no more than one evergreen. Shrubbery required in the front yard shall be a minimum of twelve (12) shrubs, each initial shrub shall, at minimum, be in a three gallon container, and at least half of which shall be species evergreen in this climate. Shrubs shall be planted in a bed of mulch or ground cover other than turf grass.
- (c) The rear yard shall be planted with two large trees (4.i, ii, iii), and two small trees (4.iv, v).
- (d) All proposed trees shall conform to be the minimum size standard listed below, based on American Standards for Nursery Stock, ANSI Z60.1, published by the American Association of Nurserymen and approved by the American National Standards Institute, as follows:

Suggested Large Trees:

- (i) Type 1, Shade trees, 2.5" caliper, 12' height range - Sugar Maple, Red Maple, Tulip Poplar, Sycamore, Red Oak, White Oak, and Willow Oak.
- (ii) Type 2, Shade trees, 1.5" caliper, 6' to 8' height range - Weeping Willow, Bradford Pear, Golden Rain Tree, Southern Magnolia, Zelkova, River Birch and European Birch.
- (iii) Type 5, Coniferous Evergreens, 5' to 6' height range - Pine species, Hemlock and Spruce.

Suggested Smaller Trees:

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

- (ii) Type 4, Small spreading trees, 5' to 6' height range - Flowering Dogwood, Star Magnolia, Flowering Cherry, and Japanese Maple.
- (e) Restricted trees are as follows: Cold weather palm trees are not allowed forward of the rear corners of the home.
- (f) If existing trees meet requirements of this covenant in all respects, required trees of the covenant may be omitted. Each existing tree meeting requirements may count, at the option of the owner, for one of the trees in its required class, provided it:
 - (i) Is not one of the following species: Boxelder, silver maple, catalpa, cottonwood, camphor, mimosa, chinaberry, princess tree, or Siberian elm.
 - (ii) Has a live crown and is free from serious root, trunk, and crown injury.
 - (iii) Is indicated on the landscaping plan as a tree "to be saved."
 - (iv) Is situated so that it can be incorporated into the landscape with minimal grade, cut, or fill under the drip line of the tree.
- (g) Ground cover may include shrubs and low-growing plants such as Liriope, English Ivy, Periwinkle, and similar material. Ground cover may also include non-living organic material such as bark and pine straw.
- (h) All trees greater than six inches in diameter at breast heights shall be preserved, unless removal of them is part of an approved plan.
- (i) The lot shall be completely landscaped. However, planned natural areas will be allowed provided that the lawn and the natural area form a cohesive whole.
- (j) Driveways shall coordinate with topography and existing vegetation to preserve all trees greater than six inches in diameter at breast height. "Curved" driveways are encouraged.
- (k) Each lot owner must submit a landscaping plan which must be approved before construction is commenced. The plan must be completely installed within ninety days of receiving a certificate of occupancy. Additionally, each lot owner must maintain his lawn in as good or better condition than his original landscaping plan. It is not the intention of the Architectural Review Committee to monitor every planting in Cliffs Cove, but if a lawn, at the sole discretion of the Architectural Review Committee, has deteriorated and/or was never installed properly, and then the lot owner will be required to bring his lot into compliance with the guidelines.

30. Screening of Heating and Cooling Units. All exterior heat and air conditioning compressors or air handlers must be screened from view. This can be accomplished with vegetation, fence, brick, and/or stone. If vegetation is used it must create a walled-off effect within a reasonable time (a maximum of two years) after planting with no visual sight of units. The screening is encouraged on all sides of the equipment but is required on the front and side of the equipment.

31. Storage Tanks. Two twenty (20) pound propane tanks for outdoor cooking equipment are permitted. Any other storage tanks must be approved by the Architectural Review Committee.

32. Corner Lots. Houses on all corner lots shall be built either caddie-corner to both streets or, in cases accepted by the Board, where the residence is built parallel to one of the streets, the garage must face the interior lot where possible to avoid the garages facing any street at a ninety degree angle.

33. Recreational Equipment. Outdoor recreational equipment (swing sets, playhouses, trampolines, etc) are permitted in rear yards and if possible should be sited directly behind the rear of the house to prevent their viewing from the street directly in the front of the residence, or within an approved enclosed fence. Only Board approved basketball goals may be erected or constructed and no basketball goals may be erected or constructed forward of the front corners of the home. Any exceptions must be approved by the Architectural Review Committee before installation.

34. Dwelling Restrictions.

- (a) All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior of at least eighty percent stone or masonry brick construction, with no less than eighty percent of the exterior of the sides of the dwellings or buildings consisting of stone or masonry brick. Visible unpainted red or yellow "sewer brick" will not be allowed.
- (b) All dwellings shall have side or rear entry garages. No front entry garages will be permitted on the primary residence.
- (c) Roofs of dwellings constructed on all of said lots shall be of dimensional architectural grade shingles with no 3 tab flat shingles.
- (d) Dwellings constructed on lots in the subdivision shall have at least 3,000 square feet of heated area, except that lots 1-18, 39-48, 65, 80-86, and 96-121 must have at least 3,500' square feet of heated area.
- (e) All dwellings shall have a minimum of a roof pitch of 8/12 or greater.
- (e) Each lot shall contain an "Old French Mailbox" with pointed top by the manufacturer designated by the Board. In the event of supply problems of a given designated model, the Board or its designee shall select the style mailbox to be installed for each lot. Each mailbox shall have a black finish.
- (f) All single-family detached Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted, unless attached to the house and garage as a porte-cochere, which must be approved by the Architectural Review Committee.
- (g) All dwelling exteriors must be repainted in the same color used in the original construction unless prior permission is received from the ARC. No dwelling shall be constructed of untreated wood. All such wood exteriors must be painted or specifically approved by the ARC.

(h) Residences of more than two stories are prohibited (unless approved by the Architectural Review Committee prior to construction), not including partial below ground basements.

35. Use of Amenities and Common Area. Only residents may use the Association's amenities and common area. Guests may utilize and/or visit such facilities only when accompanied by a resident.

36. Fines for Non-compliance with Community Use Restrictions.

(a) **New Home Construction Plan Submission Violations.** The failure to provide new home construction plans to the Architectural Review Committee established by the Board shall result in a fine assessed against the Owner, at the discretion of the Board, in the amount of up to \$100.00 per month the plans are delinquent, meaning the initiation of construction activity.

(b) **Sign Violations.** If a sign is erected in violation of this Declaration, a notice will be sent by the Board to the Homeowner. If the sign is not removed within five days of the date of the notice, a penalty of \$10.00 per sign per day will be assessed until said sign(s) is/are removed.

(c) **Other Community Use Restriction Violations.** In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to comply with these listed Community Use Restrictions; or, (b) that the non-compliance is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association shall give the Owner or designee written notice of the violation specifics. The Owner or his designee shall have ten days to correct the violation, or respond to the Board with their plan and time schedule to accomplish compliance in the event that such compliance is not capable of completion within a ten day period, or, to commence such work which shall be completed within a reasonable time, or, in the event that such work cannot be completed within a ten day period, the Owner must receive approval of a reasonable time for completion from the Board. If any Owner does not comply with the provisions hereof, a penalty of \$50.00 per occurrence will be assessed. In the case of construction or a similar type of labor requirement, the violation will be reassessed in thirty days from the date of the assessment for the continued or additional violations and the possibility of additional penalties of the same amount.

"Repeat offenders" shall be subjected to a penalty of \$100.00 per occurrence. A "repeat offender" shall be defined as an Owner who has received three notices of non-compliance regarding the same type of violation at any given time.

These fines shall be in addition to any other remedies afforded to the Association as specified in this Declaration, including, but not limited to the enforcement provisions as contained in Article XII.

37. Appeal of an assessed fine. The Board of Directors shall not impose a fine (late charges are not considered fines) unless and until the following procedure is followed:

- (a) Within ten days from the date of the notice that the Board intends to assess a fine for a Covenants violation, the violator may request a hearing regarding the fine. Any statements, evidence, and witnesses may be produced by the alleged violator at the hearing; and all rights to have the fine reconsidered are waived if a hearing is not requested within ten days of the date of the notice.
- (b) If a hearing is requested, it shall be held before the Board in Executive Session (not open to the community or public), and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

VII - Prohibition of Timesharing

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

VIII - Insurance and Casualty Losses

1. **Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property.

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

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

- (a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

- (d) All insurance policies shall be reviewed annually by one or more qualified persons.
- (e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (i) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
 - (ii) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
 - (iii) That no policy may be canceled, invalidated, or suspended on account of anyone or more individual Owners;
 - (iv) That no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
 - (v) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and,
 - (vi) That no policy may be canceled or substantially modified without at least thirty days' prior written notice to the Association.

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

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

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or

following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

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

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

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

IX - Condemnation

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VIII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced by amendment to Exhibit "C" Real Property. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation amendment shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

X - Mortgagee Provisions

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

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

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Residence on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of eligible holders.

2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds of the first Mortgagees or at least two-thirds of the total Association vote entitled to vote thereon consent, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);
- (b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence (A decision, including contracts, by the Board or provisions of any Supplementary Declaration regarding assessments for Parcels or other similar areas shall not be subject to this provision where such decision or Supplementary Declaration is otherwise authorized by this Declaration.);
- (c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

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

(e) Use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

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

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

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

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

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

XI - Easements

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

2. Easements for Use and Enjoyment of Common Property. Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which

shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

- (a) The right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property, including, without limitation, swimming pools, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefore, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, Occupants, and invitees;
- (b) The right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;
- (c) The right of the Board to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Residence or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default there under shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Residence or other property located within the Community.); and
- (d) The right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue).

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

Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) the

Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert tennis courts into a basketball court or vice versa.

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

3. Reserved Easements for the Provision of Services to the Community. There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights-of-way, drainage facilities, floodway easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

5. Easement for Lake Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successors and assigns, across such portions of the Community, determined in the sole discretion of Declarant (or its successors and assigns), as are necessary to allow for the maintenance of a lake(s), lakebed(s) and shoreline(s), if any,

which are within the Community or which are made available for the use and enjoyment of Owners and Occupants within the Community. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of property adjacent to the lake(s), reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. In order to allow the exercise of the rights created pursuant to this easement, no tree or structure may be placed within fifteen feet of the line formed by the highest normal pool elevation of any lake without the prior written approval of the Board or its designee.

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

XII - General Provisions

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

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

3. Durations. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter in effect limit the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten years or such shorter period as

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

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

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

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

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

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

7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such

prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

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

9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England, including, but not limited to Prince Charles, Prince William, Prince Harry, Prince Andrew, and Princess Margaret.

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

11. Construction. During any construction all trash must be contained on the lot under construction in either a container or in a roll-off within 100 feet of the home except that a builder with two adjacent lots can provide trash removal between the two lots. Each construction site must be maintained in a safe, clean and orderly condition and shall include a portable toilet until such facilities are available in the home for use by construction workers.

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

The Board shall establish reasonable rules with respect to:

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

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

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

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

15. Estoppel Certificate. Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed \$25.00 for the issuance of each such certificate.

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

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

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

19. Use of Word "Clift's Cove." No Person shall use the word "Clift's Cove" in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of the Declarant other than Clift's Cove, L.L.C. However, Owners or Occupants may use the term "Clift's Cove" in printed or promotional matter where such term is used solely to specify that particular property is located within Clift's Cove.

1. ~~_____~~

2. ~~_____~~

3. ~~_____~~

4. ~~_____~~

IN WITNESS WHEREOF, the undersigned have executed this instrument under seal this the 1 day of November, 2009. 2010

CLIFT'S COVE HOMEOWNERS ASSOCIATION, INC.

William W. Hornsey
By: WILLIAM W. HORNSEY
Its: President

ATTEST:

Dawn Bynum Colvert
Secretary

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned authority, a Notary Public in and for said County and State do hereby certify that on this day personally appeared before me WILLIAM W. HORNSEY whose name as President of Clift's Cove Homeowners Association, Inc is signed to the foregoing instrument, and attested by DAWN BYNUM COLVERT, Secretary, and who after being duly sworn and informed of the contents of said instrument, doth depose and say that being informed of the contents of said instrument, they have executed the same voluntarily on day same bears date with full power and authority to act for said entity.

Given under my hand and seal this 1st day of November, 2009. 2010

Laura J. Jacobs

NOTARY PUBLIC
My Commission Expires: 8/10/2014

THIS INSTRUMENT PREPARED BY:
Clift's Cove Homeowners Association, Inc.
Madison, AL



EXHIBIT "A"

Definitions

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

(a) "**Articles of Incorporation**" shall mean the Articles of Incorporation of Cliff's Cove Homeowners Association, Inc., as such document may be amended.

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

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

(d) "**Cliff's Cove Subdivision**" shall mean the said subdivision as recorded in Plat Book 36, Pages 25 & 26, in the Office of the Judge of Probate, Madison County, Alabama, including subsequent additions.

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

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

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

(h) "**Common Property**" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners and Occupants, whether located within or without the boundaries of the Community.

(i) "**Community**" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto of all or any portion of the real property described in Exhibit "C", attached hereto, as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration; and (ii) such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

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

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

(l) "Declaration" shall mean the Declaration of Protective Covenants for Clift's Cove, as such document may be amended.

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

(n) "Lake Lot Owner" shall mean the owner of any residence whose rear property line abuts a lake within the community (or a lake made available for the use and enjoyment of owners and occupants within the community) or whose rear property line would abut such lake if the strip of land between such property line and such was owned by the owner of such residence.

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

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

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

(r) "Mortgagee" shall mean the holder of a Mortgage on a lot within Clift's Cove.

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

(t) "Owner" shall mean the record owner, whether one (1) or more Persons, of the fee simple title to any real property located within the Community, including contract sellers, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation and excluding contract purchasers.

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

(v) "Residence" shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. For example, each single family detached home shall constitute a Residence; each condominium unit in a condominium development shall constitute a Residence; each Apartment Unit in an Apartment Complex shall constitute a Residence; and each townhome or cluster home unit in an attached or semi-attached housing development shall constitute a Residence. The foregoing examples are set out by way of illustration and not in limitation of the term "Residence." Residence shall include all portions of the land owned as well as any structure thereon, as described above. A Residence shall come into existence on the earliest date of the happening of any of the following events: (1) when a Certificate of Occupancy is issued by the proper governing authority; (2) in the case of a subdivision the expiration of two years from the date the subdivision is accepted for maintenance by the City of Madison, (unless made earlier by contract with owner).

(w) "Supplementary Declaration" shall mean an amendment to the Declaration subjecting additional property to the Declaration.

EXHIBIT "B"

The property subject to this Declaration of Protective Covenants for Clift's Cove Subdivision shall include any and all real estate subject to the Declaration of Protective Covenants for Clift's Cove Subdivision, as recorded in Deed Book 925, Page 980; and as amended in Deed Book 964, Page 635; Deed Book 976, Page 426; Deed Book 976, Page 936; Deed Book 1004, Page 692; Deed Book 1036, Page 368; Deed Book 1055, Page 722; Deed Book 1061, Page 301; Instrument Number 20041229000596960; Instrument Number 20050629000421610; and Instrument Number 20060217000101960, which said property includes, but it not limited to:

Clift's Cove Subdivision, as recorded in Plat Book 36, Page 25;

Clift's Cove Subdivision 1st Addition, as recorded in Plat Book 36, Page 82;

Clift's Cove Subdivision 2nd Addition, as recorded in Plat Book 36, Page 84;

Clift's Cove Subdivision 3rd Addition, as recorded in Plat Book 37, Page 35;

Clift's Cove Subdivision, 4th Addition, as recorded in Plat Book 37, Page 39;

Clift's Cove Subdivision Tract 3, a resubdivision of Tract 3, as recorded in Plat Book 37, Page 75

Clift's Cove Subdivision, a resubdivision of Lots 39 and 40 of Clift's Cove Subdivision, 3rd Addition, as recorded in Plat Book 38, Page 31;

Clift's Cove Subdivision, 5th Addition, as recorded in Plat Book 39, Page 5;

Clift's Cove Subdivision, 6th Addition, as recorded in Plat Book 40, Page 2;

Clift's Cove Subdivision, 6th Addition, as recorded in Plat Book 40, Page 75

Clift's Cove Subdivision, 7th Addition, as recorded in Plat Book 40, Page 73

Clift's Cove Subdivision, 8th Addition, as recorded in Plat Book 42, Page 57;

Clift's Cove Subdivision 9th Addition, as recorded in Plat Book 44, Page 36;

Clift's Cove Subdivision, 10th Addition, as recorded in Plat Book 46, Page 26

Clift's Cove Subdivision, 11th Addition, as recorded in Plat Book 46, Page 84;

Clift's Cove Subdivision, 12th Addition, as recorded in Plat Book 47, Page 31;

Clift's Cove Subdivision, 12th Addition, as recorded in Instrument Number
20061024000726020;

Clift's Cove Subdivision, 13th Addition, as recorded in Instrument Number
20050727000490340; and

Clift's Cove Subdivision, 14th Addition, as recorded in Instrument Number
20060522000328980

All being recorded in the offices of the Judge of Probate of Madison County, Alabama.

20101202000696490 43/43 \$124.75
Madison Cnty Judge of Probate, AL
12/02/2010 08:58:28 AM FILED/CERT

Clift's Cove Homeowner Association
C/O Hughes Properties, Inc.
415 Church St. Suite 101
Huntsville, AL 35801

March 2, 2010

The Clift's Cove Homeowner Association (CCHOA) hereby approves the revised Declaration of Protective Covenants for Clifts Cove Subdivision as defined in the electronic file Covenants Final Draft 121409revised3-2-10.doc
And authorizes John Como as CCHOA president, to sign the Approved Covenants.

John Como, President *in Honor for John Como*

Bill Hornsey, Vice President *in Honor*

Dave Hively, Treasurer *Pat Sharp*

Dawn Colvert, Secretary *Don Colvert*

Melissa Cole, Board Member *Melissa Cole*

Don Story, Board Member *Don Story*

Jim Cambron, Board Member *Jamada Cambron*

Jon Campbell, Board Member *Pat Sharp for Jon Campbell*

Norm Stanley, Board Member *Norm Stanley*