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**BENT BROOK RESIDENTIAL  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**DATED FEBRUARY 14, 2005**

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**OF**  
**BENT BROOK RESIDENTIAL**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**BENT BROOK RESIDENTIAL**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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THIS BENT BROOK RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 14th day of February, 2005 by JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation ("Developer") and BENT BROOK RESIDENTIAL OWNERS ASSOCIATION, INC., an Alabama nonprofit corporation (the "Association").

**RECITALS:**

Developer is the owner of all the real property described in the Plat of The Glen at Bent Brook recorded in Map Book 40, page 55 in the Probate Office of Jefferson County, Alabama, Bessemer Division (the "Property"). Developer is also the owner of certain real property that is currently used as a golf course known as Bent Brook (the "Golf Course") that has a common boundary with the Property.

Developer has developed the Property as a residential subdivision as part of the Bent Brook Planned Unit Development which has been approved by Jefferson County, Alabama, and the development, improvement, sale and ownership of the Property shall be in accordance therewith. Developer desires to subject the Property to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has caused the Association, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.9 below, establishing annual budgets for maintaining the Common Areas, paying all costs and expenses incurred by the Association in connection therewith along with other Common Expenses, making Annual, Special and Individual Assessments, as defined in Section 1.5 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of the Property, described in Section 2.1 below, and such additional property as may hereafter be made subject to this Declaration pursuant to Section 2.2 below, is and shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the approved plan for the Bent Brook planned unit development and the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of said Property and any of the Additional Property, as described in Section 1.1 below, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I  
DEFINITIONS

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

1.1 **Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

1.2 **ARC.** The term or letters "ARC" shall mean the architectural review committee appointed pursuant to Section 5.2 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.3 **Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 5.4 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Lot, Dwelling, or Common Area.

1.4 **Articles of Incorporation.** The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association which were filed in the Probate Office of Jefferson County, Alabama as Instrument No. 200412/6959 together with all amendments thereto.

1.5 **Assessment.** The term "Assessment" shall mean, collectively, the Annual, Special and Individual Assessments and/or any other charges assessed against an Owner by the Association pursuant to the terms of this Declaration.

1.6 **Association.** The term "Association" shall mean the Bent Brook Residential Owners Association, Inc., an Alabama nonprofit corporation, its successors or assigns.

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

1.8 **Bylaws.** The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.9 **Common Area.** The term "Common Area" shall mean and refer to all real and personal property now or hereafter owned, leased or maintained by the Association within or without the Development for the common use and enjoyment of the Owners. The Common Areas shall include, but not be limited to: (a) all public or private roadways or easements within the boundaries of the Property upon which public or private roadways providing ingress to and egress from the Development for use by all Owners of the Property have been constructed, (b) all



signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, improvements, and landscaped areas adjacent to any public or private roadways, including all medians within any public or private roadways, which provide ingress to and egress from any portion of the Development (other than any such areas located solely within the boundary lines of a Lot), (c) all lakes, water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, lakes, basins or other areas and facilities located within the Development (other than such areas located solely within the boundary lines of a Lot), (d) all maintenance areas and parking areas located on any portion of the Development (other than such areas located solely within the boundary lines of a Lot), (e) subject to the rights of others therein, all public and private utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and (f) all parks, nature trails, recreational facilities and areas and any other areas or Improvements on or within the Development, if any, which are designated by Developer as Common Area from time to time. The designation of any land and/or Improvements as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof; provided that any part of a Common Area dedicated as a public area shall be subject to the terms of such dedication. **The Golf Course and the Open Space, and the lakes and ponds within or contiguous to the boundaries thereof, shall not be included in the Common Areas.**

1.10 **Common Expenses.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.4(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.11 **County Buffer.** The term "County Buffer" shall mean the areas within the Property and the Improvements and plants to be constructed and planted thereon that Jefferson County, Alabama has required as a buffer between the Property and land of adjoining property owners, which are located, constructed and planted on the Property and the Golf Course substantially in accordance with the buffer plan attached hereto as Exhibit A.

1.12 **Declaration.** The term "Declaration" shall mean and refer to this the Bent Brook Residential Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.13 **Developer.** The term "Developer" shall mean JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation, in its capacity as the owner and developer of the unsold Lots and Common Areas in the Development and its successors and assigns with respect thereto, including, without limitation, a lender holding a Mortgage on Lots unsold by Developer to the extent such lender has exercised its foreclosure rights under said Mortgage.

1.14 **Development.** The term "Development" with an initial capital letter shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.2 hereof.

1.15 **Dwelling**. The term "Dwellings" shall mean and refer to any home or residence constructed for use as attached or detached single-family residential housing units upon any portion of any Lot.

1.16 **Golf Course**. The term "Golf Course" shall mean and refer to the land and improvements comprising the golf course, and related facilities (including without limitation, the club house, parking area, golf shop, lakes and ponds, cart paths, maintenance and golf cart facilities and driving range) that are owned by Golf Course Owner and located near the Property, so long as such land and improvements are used principally as a golf course and uses related thereto. The Golf Course is not part of the Property or the Common Areas. Title to the Golf Course is held by the Golf Course Owner. No Owner shall acquire by reason of his ownership of a Lot or Dwelling any right to use or have access to the Golf Course.

1.17 **Golf Course Buffer**. The term "Golf Course Buffer" shall mean and refer to the area within the Golf Course Lots that is designated as the Golf Course Buffer on the Plat.

1.18 **Golf Course Lots**. The term "Golf Course Lots" shall mean and include those lots with a boundary that is contiguous to the Golf Course, namely Lots Numbered 19 through and including 53.

1.19 **Golf Course Owner**. The term "Golf Course Owner" shall mean and refer to JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation, in its capacity as the owner of the Golf Course and its successors and assigns with respect thereto

1.20 **Governmental Authority**. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development or over any Owner or Occupant.

1.21 **Improvement**. The term "Improvement" shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, landscaping, fences, screening, walls, signs, piers and any other artificial or man-made changes or alterations to the condition of any Lot, Dwelling, or Common Area. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

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

1.23 **Lot**. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. In the event any Lot is resubdivided pursuant to

the provisions of Section 2.6 hereof, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.24 **Mortgage.** The term "Mortgage" shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division.

1.25 **Mortgagee.** The term "Mortgagee" shall mean and refer to the holder of any Mortgage. The term "Mortgagee" shall not mean or refer to a lender holding a mortgage on lots unsold by Developer.

1.26 **Occupant.** The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All acts or omissions of any Occupant are and shall be deemed the act or omission of the Owner of such Lot.

1.27 **Open Space.** The term "Open Space" shall mean and refer to the area of land contiguous to the Property consisting of not less than 21.2 acres that is reflected as Designated Open Space on the Plat. Title to the Open Space is held by the Golf Course Owner. The Open Space is currently used as part of the Golf Course and is not part of the Property or the Common Areas. References to the Golf Course shall include the Open Space.

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

1.29 **Plat.** The term "Plat" shall mean and refer to the Plat for the Glen at Bent Brook recorded in Map Book 40, Page 55, in the Probate Office of Jefferson County, Alabama, Bessemer Division, as the same may be amended or resurveyed from time to time.

1.30 **Property.** The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County, Alabama which is more particularly described on the Plat defined in Section 1.28 hereof. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

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

2.1 **General Declaration by Developer.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer, the Golf Course Owner and upon all Owners and Occupants of the Property and any Lot, Dwelling, and Common Area thereof. Furthermore, this Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer) but this Declaration shall not apply to any other real property owned by Developer or the Golf Course Owner unless the same is subjected specifically by written instrument to this Declaration.

2.2 **Additional Property.** Subject to the provisions of Section 2.8(a) hereof, Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer and the Golf Course Owner in the manner required for the execution of deeds and recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee, other than Developer's Mortgagee consenting hereto, and its successors and assigns) and shall (a) refer to this Declaration stating the book and page number where this Declaration has been recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property, including use of such Additional Property for single-family or multi-family residential areas or for commercial or recreational purposes. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in

part, without the prior written consent of Developer and Golf Course Owner and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.2 of this Declaration.

2.3 **Right of Developer to Modify Restrictions with Respect to Lots and Other Property Owned by Developer.** Subject to the provisions of Section 2.8(b) hereof, Developer may modify the provisions of this Declaration as the same may apply to any Lot or other real property within the Development then owned by the Developer by filing for record in the manner specified in Section 2.2 hereof a deed or other instrument executed by Developer and Golf Course Owner.

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

2.5 **Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make Improvements to all Common Areas, whether owned by Developer or the Association, and to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas and (iii) installation of security and trash and refuse facilities. The exercise by Developer of any of the rights set forth in this Section 2.5 may be exercised solely by Developer but without any requirement that the consent or approval of any Owners, Occupants or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer or affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Property (including, without limitation, the Golf Course), which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.2 above.

2.6 **Subdivision Plat.** Subject to the provisions of Section 2.8(d) hereof, Developer may record, modify, amend, revise and otherwise add to or delete from, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Common Areas, Additional Property, public or private roads, public or private utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Subject to the provisions of Section 2.8(d) hereof, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots, Common Areas and other portions of the Property owned by

Developer. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved to Developer pursuant to this Section 2.6 may be exercised by Developer only with the prior written consent of the Golf Course Owner in accordance with Section 2.8(d) but without any requirement that the consent or approval of any Owners or Mortgagees be obtained.

2.7 **Golf Course and Open Space.** Developer reserves for the Golf Course Owner the right to convert the Golf Course to a private club, in which event no Owner shall have a right to be a member of such private club or association solely by reason of ownership of a Lot or Dwelling. Developer reserves for the Golf Course Owner the right and privilege, in its sole and absolute discretion, to make changes in the Golf Course or the Open Space or to use all or any of the Golf Course or Open Space for purposes other than its current use as a golf course or a related facility. No Owner shall acquire by reason of his ownership of a Lot or Dwelling any right to use or have access to the Golf Course or the Open Space.

2.8 **Approval by Golf Course Owner.** Notwithstanding the aforesaid provisions of this Article II, the Developer shall not do any of the following without the prior written consent of the Golf Course Owner, which consent shall not unreasonably be withheld:

- (a) add and submit any Additional Property to this Declaration pursuant to Section 2.2 hereof;
- (b) modify the restrictions or provisions of this Declaration with respect to any Lot pursuant to Section 2.3 hereof;
- (c) exercise any of the rights of the Developer to modify or change the Common Areas pursuant to Section 3.5(b) hereof; or
- (d) record, modify, amend, revise or otherwise add to or delete information on a recorded subdivision plat with respect to all or any party of the Development.

Notwithstanding anything in this Section 2.8 to the contrary, the Golf Course Owner shall consent to any modification to the Declaration under Section 2.3 hereof and to any modification of the Plat under 2.6 hereof that may be required by Jefferson County, Alabama, in connection with its approval of the zoning for the Bent Brook Planned Unit Development.

### **ARTICLE III**

#### **EASEMENTS AND RESERVATION OF RIGHTS**

3.1 **Grant of Non-Exclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, the Association, and their successors and assigns, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot. The easement to use and enjoy the Common Areas granted hereby shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. The easements, rights and

privileges granted in this Section 3.1 shall pass with each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot.

3.2 **Grant of Easement to Governmental Authorities.** Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon the Property and each Lot for the purposes of performing such duties and activities related to law enforcement, fire protection, trash, garbage and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the governmental Authorities as shall be required or appropriate from time to time.

3.3 **Reservation of Easement.** Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, representatives, invitees, licensees, successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon the Property for the purpose of (i) constructing, installing, maintaining, repairing, operating, replacing and the use of roadways, medians, landscaped areas, guard houses, security gates, sidewalks, walkways, trails, bicycle paths, jogging paths, lanes, fences, walls, berms, curbing, gutters, informational and traffic directional signs and related and other improvements thereon and (ii) doing all things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. The easements established and reserved pursuant to this Section 3.3 shall include the right to cut and remove trees, underbrush, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to install any of the improvements contemplated pursuant to this Section 3.3.

3.4 **Reservation of General Access Easement.**

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

(b) It is anticipated that a single family residential home shall be constructed on each Lot. In the event a minimum side setback line of zero (0) is established for a Lot pursuant to the provisions of Section 6.4 below, the Dwelling to be constructed on each such Lot may be situated so that one side wall of the home is located up to and on one side line of the Lot.

Any such Lot shall hereafter be referred to as the "dominant lot" and the side line which the home is located up to or on shall thereafter be referred to as the "dominant side." The owner(s) of each dominant lot shall have, and there is hereby created in favor of each dominant lot, a five (5) foot wide easement across the Lot which joins the dominant lot on its dominant side, the easement to extend along their common property line from the front to the rear thereof, for the limited purpose of facilitating the construction and maintenance of the home. The easement herein created shall apply not only during the construction phase but shall also run with the Lots subject thereto and in favor of the dominant lot, and apply to the continued maintenance and repair of the Dwelling and the reconstruction of a Dwelling in the event of its partial or total destruction. Any party exercising its rights under the easement herein established shall not cause any damage to any Lot which is subject to this easement and, except in the event of emergencies or perceived emergencies, may exercise its rights only during reasonable hours and in a reasonable manner. The easement herein created shall not permit the alteration in any manner of any area subject to the easement by the Owner of the "dominant lot."

### 3.5 Reservation of Easements With Respect to Common Areas.

(a) Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, utility lines, equipment and facilities, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot within the Development, Developer hereby establishes and reserves for itself, its successors and assigns, a permanent and perpetual, non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) Subject to the provisions of Section 2.8(c) hereof, Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, whether owned by Developer or the Association, and any Lots owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey, and the Association shall accept such conveyance, by quitclaim or other deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.6 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots which are reasonably necessary for the purpose of installing,



erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development or neighboring properties including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or neighboring properties. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same.

**3.7 Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 7.2(b) below, Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and appearance within the Development; and for the purpose of maintaining, repairing and replacing the improvements and plants in the County Buffer; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

**3.8 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards, to effect storm water run-off, or to effect any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any applicable Governmental Authority. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

**3.9 Reservation of Controlled Access Easement.**

(a) Subject to the terms and conditions set forth in this Declaration, Developer does hereby grant to each Owner and Occupant a nonexclusive easement over and upon, and the right to use for pedestrian and vehicular travel and transportation purposes, any roads within the Common Areas subject to and in common with the Developer, its successors and assigns, and the rights of all other parties having any interest or rights in and to any or all of such Common Areas. Subject to the provisions of subparagraphs (b) and (c) below and the rights reserved by the Developer, its successors and assigns, to take any action necessary in order to cause the roads

within the Common Areas or any portion thereof to be dedicated to and accepted as a public roadway by the Governmental Authority as provided in subparagraph (d) below, the easement and right to use granted pursuant to this Section 3.3(a) shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot or Dwelling.

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

(c) Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling, limiting and restricting vehicular and pedestrian access to and from the Development and/or the Golf Course.

(d) Notwithstanding anything provided to the contrary in this Declaration, Developer (i) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate the roads within the Common Areas, or any portion thereof as public roadways to any Governmental Authority designated by Developer without requirement that the approval or consent of any Owner, Occupant or Mortgagee be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which the roads within the Common Areas, or any portion thereof and/or any of the private roadways within the Development are submitted for dedication as public roadways. Each Owner, by acceptance of any deed to a Lot or Dwelling, and each Mortgagee, by the acceptance of any Mortgage on any Lot or Dwelling, shall be deemed to, and each does hereby, irrevocably appoint the Developer as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of the roads within the Common Areas, or any portion thereof to any Governmental Authority as public roadways for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and anyone having any interest in any Lot, Dwelling, Common Areas, or in any of the easement rights created or granted in this Declaration. The rights reserved by Developer pursuant to this Section 3.9(d) may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein to Developer.

(e) Developer reserves for itself and the Association, and their respective successors and assigns, the exclusive right to maintain, repair and replace the roads within the

Common Areas including without limitation, sidewalks, streets, entrance ways, parking areas, landscaping, and related improvements located on or about such roads; provided that no gates, fences, walls, curbs or other obstructions shall be constructed which will impair the ingress and egress of vehicles and pedestrians, or the installation of utilities as herein provided, or otherwise unreasonably interfere with the easements herein granted. Developer also reserves for itself and their respective successors and assigns, the exclusive right, but not the obligation, to regulate, control and police the traffic on the roads within the Common Areas, and from time to time to establish, modify, and enforce reasonable rules and regulations regarding the use of such roads. The rights reserved hereunder by the Developer and the Association shall terminate and be of no further force and effect as to any portion of the roads that is dedicated to a Governmental Authority pursuant to subparagraph (d) above.

3.10 **Golf Course Easement.** Developer hereby reserves for itself and the Golf Course Owner a perpetual non-exclusive easement over, across and under the Property for the benefit of the Golf Course which is in close proximity to the Property, and the Property shall be held, transferred, sold, conveyed and occupied subject to the following covenants, restrictions and conditions, all of which shall be construed as and deemed to be covenants running with the land for the benefit of the Golf Course.

(a) Developer and Golf Course Owner, and their respective invitees, guests, licensees, employees, agents, successors and assigns, shall have the right and privilege to land, seek and retrieve golf balls on portions of the Property adjacent to the Golf Course and to use the Property for ingress and egress for pedestrians, golf carts and maintenance vehicles to and from the Golf Course.

(b) Developer and Golf Course Owner, and their respective contractors, employees, agents, successors and assigns shall have the right to enter the Property to construct, improve, and landscape the Golf Course, including without limitation, the construction of paved paths for use by golf carts and maintenance vehicles and to maintain, repair and replace of the Golf Course.

(c) Developer and Golf Course Owner and any agents, servants, employees, directors, officers, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such party, shall not in any way be responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever, including, without limitation, actions based upon (i) any use of the Golf Course and the Golf Course Buffer; (ii) any invasion of the Property; (iii) improper design of the Golf Course; (iv) the level of skill of any golfer (whether or not such golfer has permission of the management to use the Golf Course); or (v) trespass by any golfer on the Property that may result in property damage or personal injury from golf balls (regardless of number) hit onto the Property, or from the exercise by any golfer of any easement rights or rights of entry onto the Property.

3.11 **Reservation of Easements for Signs, Walks, and Trails.** Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land seven feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling and any public or private roadway which is directly adjacent to

and abuts such Lot or Dwelling for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, outdoor lights, traffic directional signs and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements. Each Owner may, however, be required by the Association or a Declaration to construct a sidewalk within the easement in accordance with specifications of the Association or ARC and at the location designated by the Association or ARC.

3.12 **Reservation of Easement for Golf Course Buffer.** Developer does hereby reserve for, and grant to, the Golf Course Owner and the Association and their respective successors and assigns, an easement for the benefit of the Golf Course over, under and across the Golf Course Buffer for the following uses and purposes: (i) to construct, maintain, repair and replace a perimeter wall or fence between the Golf Course Lots and the Golf Course; (ii) to plant and maintain a natural buffer consisting of trees and other plants and vegetation; and (iii) to construct, maintain, repair and replace a paved path within the Golf Course Buffer and to use such path for vehicular and pedestrian traffic in connection with the maintenance of the Golf Course; provided that if a perimeter wall or fence is constructed within the Golf Course Buffer, the paved path must be located on the side of the perimeter wall or fence facing the Golf Course. The Golf Course Owner shall have exclusive responsibility for the maintenance and repair of the plants and Improvements in the Golf Course Buffer subject to the rights of the Association under Section 7.2(d) hereof. The grounds in the Golf Course Buffer shall remain in a natural condition and the Improvements located therein shall be maintained in good repair and condition. ~~The Golf Course Owner shall promptly remove from the Golf Course Buffer dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material.~~ The Golf Course Owner may, at any time in its sole discretion, convey to any or all of the Owners of Lots subject to the Golf Course Buffer its interest in the easement herein granted with respect to the Golf Course Buffer, and in such event, the Golf Course Owner shall be relieved of its obligation to maintain the Golf Course Buffer with the Lots subject to such conveyance.

#### **ARTICLE IV** **ASSOCIATION**

4.1 **Membership.** The Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot owned by Developer in the Development, (b) in the event any Lot is owned by more than one (1) person, then the Owners of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot owned by such Owners and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred,

assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.2 **Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot within the Development; provided, however, that Developer may, in its sole discretion, elect to transfer all such rights to the members of the Association prior to the occurrence of the foregoing. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

4.3 **Voting Rights.** Subject to the rights reserved to Developer herein and in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Article XI below, the Owner of each Lot shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot owned. Such voting rights shall continue to apply to each Lot upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.6 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted. For purposes of this Section 4.3, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots owned by Developer.

4.4 **Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants, and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase or lease one or more Lots and any other real or personal property,

whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (ii) subject to the provisions of this Section 4.4, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.4, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the ARC, the Association and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer from the Association fee simple title to all or any portion of the Common Areas to any Governmental Authority and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer and/or security services for the Common Areas and/or the Lots. For so long as Developer shall own any Lot, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

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

4.6 **Management by Developer or its Affiliates.** Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot within the Development, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot, shall be deemed to ratify the provisions of this Section 4.6 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof

4.7 **Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots and Common Areas. Without limiting the foregoing, the board may adopt rules and regulations which shall govern the use of any of the Common Areas (including, specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Development. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled, or modified unless such action is also approved by Developer so long as Developer owns any Lot in the Development.

4.8 **Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the ARC and the Board harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the ARC or the Board. The officers, agents, representatives and members of the ARC or the Board shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the ARC or the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC or the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the ARC or the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the ARC or the Board may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers and directors liability insurance in order to fulfill its obligations under this Section 4.8 and the costs of such insurance shall constitute a Common Expense.

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

5.1 **Committee Composition.** The ARC shall consist of not less than three (3) nor more the seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.2 below. The members of the ARC may, but shall not be required to be, members of the Association or Owners of any Lot. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 5.2 below may be removed with or without cause in the manner provided in Section 5.2 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot, shall be deemed to ratify the provisions of Section 5.2 below.

5.2 **Appointment and Removal of ARC Members.**

(a) For so long as Developer is the Owner of any Lot within the Development or any portion of the Development, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as Developer is no longer the Owner of any Lot within the Property or, upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 5.2(a) above, then the members of the ARC shall be appointed by the Board.

(c) Any member of the ARC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 5.2(a) above are in effect or (ii) the Board, in the event the provisions of Section 5.2(b) above are in effect. In the event of death or resignation of a member of the ARC, then Developer, in the event of the provisions of Section 5.2(a) above are applicable, or the Board, in the event the provisions of Section 5.2(b) above are applicable, as the case may be, shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

5.3 **Procedure and Meetings.** The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairmen, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it; provided that a majority of the members of the ARC may delegate the right to act for and on behalf of the ARC to one or more of its members. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred



on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC.

5.4 **Architectural Standards.** Developer and the ARC is hereby authorized but not required to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, improvement, alteration, location, landscaping and design of all Dwelling and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvement on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, improvement, alteration, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by Developer and the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

5.5 **Approval of Plans and Specifications.**

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the Development and to protect and promote the value of the Property, the Lots, the Dwellings, and all Improvements thereon, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Dwelling by any Owner or the Association, other than Developer, which affect the exterior appearance of any lot or dwelling unless plans and specifications therefor have been submitted to and approved by the ARC in accordance with the terms and provisions of this section 5.5. Without limiting the foregoing, the construction, installation or alteration of any Dwellings, sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, guest or servant's quarters, garages or any other outbuildings, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Dwelling or Improvements, unless the plans and specifications for the same have been submitted to and approved by the ARC in accordance with the terms and provisions of this section 5.5.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property. Prior to the commencement of any Dwelling or other Improvements on any Lot, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements (the "Plan"), which shall include the following:

(i) three (3) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all

driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot or Dwelling;

(ii) three (3) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back, and sides of the Dwelling or Improvement to be constructed on the Lot;

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

(iv) three (3) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot, Dwelling or other Improvement;

(v) three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5.6 below;

(vi) three (3) copies of an erosion control plan prepared and submitted in accordance with Section 5.7 below;

(vii) such fee as may from time to time be imposed by the ARC for review, approval and inspection of the Plans and the construction of the Improvements as herein provided (currently \$250.00); and

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

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed Improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the

ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Development. The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking the ARC's approval of plans and specifications. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance and the Association may make interior improvements and alterations within any buildings or structures it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that the approval or consent of the ARC be obtained.

(d) In the event the ARC fails to approve in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

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

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

(g) **No Owner shall occupy any Dwelling unless and until the ARC shall have issued to the Owner a Certificate of Compliance in accordance with the provisions of this Section 5.5(g) and Section 5.15 below.** Upon completion of the construction of any Dwelling, the Owner shall submit a written request to the Association for a Certificate of Compliance. Upon receipt of such request, the Association shall within ten (10) business days inspect the Dwelling to determine if the construction is in compliance with the Plans and Specifications approved by the ARC and the Association and promptly upon making such determination, the Association shall either (i) issue to the Owner a Certificate of Compliance in accordance with Section 5.15 below if the Association finds the construction complies with such approved Plans and Specifications; or (ii) deliver to the Owner a written statement setting forth the reason(s) that a Certificate of Compliance will not be issued with respect to the Dwelling.

#### 5.6 Landscaping Approval.

(a) In order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by

any Owner or the Association, other than Developer, on any Lot, Dwelling or Common Area unless and until landscaping plans therefore have been submitted to and approved by the ARC. For purposes of this Section 5.6, landscaping approval shall not be required for the planting or installing of flowers or small shrubs unless such violate the Architectural Standards or other terms or provisions of this Declaration. The provisions of Section 5.5 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

(b) Each landscape plan so submitted shall provide for the construction of a sidewalk along the Lot line bounded by the street in accordance with the requirements of the ARC and the Association, and the Owner shall be responsible for the repair of any damage to the sidewalk occurring during construction of the Dwelling or any other Improvements on the Lot. The landscape plan shall also reflect the location of all curb cuts in the sidewalk allowing access to the Lot or Dwelling. The Owner must post security for the cost of construction of sidewalks and curb cuts reasonably satisfactory to Developer.

(c) Each landscape plan for a Lot subject to the County Buffer shall incorporate the requirements of the County Buffer. No landscape plan for a Golf Course Lot shall provide for any landscaping or Improvements within the Golf Course Buffer.

5.7 **Erosion Control Plan.** Owner or the Owner's builder or contractor shall prepare an Erosion Control Plan to be implemented with respect to any Lot. Any such Erosion Control Plan, to be approved by the ARC and the Association, must provide that gravel be placed in the driveway of the Lot during the construction period and that hay and silt fences be utilized during construction to minimize erosion. Such Erosion Control Plan must comply with all terms and conditions of the General Permit issued by the Alabama Department of Environmental Management and made available to Developer regarding storm water runoff from construction, excavation, land clearing and other land disturbance activities within the Property.

5.8 **Construction Without Approval.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without approval of the plans and specifications for the same or (b) the ARC shall determine that any approved Plans for any Improvements or the approved landscaping plans (see Section 5.6 hereof) and/or the approved Erosion Control Plan (see Section 5.7 hereof) for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.14 below.

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

5.10 **Subsurface Conditions.**

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

(b) Neither the ARC and its individual members, nor the Association and its members, nor the Developer and its shareholders, officers, directors, agents and employees nor Bent Brook Homes, Inc. as successor to the Developer and its officers, directors, employees, shareholders, agents and contractors (including without limitation, Thornton Construction Company, Inc.) shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on account of injuries to any Lot or parcel of the Property, to any buildings, Improvements, Dwellings or other structures now or hereafter located upon any Lot or parcel of the Property, or on account of any past or future injuries to any Owner, Occupant, or any other person in or upon any Lot or parcel of the Property, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, sinkholes, radon gas, limestone formations, or other geological formations or conditions) under or on the Property.

5.11 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer nor Bent Brook Homes, Inc., as its successor, the ARC, the Association, nor any employee, representative, member, shareholder, partner, officer, director, employee or contractor (including without limitation, Thornton Construction Company, Inc.) thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted by Owner and reviewed or approved in accordance with the provisions of this Article V, (b) any defects, structural or otherwise, in any Improvements constructed or done by Owner according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, radon gas, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (f) any other loss, claim, damage, liability or expense,

including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling, or any Improvements situated thereon.

5.12 **Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities.

5.13 **Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the development of Lots, Dwellings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by the Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 5.13 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

5.14 **Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Board, the ARC and/or the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Board, ARC or the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Board, ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.6 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.8 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Board, ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Board, ARC or the Association may exercise at law or in equity or any of the enforcement rights set forth in this Declaration.

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

5.16 **Assignment Rights.** Developer shall have the right at any time to transfer and assign all or part of its rights and duties and the benefits granted to it pursuant to this Article V to the Association or to any other person or entity, and following such assignment, such assignee shall be entitled to all of the rights and benefits of Developer so assigned.

## **ARTICLE VI**

### **USE AND PROPERTY RESTRICTIONS**

6.1 **Use Restrictions.** Except as otherwise provided to the contrary in this Section 6.1, each Lot and Dwelling shall be used for single-family residential purposes only. No trade or business may be carried on in or from any Lot or Dwelling; provided, however, the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. ~~The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine, including daily or weekly rentals. Notwithstanding anything provided in this Section 6.1 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas or single-family residential purposes, then such use must be approved in writing by the ARC.~~

6.2 **ARC Approval.** ~~No Dwellings or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling and/or Improvements have been approved by the ARC in the manner set forth in Article V above. No Dwelling shall be occupied by any person until the Owner shall have received a Certificate of Compliance from the ARC pursuant to Section 5.5 and 5.15 of the Declaration.~~

6.3 **Underground Utilities.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.4 **Building Setbacks.** Subject to the provisions of Section 6.5 below, minimum building setback lines for all Dwellings may be established either (i) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (ii) in the deed from Developer to the Owner of such Lot.

6.5 **Siting of Dwellings.** Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.5 above. The ARC may require building setback requirements which are greater than the minimum building setback lines specified in Section 6.4 above.

6.6 **Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed two (2) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

6.7 **Minimum Living Space.**

(a) Minimum Living Space requirements may be established (i) on the subdivision plat for the subdivision of which such Lot is included, or (ii) in the deed from Developer to the Owner of a Lot.

(b) Subject to the provisions of subparagraph 6.7(a), the following will set forth the guidelines for Living Space (which may vary within the Development) with respect to Dwellings to be constructed on Lots within the Property. The Living Space shall not be less than 1400 square feet for any Dwelling. The ARC can reduce or increase the Living Space requirements for a Dwelling if, in the opinion of the ARC, the appearance of the Dwelling on the Lot will be consistent with the other Dwellings within the Property.

6.8 **Landscaping.**

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 5.6 above. For purposes of Section 5.6, landscaping approval shall not be required for the planting or installing of flowers or small shrubs unless such violate the Architectural Standards or other terms or provisions of this Declaration.

(b) No Owner shall be allowed to divert or obstruct surface water from its drainage channels or otherwise divert or obstruct surface water so as to adversely impact adjoining or neighboring Lots or Dwellings. The determination of whether any such diversion or obstruction of surface water exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

(c) No Owner shall be allowed to change, alter or destroy the landscaping and Improvements required in the County Buffer and maintained by the Golf Course Owner in the Golf Course Buffer.

(d) The landscaping plan submitted to the ARC for the construction of a Dwelling shall include, without limitation, the following:



(i) adequate foundation, shrubbery and ground cover with only pine straw, shredded bark or pine bark to be used for mulching shrub beds and natural areas;

(ii) one large tree and two small trees shall be planted in each of the front yard and the rear yard with a "large tree" to be defined as being deciduous tree having a trunk ranging between 2 and 2.5 inches in diameter and with a small tree being defined as a deciduous tree in excess of seven feet in height.

(iii) All front and side yards of each Lot shall be sodded with grass unless (A) otherwise required in the County Buffer, (B) approved by ARC as a natural area or (C) landscaped with shrubbery and ground cover approved by ARC.

(iv) Planters and retaining walls in front and side yards and in rear yards visible from the street shall be constructed of masonry approved by the ARC. Landscape timbers shall not be used as exposed edging for planters and retaining walls.

All landscaping shall be completed in accordance with the landscaping plan approved by the ARC prior to the issuance of the Certificate of Compliance for the Dwelling.

(e) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot where such hedge or shrubbery interferes with traffic sight-lines for roadways providing ingress to or egress from any portion of the Development. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners and Occupants.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any street.

(g) No Owner shall allow the grass on his Lot or Dwelling to grow to a height in excess of two (2) inches, measured from the surface of the ground.

(h) The ARC and/or the Association may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot or Dwelling, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot or Dwelling.

(i) All Owners shall maintain their yards in a neat and attractive manner as determined by the ARC, which determination shall be final, conclusive and binding on all Owners and Occupants. The ARC may from time to time promulgate rules and regulations with regard to the maintenance and appearance of yards including, but not limited to, rules and regulations as to acceptable and unacceptable lawn fixtures, decorations, accessories and plant life.

(j) Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling as soon as such holiday passes.

6.9 **Roofing.** The ARC shall have the right to establish specific requirements for the pitch of any roof, the type of roofing materials and the location and color of vents, stacks, equipment, or other devices which may be utilized on the roof of any Dwelling.

6.10 **Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by the ARC. All fixtures should be constructed to direct the beam below the horizontal plane of the fixture and should reflect away from adjacent property and street. Exterior lights may not extend higher than the eaves when placed on a building and no higher than 10 feet above ground when placed on a pole, tree, or other structure. Poles or mounting devices must be dark bronze or black. Mercury vapor security lights are not permitted. Decorative light posts should be located in proximity to the front door or dwelling rather than the street. The Owner or Occupant of each Dwelling shall be responsible for maintaining and replacing all exterior lighting on the Dwelling or Lot of such Owner or Occupant.

6.11 **Exterior Materials and Finishes.** All exterior building material finishes for any Dwelling shall be approved by the ARC. Dryvit shall be prohibited

6.12 **Off-Street Parking.** Each Dwelling shall provide for off-street parking for all automobiles, vehicles, machinery and equipment. No automobiles, vehicles, machinery and equipment shall be parked on the street; provided, however, that visiting automobiles and vehicles shall be parked, to the greatest extent possible, (i) in the off-street parking areas of the Lot being visited or (ii) on the street in front of the Dwelling being visited. The Board shall have the right but not the obligation at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks, commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

6.13 **Fences.** Subject to Section 3.12 hereof, no fences of any kind or material shall be permitted within the Development except as approved by the ARC. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC, and if a fence is so approved by the ARC, then the Owner of such Lot shall be solely responsible for maintaining the same in good condition and repair at all times. No fence shall be constructed in the County Buffer except to the extent reflected in the plans for the County Buffer or otherwise permitted by Jefferson County, Alabama.

6.14 **Windows, Window Treatments and Doors.** All exterior windows and doors shall be approved by the ARC. Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes. Appropriate window treatments shall be used on

all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

6.15 **Mailboxes.** Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or as approved by the ARC.

6.16 **Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall, to the extent practicable, be located on each Lot in the side yard or such other location as it not visible from any street. No window mounted heating or air conditioning units or window fans shall be permitted.

6.17 **Satellite Dishes and Antennae.** Subject to the approval of the ARC as to size, appearance, location and function, miniature satellite dishes which are twenty-one (21) inches in diameter or less may be allowed on any Lot or Dwelling where not visible to the street. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling or any other portion of the Development unless the size, appearance, location and function are approved by the ARC.

6.18 **Driveways and Sidewalks.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of materials approved by the ARC.

6.19 **Outdoor Furniture and Clotheslines.**

(a) Any outdoor furniture placed, kept, installed, maintained or located in or on any Lot shall, to the greatest extent practicable, be located so that the same will not be visible from any street within the Property and shall not be located in the County Buffer. All outdoor furniture shall be maintained in good condition and repair at all times by the Owner of such Lot. No indoor furniture shall be placed, kept, installed, maintained or located outside of the Dwelling.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping so as not to be visible from view from streets, the Golf Course and, to the extent practicable, from adjacent Lots and Dwellings. No wood piles shall be located in the County Buffer.

(c) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street or the Golf Course and shall not be located in the County Buffer.

(d) Free-standing playhouses and treehouses shall be permitted in areas other than the County Buffer, but only after ARC and Association approval of the same.

(e) Basketball backboards shall be located so as not to be visible from any street and shall otherwise be located on such Lot or Dwelling in a location approved by the ARC and the Association other than the County Buffer. Basketball goal backboards should be of clear plexiglass or acrylic and posts should be black.

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only the rear yard of a Dwelling and, to the extent practicable, shall not be visible from the street or the Golf Course and shall not be located in the County Buffer.

6.20 **Pets and Animals.** No wild animals, reptiles, livestock or poultry of any kind shall be kept, raised or bred by any Owner upon or within any Lot or Dwelling or other portion of the Development. Ordinary household dogs and cats may be kept and maintained within the Development except for breeding or commercial purposes. No pet may make an unreasonable amount of noise, be a nuisance or annoyance to other Owners or Occupants, or be a threat of personal injury or property damage to other Owners and Occupants. The determination of whether a pet is unreasonably noisy, annoying, a nuisance or a threat of personal injury or property damage shall be made by the Board in its sole discretion and shall be final, conclusive and binding on all Owners and Occupants. Upon determining that a pet is unreasonably noisy, annoying, a nuisance or a threat, the Board is authorized to invoke any remedy available pursuant to Article XI below and/or may prohibit such pet from residing within the Development. No structure or area for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas or the County Buffer. All structures or areas for the care, housing or confinement of any pet shall be located at the rear of a Dwelling and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Development; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or Occupant or within any street or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association or the Developer for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing the keeping of pets within the Development, including the right to assess fines for violations of such rules and regulations.

6.21 **Trash, Rubbish and Nuisances.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development by Owners or Occupants nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Dwellings within the Development or any real property owned or being developed in close proximity to the Development. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Any Owner or Occupant, or any respective family members, guests, invitees,

servants, agents, employees or contractors of such Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Dwelling or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in trash cans or containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from streets, the Golf Course and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC and the Association and shall not be located in the County Buffer; provided, however, that trash cans and containers can be moved to the side yard of any Dwelling on trash collection days for such Lot or Dwelling.

(c) Except as otherwise provided in Section 6.27 below, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot, Dwelling, or other portion of the Property.

6.22 **Signage.** No signs or advertising posters of any kind (other than one (1) "For Sale" sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. Notwithstanding the foregoing, (a) the restrictions set forth in this Section 6.22 shall not be applicable to Developer and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 3.3 above. NO FOR RENT SIGNS

6.23 **Above or Below Ground Tanks and Wells.** No septic tanks or above or below ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot.

6.24 **Temporary Structures.** No trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, temporary house or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Board, (b) any detached garages or other structures which are approved in writing by the ARC, (c) dog houses, as provided in Section 6.20, and (d) construction trailers and/or sales offices of Developer or builders.

6.25 **Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.25 shall be subject to Sections 2.6 and 2.8 hereof. No Lot or Dwelling shall be sold or owned under any time-sharing, time interval or similar right-to-use programs.

6.26 **Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed

and maintained in the rear yard of a Lot outside the County Buffer only with the prior written approval of the ARC. Above ground swimming pools shall be prohibited. Pool accessories, furniture and equipment shall be maintained in good condition and repair and in a neat and attractive manner and shall not be located in the County Buffer.

#### 6.27 Construction of Improvements.

(a) During the construction of any Improvements or Dwelling, (i) all Lots or Dwellings shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Development at least weekly. Used construction materials may be burned on-site so long as such burning does not create a nuisance to other Owners or violate the laws, ordinance, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot or Dwelling or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any streets within the Development.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) utilize off-street parking only, and (ii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling.

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

(d) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each owner shall also be responsible for strict compliance with the Plans and Specifications for the Dwelling, the landscaping plan for the Lot, the Erosion Control Plan approved by the ARC and the Association, as well as any other applicable watershed protection or soil erosion requirements, and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot. **In the event that the Owner or any of his contractors or agents shall be in violation of the aforesaid requirement, the Association or the ARC shall have the right to exercise any of the remedies set forth in Section 6.32 below. Further, the Owner shall indemnify and hold**

the Developer harmless from and against any liability the Developer may have as a result of the violation by the Owner or its builder, contractor, or other agent, of the terms, conditions or requirements of the Erosion Control Plan submitted by the Owner and approved by the ARC and the Association.

6.28 **Common Areas**. No Owner or Occupant may cut, remove, damage, mutilate or destroy any of the Improvements, trees, plant life, or other vegetation situated on or within a Common Area. Furthermore, no Owner or Occupant may construct, install, place, erect or otherwise maintain any Improvements, vehicles or devices of any nature on or within a Common Area.

6.29 **Additional Regulations**. In addition to the restrictions set forth in this Declaration, the (i) ARC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Occupants, Lots, and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling and (ii) the Board shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Occupants, Lots and Dwellings.

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

6.31 **Variances**. Subject to the provisions of Section 6.33 hereof, the ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot or Dwelling. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC. A variance granted to one Owner shall not be precedent for a variance request of another Owner and each variance request will be considered individually on its own merits without consideration of prior variances and variance requests.

6.32 **Enforcement and Remedies**. In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to do any or all of the following: (a) require cessation of such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the

ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an individual Assessment to such Owner pursuant to Section 8.1 hereof, and if the same is not paid when due, shall bear interest, and shall be subject to the lien provided for in Section 8.6 hereof and shall be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in Sections 5.14, 6.20, 6.27(d), 6.29, 7.2(b), and 11.1 of this Declaration.

**6.33 Approval and Enforcement by Golf Course Owner.** Notwithstanding anything herein to the contrary, the ARC shall not grant a variance of any of the following provisions of this Declaration with respect to a Golf Course Lot without the prior written consent of the Golf Course Owner: Section 6.8, Section 6.13, Section 6.19 through and including Section 6.24, Section 6.26 and Section 7.1(b) hereof. In the event any of said provisions are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Golf Course Owner shall have the right, at its option, to require cessation of such violation or non-compliance by filing an action in a court of competent jurisdiction to enjoin such violation or non-compliance. All costs and expenses incurred by the Golf Course Owner in enforcing this provision of the Declaration, including without limitation, attorney's fees, court costs, and costs and expenses of witnesses shall be paid by the Owner who has violated the aforesaid provisions of the Declaration.

## **ARTICLE VII**

### **MAINTENANCE RESPONSIBILITIES**

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

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, all Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his Lot or Dwelling, as the case may be, in a reasonably neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling (including painting or finishing) without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot shall be landscaped in accordance with plans and specifications submitted to and approved by Developer or the ARC pursuant to Section 5.6 above. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. The Owner shall replace any trees, shrubs or other vegetation that are required to be maintained in the County Buffer. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Development.



(c) No Owner shall (i) change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other Improvements within a Lot unless such change or alteration is first approved, in writing, by the ARC as provided in Sections 5.5 and 5.6 above; or (ii) change or otherwise alter the grounds and Improvements within the Golf Course Buffer; or (iii) remove, damage, mutilate or destroy Improvements, or required vegetation in the County Buffer except as required under Section 7.1(b) hereof with respect to dead vegetation; or (iv) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Development, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the ARC.

## 7.2 Responsibilities of Association.

(a) The Association henceforth shall, to the extent it has received sufficient funds from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas, whether owned by Developer or the Association, which responsibility shall include the maintenance, repair and replacement of (i) walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, landscaped areas, recreational areas and other Improvements made by Developer or the Association within any of the Common Areas, or within any of the easements encumbering the Lots as provided in Article III above, (ii) such entrance gates, roadways, storm sewers, siltation and erosion control facilities, and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Areas. Neither the Association nor the Developer shall be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Areas onto a Lot or Dwelling or (3) resulting from theft, burglary or other illegal entry into the Development, or any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act or omission of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or

replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.8 below.

(c) In the event that the Board determines that the Golf Course Owner has failed or refused to discharge properly its obligations with respect to the maintenance and repair of the Golf Course Buffer in accordance with Section 3.12 hereof, the Association may give written notice to the Golf Course Owner of the Association's intent to provide such necessary maintenance and repair at the cost and expense of the Golf Course Owner; which notice shall set forth in reasonable detail what action is deemed necessary. Except in the case of emergency situation, the Golf Course Owner shall have thirty (30) days within which to complete the same in a good and workmanlike manner, or if the same is not capable of completion within such thirty (30) day period, to commence the required maintenance and repair within such period and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or failure by the Golf Course Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance or repair at the cost and expense of the Golf Course Owner. The Golf Course Owner shall reimburse the Association for the reasonable costs incurred by the Association in connection with such work within thirty (30) days after receipt of a detailed invoice for such work.

(d) Until such time as the private roadways and storm sewers are deemed Common Areas to be maintained by the Association, Developer shall be responsible for the private roadways and storm sewers within the Property and shall be responsible for the maintenance thereof. Upon designation of the private roadways and storm sewer system as Common Areas, the Association shall be responsible for the maintenance thereof as provided in Section 7.2(a) above.

7.3 **Jefferson County, Alabama.** Jefferson County, Alabama will not maintain any private road, storm sewer or other Common Area within the Development now or in the future and will not honor a request to do such. Any part of the Lots and Common Areas that are included in the County Buffer shall be maintained subject to the requirements of Jefferson County, Alabama, with respect to the County Buffer.

7.4 **Traffic Regulations.** All vehicular traffic on the roads within the Common Areas shall be subject to the applicable provision of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board of the Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting

reasonable safety measures and speed limits for any of the roads within any portion of the Common Areas. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic rules and regulations promulgated by the Association, the laws of the State of Alabama shall govern. Only drivers licensed to operate motor vehicles by the State of Alabama or by any other state in the United States may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner, with due consideration for the rights of all occupants of the Development.

## **ARTICLE VIII**

### **COMMON AREA ASSESSMENTS**

8.1 **Assessments and Creation of Lien.** Each Owner of a Lot, except for Developer, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.4 below, (b) Special Assessments, to be established and collected as provided in Section 8.5 below, and (c) Individual Assessments against any particular Lot which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided in Section 8.8(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.8(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.8(a) below, court costs and attorneys' fees incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Common Area, or any other portion of the Development or any other cause or reason of any nature.

8.2 **Purpose of Assessments.**

(a) The Annual and Special Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and

any Improvements thereto, all as may be more specifically authorized from time to time by the Board.

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

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, including but not limited to full time and part time employees, agents, officers, members of the Board and any third party contractors;

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

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, trash collection and security services, if any;

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

(v) Expenses of maintaining, operating and repairing the Common Areas, amenities and facilities serving the Development, whether located within or without the Development, which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair.

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas as of the date hereof and for all subsequent tax years;

(vii) The expenses of the ARC which are not defrayed by plan review charges.

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

(c) The establishment and maintenance of a reasonable reserve fund or funds, if determined necessary by the Board (1) for inspections, maintenance, repair and replacement of

any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

### **8.3 Uniform Rate of Assessments.**

(a) Both Annual and Special Assessments, as described in Sections 8.4 and 8.5 below, shall be assessed against each Lot in the Property at a uniform rate, with the Owner of each Lot (other than Developer) being required to pay the same amount of such Annual and Special Assessments; provided, however, the Board may create classes of Lots within the Property and Annual and Special Assessments shall be at a uniform rate as to each class as follows: (i) the Board shall allocate a percentage share of all Annual Assessments as to each class of Lots within the Property and the Owner of each Lot shall pay his pro rata share of the percentage share of the Annual Assessments allocated to the class of his Lot; (ii) the Board may make Special Assessments against one or more classes of lots within the Property, or may allocate percentage share of Special Assessments as to each class of Lots within the Property, and the Owner of each lot shall pay his pro rata share of the Special Assessment allocated to the class of his Lot. The Lots within the Property shall initially be deemed a single class of Lots for purposes of Annual and Special Assessments.

(b) Notwithstanding anything provided in Section 8.3(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots and/or Dwellings within the Additional Property shall be subject to the same Annual or Special Assessments then being paid by the Owners of all other Lots and Dwellings in the Development, subject to proration for the actual number of days remaining in the year in which such Additional Property was added to the Property as provided in Section 8.7 below.

### **8.4 Computation of Annual Assessments.**

(a) Notwithstanding anything provided to the contrary in this Declaration, the Annual Assessment for each Lot within the Development, except Lots owned by Developer, commencing on the date hereof and continuing until and including December 31, 2005 shall be THREE HUNDRED and NO/100 DOLLARS (\$300.00) per Lot in the Development. The foregoing shall not limit or restrict any Special Assessments levied pursuant to Section 8.5 below or any Individual Assessments levied in accordance with the provisions of Section 8.6 below.

(b) The Board (and Developer so long as Developer owns any Lot within the Development) shall determine and approve an annual budget covering the estimated Common Expenses for the Development for the year ending December 31, 2006 (the "Base Year") and for each year thereafter. Based upon such annual budget, the Board (and Developer, so long as Developer owns any Lot within the Development), shall determine the Annual Assessments to be levied against the Lots for the following year. At such time as Developer no longer owns any Lot within the Development, the Board shall be solely responsible for the annual budget covering the estimated Common Expenses for the Development. A copy of the approved budget

setting forth the amount of Annual Assessments to be levied against the Lots for the year shall be delivered to each Owner.

(c) Subject to the provisions of subparagraph 8.4(d) below, Annual Assessments may increase each year in the amount reasonably necessary to cover the estimated Common Expenses for the Development for the upcoming year. If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.5 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(d) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of Annual Assessments which exceed 110% of the Annual Assessments payable for the entire immediately preceding calendar year, then the budget and the amount of the Annual Assessments shall be presented for approval by the vote of Owners of a majority of the Lots and Dwellings who are voting in person or by proxy at such meetings. In the event the amount of Annual Assessments exceeds the limitations set forth above or until such time as the Owners of a majority of the Lots and Dwellings have approved such increase in the amount of the Annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented subject to the limitation set forth above on the amount of increase in Annual Assessments.

**The limitations on increases in the amount of Annual Assessments provided in this Section 8.4(d) shall not be applicable to the Base Year; accordingly, the actual Annual Assessments for each Lot and Dwelling for the Base Year may exceed 110% of the monthly assessments reflected in Section 8.4(a) above.**

8.5 **Special Assessments.** In addition to the Annual Assessments authorized in Section 8.4 above and the Special Assessments authorized in Sections 9.1(b) and 9.3(a)(i) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Sections 9.1(b) and 9.3(a)(i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting Special Assessments. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.3 above.

8.6 **Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots. The Individual Assessments provided for in this Section 8.6 shall be levied by the Board and the amount and

due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.6 shall apply, without limitation, to any Individual Assessments levied pursuant to Section 5.13, Article VI and Section 7.2(b) above and Article XI below.

**8.7 Date of Commencement of Assessments.**

(a) The Annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board. Annual Assessments and any outstanding Special Assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is conveyed. Annual and Special Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of Annual or Special Assessments on any Lots which it, or its affiliates, own in the Development.

(b) In the event a deficit exists between the total amount of Annual Assessments assessed to all Owners other than Developer and the actual costs incurred by the Association for Common Expenses for the Development, Developer shall have the option to either pay Annual Assessments on Lots owned by Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all Owners other than Developer and the actual costs incurred by the Association for Common Expenses for the Development. As of December 31, 2009, Developer shall have no further obligation of any nature to pay any Annual or Special Assessments or otherwise fund any deficits relating to the Common Expenses or Common Areas.

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

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

Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

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

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.8(a) above, together with the attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.8(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of the Assessments remains unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, as the case may be, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division:

(i) The name of the delinquent Owner;

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

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

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



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

8.9 **Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments or other charges authorized herein with respect to any Lot is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division, prior to the filing of a claim of lien by the Association pursuant to Section 8.8(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division, prior to the filing of a claim of lien by the Association pursuant to Section 8.8(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Mortgagee on such Owner's Lot.

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

## **ARTICLE IX**

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

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

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the

condition to which they existed immediately prior to such fire or other casualty. In the event of damage or destruction to any of the Common Areas by the act or omission of an Owner, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such damage and the cost thereof shall be an Individual Assessment assessed against such Owner and such Owner's Lot.

(b) Notwithstanding anything provided in Section 9.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, pursuant to Section 8.5, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such Special Assessments shall be levied against each Owner equally as provided in Section 8.3 above. Further Special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

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

9.3 **Condemnation of Common Areas.**

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

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby

empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 8.5, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such Special Assessments shall be levied against each Owner as provided in Section 8.3 above.

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

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.3(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

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

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

9.5 **Insurance.**

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

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

(c) The Board shall have the right and authority to obtain worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the Association, the members of the Board and all officers, agents and employees of the Association, including the manager for the Development and the Association, the Owners and the family members, servants, agents, tenants and guests of the Owners and shall also name Developer as an additional insured.

(e) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot, Dwelling and all other Improvements situated thereon. The Board may require all Owners and the Association to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot, does hereby waive and release the Developer, the Association and the ARC, and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors from any and all liabilities, damages or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage is caused by the fault or negligence of the Association, Developer, the ARC or any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors.

9.6 **Indemnity.** Each Owner hereby waives and releases any and all claims against Developer, the Golf Course Owner, the Association and the ARC, and any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, for damages to persons or personal property occurring in, on, about or upon such Owner's Lot or any of the Common Areas and does hereby indemnify, agree to defend and hold harmless the Developer, the Association, the Golf Course Owner and the ARC, and any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, from and against all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) of any nature arising out of or in connection with any injury or damage to person or personal property occurring in, on or about such Owner's Lot or any of the Common Areas caused by or resulting from any negligent act or omission or any willful act or omission of any Owner, Occupant or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant.

## **ARTICLE X**

### **TERM AND AMENDMENTS**

10.1 **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds (2/3) or more of the Lots within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.2 **Amendment by Developer.** For so long as Developer owns any Lot within the Development, Developer may amend this Declaration without obtaining the approval of any Owner or Mortgagee by a written instrument executed by Developer filed and recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division; provided that the provisions of Articles II, III, IV, V, VII and X hereof shall not be amended without the prior written consent of Golf Course Owner, which consent shall not unreasonably be withheld. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots within the Development.

10.3 **Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 10.2 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially, substantially and adversely affects the security, title or interest of any Mortgagee must be approved by such Mortgagee; (ii) during any period in which Developer owns any Lot within the Development, then Developer must approve such proposed amendment; and (iii) the Golf Course Owner must approve any amendments to Articles II, III, IV, V, VII and X hereof.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.3(a) above shall be executed by all parties whose consent to the same is required, including the Golf Course Owner and the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners in the Association was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama, Bessemer Division. Notwithstanding anything provided in this Section 10.3(b) to the contrary, Developer shall have the right, at its option, to add Additional Property to the Declaration as provided in Section 2.2 above.

10.4 **Restriction on Amendments.** Notwithstanding anything herein to the contrary, Sections 1.9, 7.2(d) and 7.3 shall not be amended by action of the Developer or the Association. Each deed for the sale of any Lot shall contain a statement that acknowledges the existence of this Declaration and that the Lot is subject to this Declaration and particularly to the restrictions set forth in this Section 10.4.

## **ARTICLE XI** **ENFORCEMENT**

11.1 **Authority and Enforcement.** In addition to the rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board from time to time, then the Board, the Association and the ARC shall each have the power and right, at its option, to (a) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and shall be a personal obligation of such Owner which is guilty of such violation, (b) suspend an Owner's right to vote in the Association, (c) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the recreational facilities located in or upon the Common Areas, (d) enjoin such violation or noncompliance and/or (e) through its respective designated agents, employees, representatives and independent contractors, enter upon such Lot

or Dwelling and take all action necessary to extinguish or correct such violation or breach. The Board, the Association and the ARC shall each have the power to impose all or any combination of any of the foregoing sanctions and any suspension of rights may be for the duration of the infraction. All costs and expenses incurred by the Board, the Association and the ARC in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of this Declaration and all such costs shall be deemed Individual Assessments pursuant to Section 8.6 above. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Board, the Association and the ARC set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by the Board, the Association and the ARC at law or in equity in the event of any violation or breach by any Owner or Occupant of any of the terms and provisions of this Declaration.

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

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

12.1 **Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS, OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 and the provisions of Section 4.2 above. At such time as Developer no longer owns any interest in any Lot within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board.

12.2 **Legal Expenses.** In addition to the rights and remedies set forth in this Declaration, in the event either the Developer, the Association, the Board or the ARC, or any of their respective agents and representatives, undertake any legal or equitable action which either it deems necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions

in this Declaration shall be paid for by the Owner against whom such action was initiated. The Developer, the Association, the Board and the ARC, and their respective agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by the Developer, the Association, the ARC or the Board to cure such violation or breach.

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

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

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

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

12.7 **Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

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

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



shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

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

12.11 **No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

12.12 **No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

12.13 **Standards for Review.** Whenever in this Declaration Developer, the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the ARC or the Association, as the case may be.

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

12.15 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's Lot within the Development.

12.16 **Assignment.** Subject to the provisions of Section 12.19 below, Developer, the Golf Course Owner, the Association and the ARC shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer, the Association and the ARC, respectively.

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

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

12.19 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

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

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

Developer and Golf Course Owner:

JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation

By: [Signature]  
Its: President

BENT BROOK RESIDENTIAL OWNERS ASSOCIATION, INC.

By: [Signature]  
Its: President

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a notary public in and for said County in said State, hereby certify that James C. Lee, III whose name as President of the JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 14 day of February, 2005.

Misti Marie Dailey  
Notary Public

[SEAL]

My Commission Expires:

7-3-05

STATE OF ALABAMA )  
 )  
COUNTY OF JEFFERSON )

I, the undersigned, a notary public in and for said County in said State, hereby certify that James C. Lee, III whose name as President of the BENT BROOK RESIDENTIAL OWNERS ASSOCIATION, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 14 day of February, 2005.

Misti Marie Dailuy  
Notary Public

[SEAL]

My Commission Expires:

7-3-05

CONSENT OF LENDER

First Commercial Bank as the holder and owner of a mortgage, which secures the real property made subject to the Bent Brook Declaration of Covenants, Conditions and Restrictions, and which is recorded in Instrument #200364/6835 in the Probate Office of Jefferson County, Alabama, , as amended in Instrument #200462/1739 in said office, does hereby consent to the filing of the Declaration and does hereby agree that said property shall remain subject to the terms and conditions of the Declaration if the bank should succeed to the interest of the mortgagor by foreclosure of its mortgage or by accepting a deed in lieu of the foreclosure.

IN WITNESS WHEREOF, the undersigned has executed this consent on this 17<sup>th</sup> day of February, 2005.

FIRST COMMERCIAL BANK

By: [Signature]  
Its: Vice President

STATE OF ALABAMA            )  
COUNTY OF JEFFERSON      )

I, the undersigned, a notary public in and for said County in said State, hereby certify that John Marks, whose name as VP of FIRST COMMERCIAL BANK, an Alabama bank, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 17<sup>th</sup> day of February, 2005.

[Signature]  
Notary Public                      NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
My Commission Expires: Feb 21, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This instrument prepared by:  
Jack P. Stephenson, Jr.  
Burr & Forman LLP  
420 North 20th Street, Suite 3100  
Birmingham, Alabama 35203

Copy

2 0 0 5 6 2 / 4 2 6 0

STATE OF ALABAMA )  
  )  
JEFFERSON COUNTY )

FIRST AMENDMENT  
TO THE  
BENT BROOK RESIDENTIAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS FIRST AMENDMENT TO THE BENT BROOK RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into as of the 25<sup>TH</sup> day July, 2005 by and between BENT BROOK HOMES, INC., an Alabama corporation, ("Developer") and JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation ("Golf Course Owner").

RECITALS:

WHEREAS, Golf Course Owner, as defined in Section 1.19 of the Bent Brook Residential Declaration of Covenants, Conditions and Restrictions as recorded as Instrument Number 200560/6219 in the Probate Office of Jefferson County, Alabama, Bessemer Division (the "Declaration"), is the owner of the "Golf Course" as described in Section 1.16 of the Declaration; and

WHEREAS, capitalized terms not expressly defined herein shall have the meanings given them in the Declaration; and

WHEREAS, Developer is the owner of Lots 19 through and including 53, according to the subdivision plat (the "Plat") of The Glen at Bent Brook, as recorded in Map Book 40, Page 55 in the Probate Office of Jefferson County, Alabama; said Lots being defined as the "Golf Course Lots" in Section 1.18 of the Declaration; and

WHEREAS, the Golf Course is adjacent to and adjoining the Golf Course Lots as shown on the Plat; and

WHEREAS, the "Golf Course Buffer" is defined in Section 1.17 of the Declaration as the area within the Golf Course Lots that is designated as the Golf Course Buffer on the Plat; and

WHEREAS, under the terms and provisions hereof, Developer desires to grant and convey unto Golf Course Owner an easement (the "Easement") over, across, through, under and upon a portion of the Golf Course Lots as described herein below in order to amend the description of the Golf Course Buffer.



**NOW THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Golf Course Owner hereby covenant, declare and agree as follows:

1. **Easement for Golf Course Buffer.** Golf Course Owner was granted an easement over, under and across the Golf Course Buffer pursuant to Section 3.12 of the Declaration which provides as follows:

"Developer does hereby reserve for, and grant to, the Golf Course Owner and the Association and their respective successors and assigns, an easement for the benefit of the Golf Course over, under and across the Golf Course Buffer for the following uses and purposes: (i) to construct, maintain, repair and replace a perimeter wall or fence between the Golf Course Lots and the Golf Course; (ii) to plant and maintain a natural buffer consisting of trees and other plants and vegetation; and (iii) to construct, maintain, repair and replace a paved path within the Golf Course Buffer and to use such path for vehicular and pedestrian traffic in connection with the maintenance of the Golf Course; provided that if a perimeter wall or fence is constructed within the Golf Course Buffer, the paved path must be located on the side of the perimeter wall or fence facing the Golf Course. The Golf Course Owner shall have exclusive responsibility for the maintenance and repair of the plants and Improvements in the Golf Course Buffer subject to the rights of the Association under Section 7.2(d) hereof. The grounds in the Golf Course Buffer shall remain in a natural condition and the Improvements located therein shall be maintained in good repair and condition. The Golf Course Owner shall promptly remove from the Golf Course Buffer dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material. The Golf Course Owner may, at any time in its sole discretion, convey to any or all of the Owners of Lots subject to the Golf Course Buffer its interest in the easement herein granted with respect to the Golf Course Buffer, and in such event, the Golf Course Owner shall be relieved of its obligation to maintain the Golf Course Buffer with the Lots subject to such conveyance."

2. **Description of the Golf Course Buffer.** As described in Section 3.12 of the Declaration as set forth above, the Golf Course Owner is obligated to maintain the Golf Course Buffer and the perimeter fence constructed in the Golf Course Buffer between the Golf Course Lots and the Golf Course. Because topography and appearance have caused certain portions of such perimeter fence to be constructed outside the boundary of the Golf Course Buffer, Developer is hereby granting to the Golf Course Owner, as the Golf Course Owner, an easement across those portions of the Golf Course Lots that are outside the Plat's original boundary of the Golf Course Buffer on the Golf Course side of the as-built perimeter fence as more particularly shown as the solid line on the drawings attached hereto as Exhibit "A" (the "Easement Property"). The Easement Property pertains only to property within the Golf Course Lots that is (i) outside the original Golf Course Buffer and (ii) situated on the Golf Course side of the as-built perimeter fence. The definition and description of the Golf Course Buffer is hereby amended to reflect the addition of the Easement Property to the Golf Course Buffer as was originally described in the Declaration and on the Plat.

3. **Grant of Easement.** Subject to the terms and provisions of the Declaration and this First Amendment thereto, Developer does hereby grant, bargain, sell and convey unto Golf Course Owner, its successors and assigns, an easement over, upon, under, across and through the Easement Property for the purposes stated in Section 3.12 of the Declaration as set forth above including, but not limited to, the maintenance and repair of the landscaping, vegetation, perimeter fence and paved path. Subject to the provisions of Section 3.12 of the Declaration, neither Developer nor its successors and assigns shall have any liability or obligation for such maintenance or repair within the Golf Course Buffer, as amended by the addition of the Easement Property.

4. **Nature of Easement.** The Easement granted hereby shall benefit and serve Golf Course Owner and the Golf Course; shall be and are covenants running with the Golf Course Lots and the Golf Course and may not be severed from the ownership of the Golf Course Lots or the Golf Course. Any conveyance or transfer of any kind of the fee title to the Golf Course Lots or the Golf Course, whether voluntary, involuntary or by operation of law, shall be deemed subject to the Easement described herein.

5. **Termination of Easement.** The Easement granted hereby shall terminate concurrently with the easement for the Golf Course Buffer as provided in the last sentence of Section 3.12 of the Declaration.

6. **Full Force and Effect.** Except as expressly amended hereby, all terms and provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Developer and Golf Course Owner have hereunto set their hands and seals this 25<sup>th</sup> day of July, 2005.

**DEVELOPER:**

**BENT BROOK HOMES, INC.**

By: 

William L. Thornton, III  
Its Chief Executive Officer

**GOLF COURSE OWNER:**

**JEFFERSON COUNTY GOLF  
ASSOCIATES, INC.**

By: 

Its VP



STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William L. Thornton, III, whose name as Chief Executive Officer of BENT BROOK HOMES, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 25 day of July, 2005.

Kara Bouman  
Notary Public

(SEAL)

My commission expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
**MY COMMISSION EXPIRES: May 21, 2008**  
**BONDED THRU NOTARY PUBLIC UNDERWRITERS**

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Stewart R. Dudley, whose name as Vice President of JEFFERSON COUNTY GOLF ASSOCIATES, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 27th day of July, 2005.

Dolly Vanousevic  
Notary Public

(SEAL)

My commission expires:  
**MY COMMISSION EXPIRES DECEMBER 18, 2008**

CONSENT OF MORTGAGEE

First American Bank ("Mortgagee"), as the holder of that certain Mortgage pertaining to the Property dated as of March 17, 2005, and recorded on March 18, 2005 as Instrument No. 200560/8495 in the Office of the Judge of Probate of Jefferson County, Alabama, Bessemer Division (the "Probate Office"), as such Mortgage is amended or modified from time to time, has joined in the execution of this the First Amendment to the Bent Brook Residential Declaration of Covenants, Conditions and Restrictions (the "Declaration") for the purpose of consenting to the execution and recordation of said First Amendment and all of the terms and provisions set forth therein.

Dated as of the 21<sup>st</sup> day of July, 2005.

FIRST AMERICAN BANK

By: Gene Giattina

GENE GIATTINA

Its: Senior Vice President

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Gene Giattina, whose name as Senior Vice President of First American Bank, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Bank.

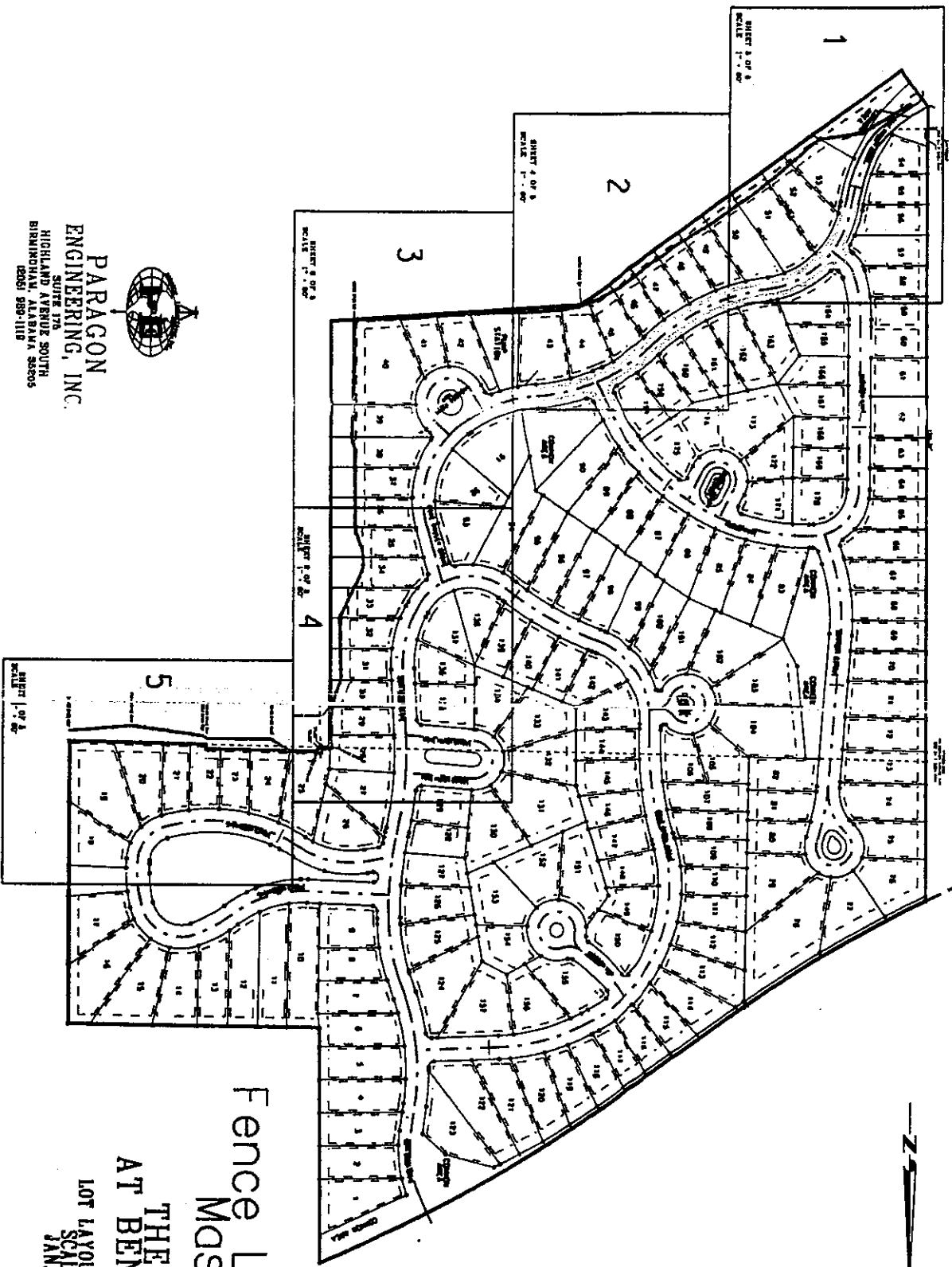
Given under my hand and official seal, this the 21<sup>st</sup> of July, 2005.

Kay H. Tyler  
Notary Public

[SEAL]

My commission Expires:

11-6-08



**PARAGON**  
**ENGINEERING, INC.**  
 SUITE 175  
 HIGHLAND AVENUE SOUTH  
 BIRMINGHAM, ALABAMA 35205  
 (205) 989-1118



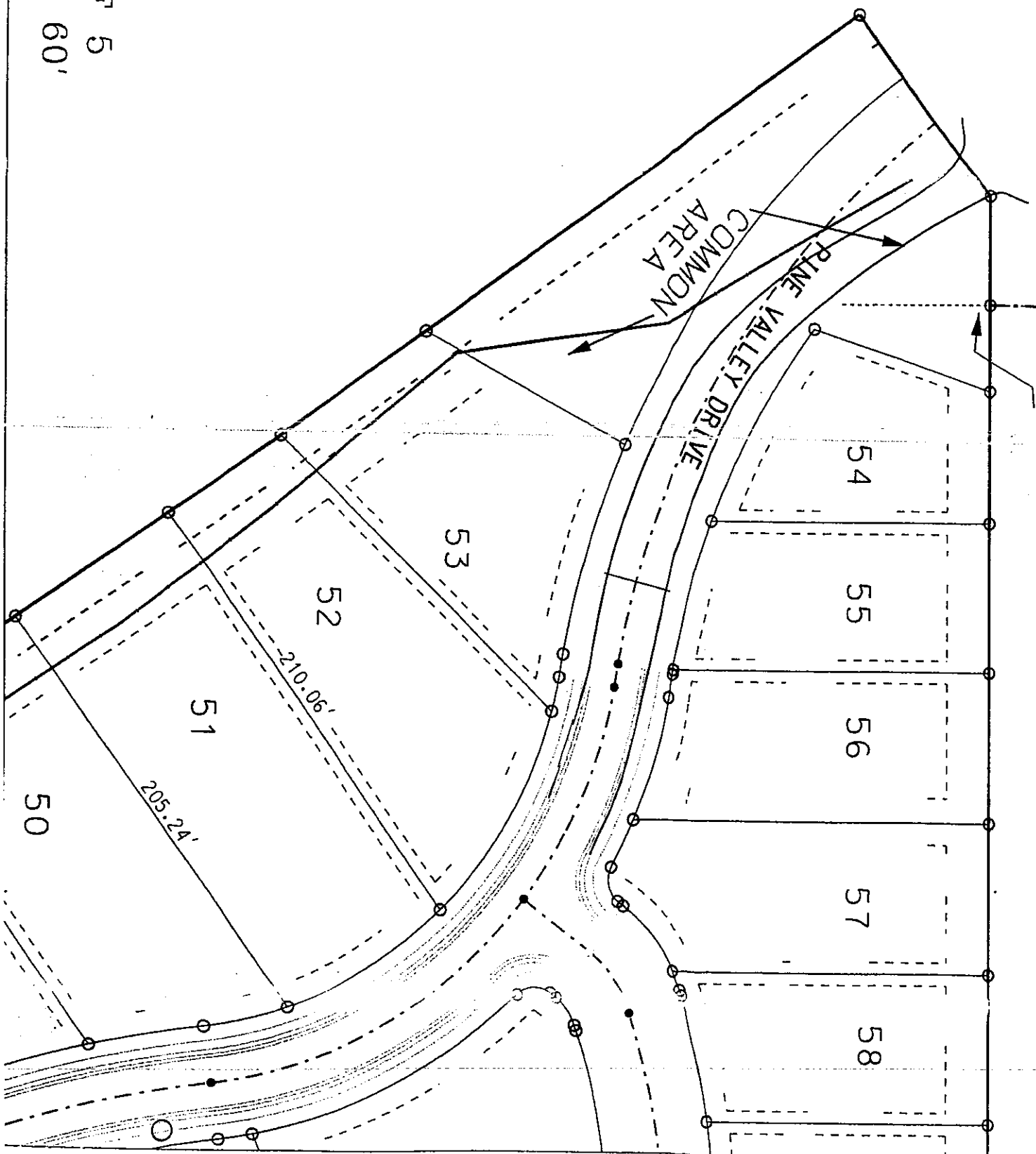
Fence Location  
 Master  
**THE CLIN**  
**AT BENT BROOK**  
 LOT LAYOUT PHASE 1 & 2  
 SCALE: 1"=100'  
 JAN. 7, 2007



**EXHIBIT A  
TO  
FIRST AMENDMENT  
TO THE  
BENT BROOK RESIDENTIAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**



SW COR-SW 174-NE 174  
SEC 5, T 20S, R4W

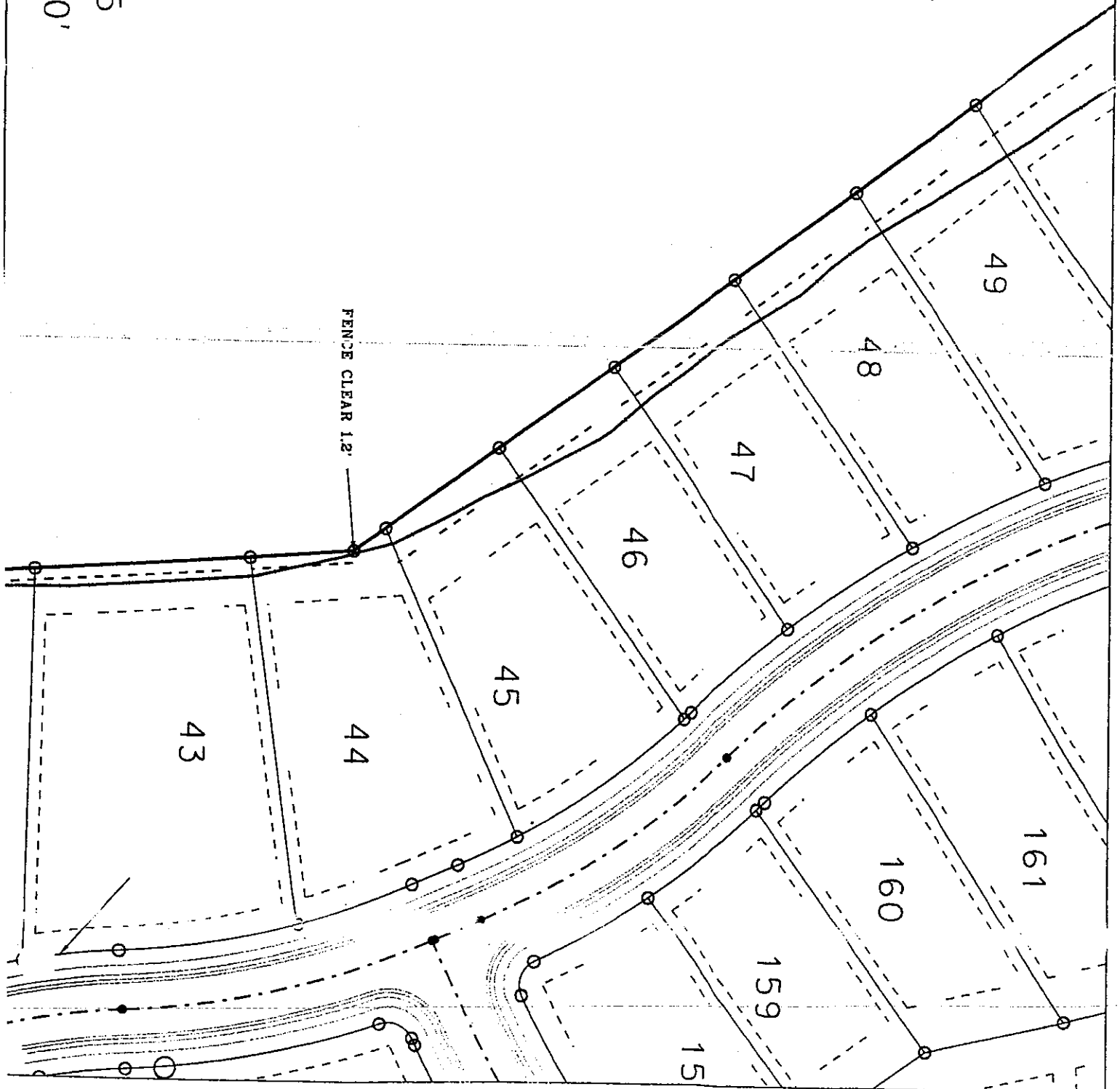


1

SHEET 5 OF 5  
SCALE 1" = 60'

2

SHEET 4 OF 5  
SCALE 1" = 60'



3

PUMP  
STATION

WINGED  
FOOT

41

42

40

39

38

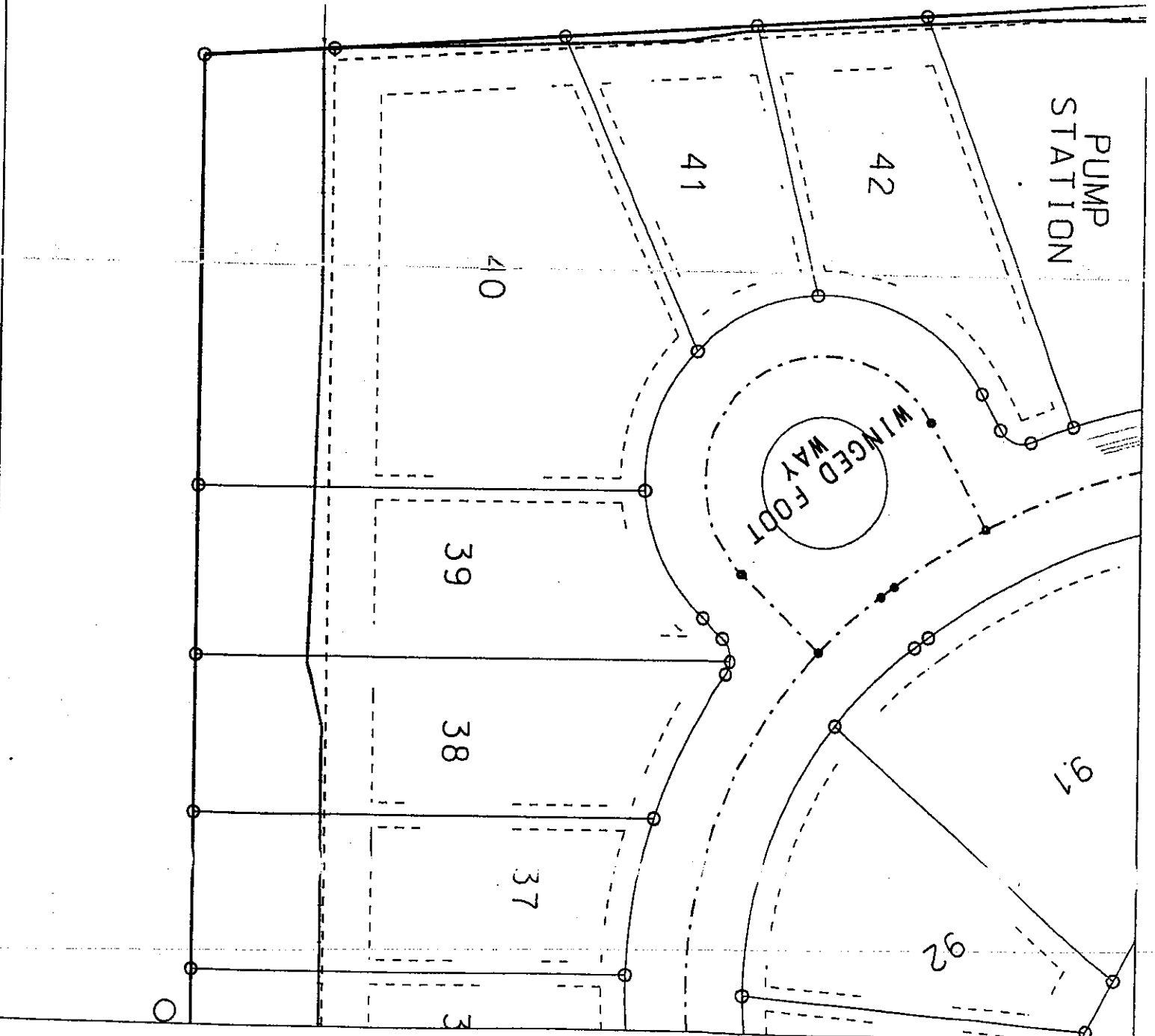
37

91

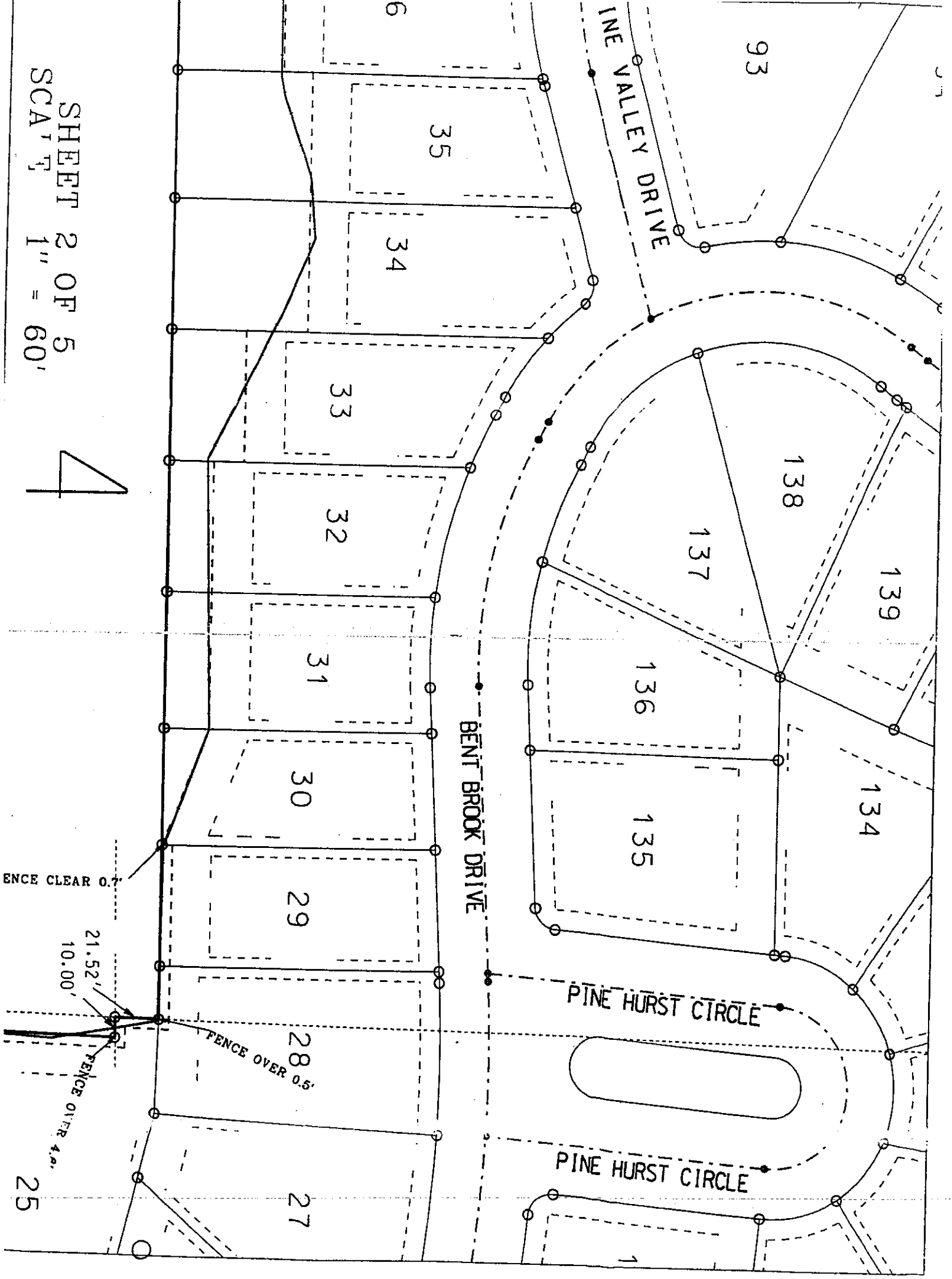
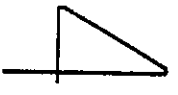
92

FENCE OVER 0.2'

SHEET 3 OF 5  
SCALE 1" = 60'



SHEET 2 OF 5  
SCALE 1" = 60'



FENCE CLEAR 0.7'

21.52'  
10.00'

FENCE OVER 0.5'

25

27

28

29

30

31

32

33

34

35

6

93

138

137

139

136

135

134

PINE HURST CIRCLE

PINE HURST CIRCLE

PINE VALLEY DRIVE

BENT BROOK DRIVE

1



5

FENCE OVER 24.21'

24

23

22

21

20

FENCE OVER 12.5'  
FENCE OVER 18.0'

SHINNECOCK CIRCLE

FENCE OVER 36.2'

19

18

FENCE OVER 22.0'

State of Alabama - Jefferson County

I certify this instrument filed on:

2005 JUL 29 10:57:51:90AM

Recorded and \$

Mtg. Tax

and \$

Deed Tax and Fee Amt.

\$ 33.00 Total \$ 33.00

MARK GAINES, Judge of Probate



200562/4260 BESS

SHEET 1 OF 5

SCALE 1" = 60'

RESTRICTIVE COVENANTS

34.50

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Jefferson County Golf Associates, Inc. ("Declarant") is the owner of certain real property located in Jefferson County, Alabama (sometimes referred to as the "County"), that is more particularly described on Exhibit A attached hereto (the "Property");

WHEREAS, Declarant has applied to the County Commission to have the Property rezoned to R-7 (PUD) in Cases Numbered Z-2001-122 and Z-2004-024 and has filed Restrictive Covenants with respect to the Property in the Probate Office of the County in Instruments Numbered 200203/8317 and 200461/7668 (the "Prior Restrictive Covenants") in order to comply with the requirements for rezoning the Property;

WHEREAS, the Prior Restrictive Covenants require that certain property owned by Declarant be dedicated as open spaces and buffers in connection with the rezoning of the Property;

WHEREAS, by resolutions adopted by the County Commission on March 12, 2002 and February 8, 2005, the Property was rezoned to R-7 (PUD) and a plat for the subdivision of the Property into residential lots has been approved in accordance with the requirements of the Jefferson County Planning Commission and filed with the Probate Office of Jefferson County, Alabama, Bessemer Division in Map Book 40, page 55 (the "Record Map");

WHEREAS, because some but not all of the requirements of the Prior Restrictive Covenants are reflected in the Record Map, the Declarant desires to file these Restrictive Covenants to supplement the Record Map and to have the Record Map and these Restrictive Covenants supersede the Prior Restrictive Covenants in their entirety;

NOW, THEREFORE, THESE PREMISES CONSIDERED, Declarant, as the owner of all of the Property and as the owner of the property constituting the Open Space Property and Buffers herein described, and as the sole declarant of the Prior Restrictive Covenants, does hereby declare as follows in connection with the rezoning of the Property by the County Commission in cases numbered Z-2001-122 and Z-2004-024:

1. The Restrictive Covenants filed in the Probate Office of Jefferson County, Alabama, as Instrument Number 200203/8317 and the Restrictive Covenants filed in said Probate Office as Instrument Number 200461/7668 are hereby declared null and void and superseded in their entirety by these Restrictive Covenants and the Record Map.

2. Declarant is the owner of the real property described on Exhibit B to these Restrictive Covenants, which is comprised of no less than 21.2 acres and is currently being used as part of the golf course known as Bent Brook (the "Open Space Property"). Declarant hereby designates and dedicates the Open Space Property as open space as required in zoning case number Z-2004-024 of the County Commission; provided that the Open Space Property may continue to be used as part of a golf course.

3. Declarant has constructed and landscaped buffers ("Buffers") on land owned by Declarant within and surrounding the Property in accordance with specifications of the County Land Development Department. The location of the Buffers and the improvements and landscaping within the Buffers are reflected in the following described drawings for The Glen at Bent Brook prepared by Ross Kelley Landscape Architects, all of which are attached hereto as Exhibit C: West Buffer Plan; East Buffer Plan; Site Tree Plan-A; and Site Tree Plan-B. Declarant hereby declares that the Property shall be subject to the Buffers located thereon and that the Buffers shall be maintained in accordance with the requirements of the County.

4. Declarant represents that the site development plan for the Property has been prepared in accordance with the recommendations of the Traffic Engineering Division of the Department of Roads and Transportation of the County to allow sufficient space for additional right of way that may be necessary to accommodate future road improvements; that Declarant has posted collateral to secure the cost of such roadway improvements in accordance with the requirements of the Director of said Department of Roads and Transportation; and that the execution of the Record Map by representatives of the Department of Roads and Transportation of the County (or a subdivision thereof), evidences compliance with the requirements of said department under the Prior Restrictive covenants.

5. No residence (building or structure) will be located within the Property further than 1,000 feet from a fire hydrant.

6. Any and all development and construction on the Property shall be in accordance with best management practices regarding stormwater, drainage and erosion control as determined by the County Commission.

7. These Restrictive Covenants are intended to evidence the action taken by Declarant to comply with the requirements of the County Commission in connection with the rezoning of the Property, including without limitation, the requirements reflected in the Prior Restrictive Covenants. Reference is hereby made to, and these Restrictive Covenants are subject to and qualified in their entirety by, the zoning maps and related detail sheets and documents established and maintained by the County with respect to the Property as the same may be modified and amended from time to time. Any or all of the Restrictive Covenants included herein shall be subject to amendment or termination as and to the extent necessary to evidence changes or additions made by the County Commission to said zoning plan and ordinances or to the planned unit development of which the Property is a part. Such amendments to these Restrictive Covenants may be evidenced by an affidavit filed for record in the Probate Office of Jefferson County, Alabama, Bessemer Division, executed by an owner of all or any of the Property or by an owner of all or any portion of property included in the Open Space or the

Buffers, which affidavit shall refer to and identify the action taken by the County Commission to modify, amend or terminate all or any part of the provision of these Restrictive Covenants.

8. These Restrictive Covenants shall be binding upon and inure to the benefit of Declarant and all parties acquiring or having any right, title or interest in any portion of the Property, and their heirs, representatives, successors and assigns.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Declarant has caused these Restrictive Covenants to be duly executed as of this 3rd day of February, 2005.

JEFFERSON COUNTY GOLF ASSOCIATES, INC.

By: [Signature]  
Its: President

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of Jefferson County Golf Associates, Inc., a corporation, is signed to the foregoing Restrictive Covenants, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Restrictive Covenants, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 3 day of February, 2005.

Misti Marie Dailey  
Notary Public  
My Commission Expires: 7-3-05

This instrument was prepared by:

Jack P. Stephenson, Jr.  
BURR & FORMAN LLP  
420 N. 20th Street, Suite 3100  
Birmingham, Alabama 35203

## EXHIBIT "A"

### to Restrictive Covenants The "Property"

#### PARCEL I:

A parcel of land situated in the Northeast Quarter of Section 5, Township 20 South, Range 4 West, Jefferson County, Alabama, being more particularly described as follows:

Begin at a 1" iron rod marking the locally accepted location of the Northwest Corner of the Southwest Quarter of the Northeast Quarter of Section 5, Township 20 South, Range 4 West, Jefferson County, Alabama; thence run in a Southerly direction along the accepted West line of said Quarter-Quarter section for 1346.82 feet to a 1/4" rebar marking the accepted location of the Southwest Corner of said Quarter-Quarter section; thence continue along the last described course in a Southerly direction for 47.46 feet to the Northeasterly right of way of Harper's Dairy Road, a Prescriptive Jefferson County right of way; thence turn an interior angle of 138 degrees 27 minutes 22 seconds to the tangent of a curve to the right having a central angle of 6 degrees 54 minutes 42 seconds and a radius of 825.00 feet and run right to right along the arc of said curve in a Southeasterly direction along said right of way for 99.52 feet; thence turn an interior angle of 89 degrees 30 minutes 35 seconds from the tangent of said curve and run to the left in a Northeasterly direction for 870.56 feet; thence turn an interior angle of 211 degrees 22 minutes 36 seconds and run to the right in an Easterly direction for 547.89 feet; thence turn an interior angle of 93 degrees 49 minutes 26 seconds and run to the left in a Northerly direction for 908.59 feet to the North line of the aforementioned Quarter-Quarter section; thence turn an interior angle of 271 degrees 08 minutes 12 seconds and run to the right in an Easterly direction along said North line for 21.53 feet to a 2" capped pipe located at the accepted Northeast Corner of said Quarter-Quarter section; thence turn an interior angle of 88 degrees 51 minutes 48 seconds and run to the left in a Northerly direction for 10.00 feet; thence turn an interior angle 271 degrees 08 minutes 12 seconds and run to the right in an Easterly direction for 251.00 feet; thence turn an interior angle of 270 degrees 00 minutes 00 seconds and run to the right in a Southerly direction for 10.00 feet; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run to the left in an Easterly direction for 297.74 feet; thence turn an interior angle of 88 degrees 51 minutes 48 seconds and run to the left in a Northerly direction for 601.84 feet; thence turn an interior angle of 90 degrees 53 minutes 32 seconds and run to the left in a Westerly direction for 548.50 feet; thence turn an interior angle of 268 degrees 47 minutes 30 seconds and run to the right in a Northerly direction for 497.81 feet to the Southerly right of way of Dickey Springs Road; thence turn an interior angle of 63 degrees 23 minutes 07 seconds to the tangent of a curve to the left having a central angle of 12 degrees 12 minutes 07 seconds and a radius of 3270.00 feet and run to the left in a Southwesterly direction along said right of way for 696.38 feet; thence run tangent to the last described curve in a Southwesterly direction along said right of way for 387.90 feet; thence turn an interior angle of 125 degrees 09 minutes 35 seconds and run to the left in a Southerly direction for 534.29 feet; thence turn an interior angle of 270 degrees 00 minutes 36 seconds and run to the right in a Westerly direction for 396.05 feet, more or less, to THE POINT OF BEGINNING.

EXHIBIT "A"

to Restrictive Covenants  
The "Property"

PARCEL II:

Part of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 5, Township 20 South, Range 4 West, Jefferson County, Alabama and being more particularly described as follows:

Begin at the Southwest corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section and run in a Northerly direction along the West line of same 298.05 feet to a point on the Southeasterly Right of Way of Dickey Springs Road, said point being on a curve to the left, having a radius of 2750.00 feet and a central angle of 9 degrees, 33 minutes, 11 seconds; thence an interior angle of 114 degrees, 34 minutes, 05 seconds to the tangent of said point on curve and run to the right in a Northeasterly direction along said Right of Way and the arc of said curve 458.51 feet to the Point of Tangent; thence continue in a Northeasterly direction along tangent of said Right of Way 7.97 feet; thence an interior angle of 54 degrees, 50 minutes, 25 seconds and run to the right in a Southerly direction leaving said Right of Way 534.29 feet to a point on the South line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence an interior angle of 89 degrees, 59 minutes, 24 seconds and run to the right in a Westerly direction along said South line of  $\frac{1}{4}$  -  $\frac{1}{4}$  section 396.05 feet to the Point of Beginning.

All being situated in Jefferson County, Alabama.

EXHIBIT "B"

To Restrictive Covenants  
The "Open Space Property"

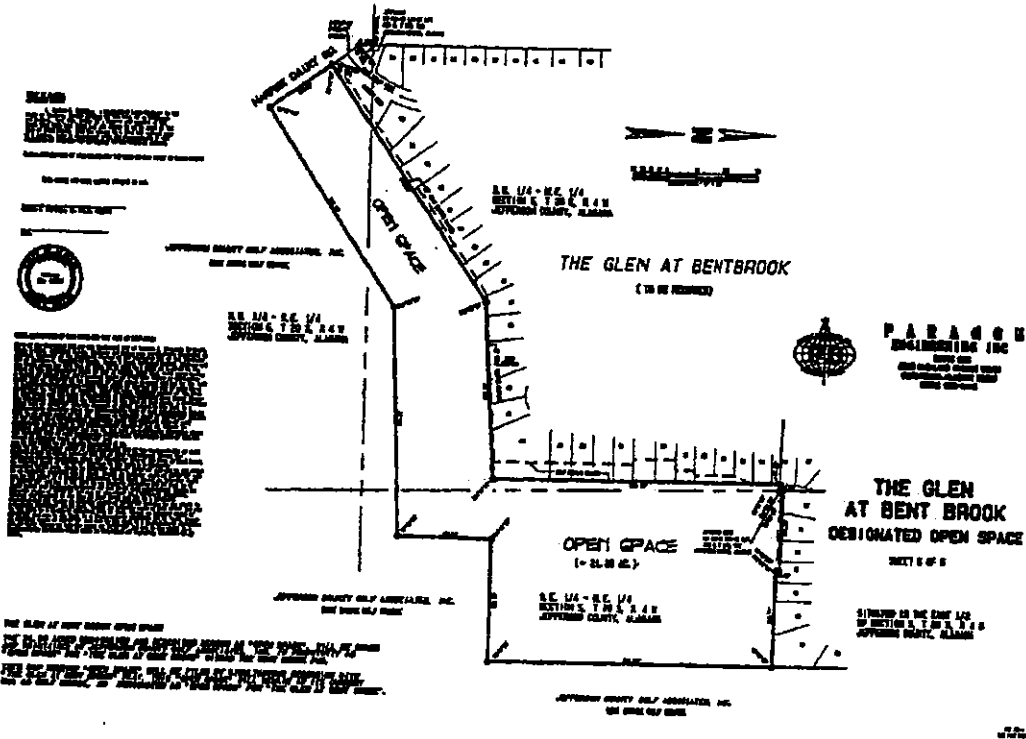
LEGAL DESCRIPTION OF OPEN SPACE FOR THE GLEN AT BENT BROOK

Part of the Northeast 1/4 and the Southeast 1/4 of Section 5, Township 20 South, Range 4 West, Jefferson County, Alabama and being more particularly described as follows; Commence at the Northwest corner of the Northwest 1/4 of the Southeast 1/4 of Section 5, Township 20 South, Range 4 West, Jefferson County, Alabama and run South along the West line of same 47.46 feet to a point on a curve to the right on the Northeastery Right of Way of Harper Dairy Road, said curve having a radius of 825.00 feet and a central angle of 6°54'42"; thence an deflection angle left of 41°32'37" to the tangent of said point on curve and run to the left in a Southeastery direction along said Right of Way and the arc of said curve 99.52 feet to the Point of Tangent, also the most Southerly corner of The Glen At Bent Brook and the Point of Beginning of herein described Open Space; thence the following courses along the boundary of The Glen At Bent Brook, a deflection angle left of 90°23'25" from the tangent of point and run to the left in a Northeastery direction along the Southeastery line of said subdivision 870.56 feet to an angle point of Lot 44; thence an interior angle of 148°37'24" and run to the right in a Northeastery direction along the Southerly line of said subdivision 547.89 feet to the Southeastery corner of Lot 40; thence an interior angle of 268°10'34" and run to the left in a Northerly direction along the Easterly line of said subdivision 808.59 feet to an angle point of Lot 28; thence an interior angle of 88°51'48" and run to the right in an Easterly direction 21.52 feet to the Northwest corner of the Southeast 1/4 of the Northeast 1/4 of said Section 5 and an offset point of Lot 25 of said subdivision; thence the following courses continuing along the Southerly line of The Glen At Bent Brook, an interior angle of 271°08'12" and run to the left in a Northerly direction 10.00 feet; thence an interior angle of 88°51'48" and run to the right in an Easterly direction 251.01 feet; thence an interior angle of 90°00'00" and run to the right in a Southerly direction 10.00 feet; thence an interior angle of 270°00'00" and run to the left in an Easterly direction 297.74 feet to an angle point and Southeastery corner of Lot 19 of said subdivision; thence an interior angle of 91°08'12" and run to the right in a Southerly direction, leaving the boundary of The Glen At Bent Brook and run in a Southerly direction 897.28; thence an interior angle of 90°00'00" and run to the right in a Westerly direction 380.98 feet; thence an interior angle of 268°42'16" and run to the left in a Southerly direction 284.36 feet; thence an interior angle of 93°49'26" and run to the right in a Southwestery direction 707.61 feet; thence an interior angle of 211°22'36" and run to the left in a Southwestery direction 722.22 feet; thence an interior angle of 91°17'44" and run to the right in a Northwestery direction 232.52 feet to the Point of Beginning. Contains 21.20 acres.

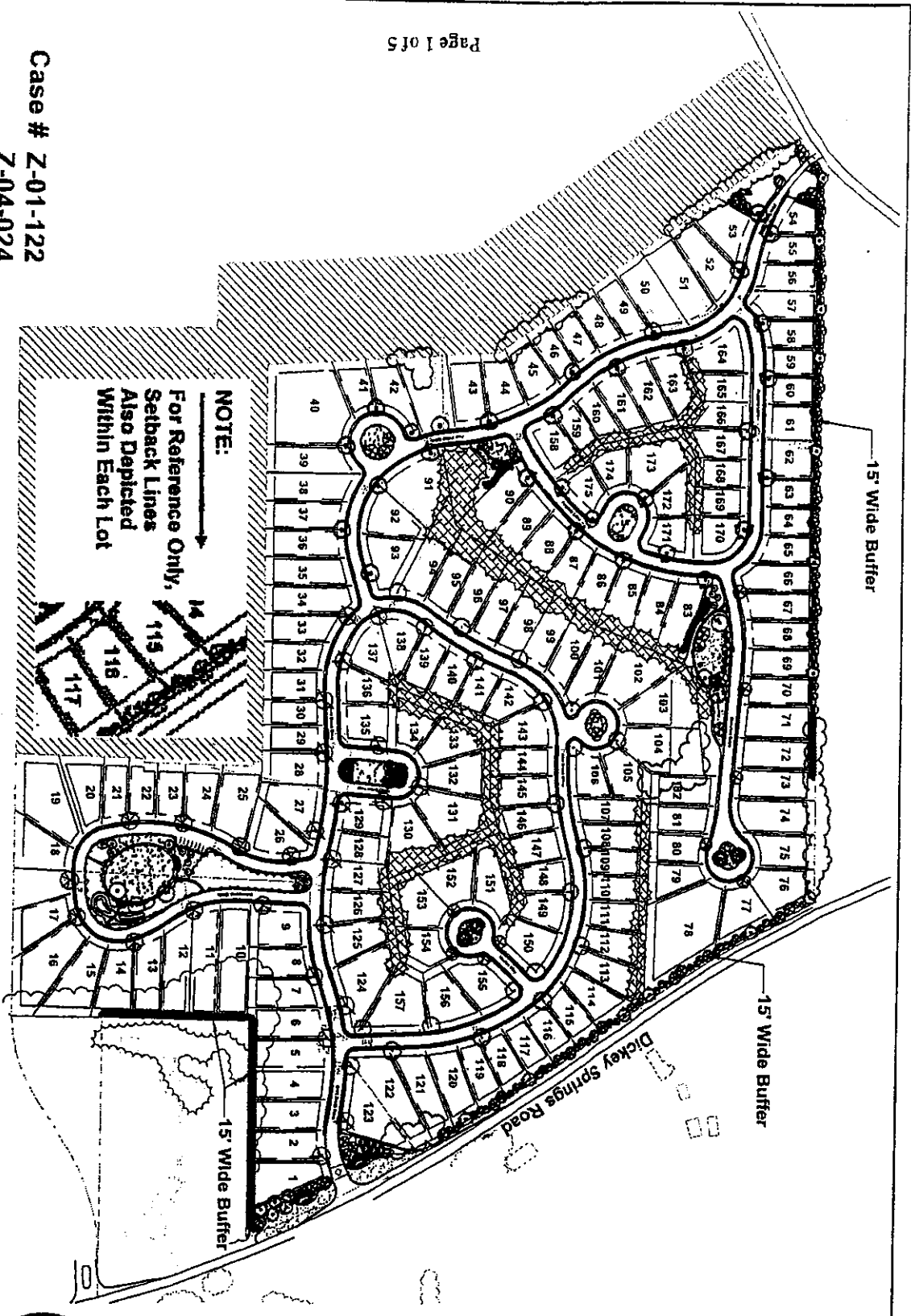


EXHIBIT "B"

To Restrictive Covenants  
The "Open Space Property"



Case # Z-01-122  
Z-04-024



**EXHIBIT "C"**  
To Restrictive  
Covenants

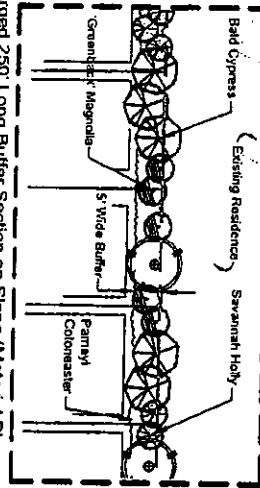
Lot Layout  
**The Glen at Bent Brook**  
Jefferson County, Alabama

**ROSS KELLY**  
LAND-USE ARCHITECTS, P.C.  
2000 10th Avenue  
Birmingham, AL 35203  
205-988-8888  
www.rosskelly.com

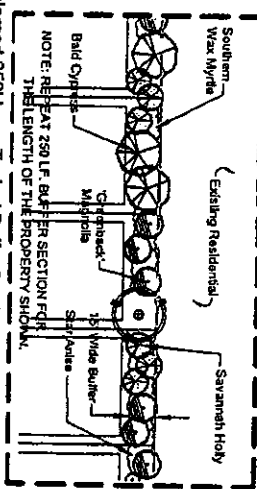
DATE: 10/11/11	BY: [Signature]
SCALE: 1" = 100' FT	
SHEET 130A	

This plan and drawings were prepared by the professional engineer or professional land surveyor named herein and are not to be construed as a warranty or representation of any kind by the engineer or surveyor named herein.

**EXHIBIT "C"**  
**To Restrictive**  
**Covenants**



Enlarged 250' Long Buffer Section on Slope (Material Placement) Plan  
Scale: 1" = 30'-0"



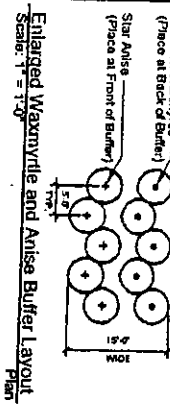
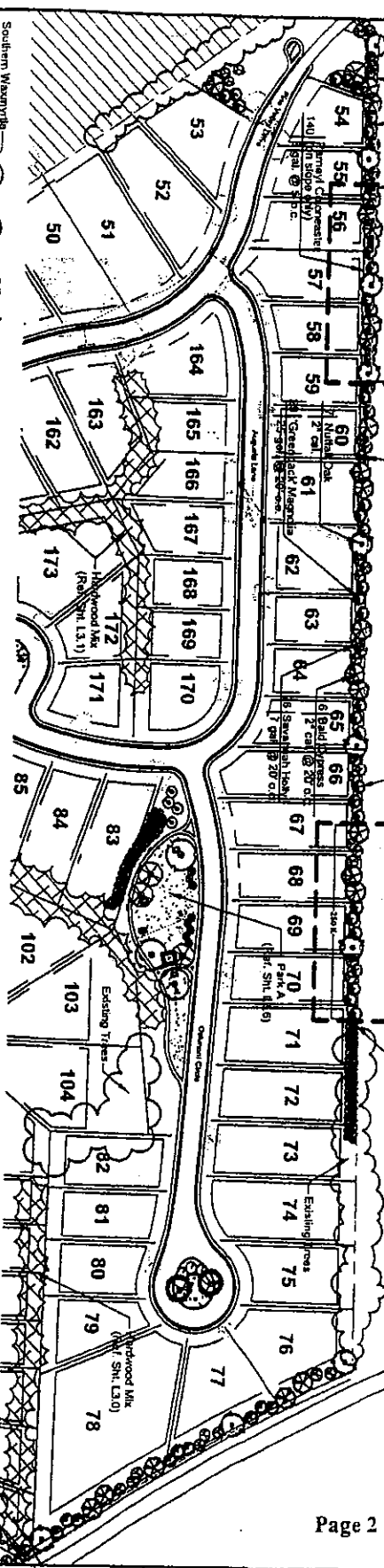
Enlarged 250' Long Typical Buffer Section (Material Placement) Plan  
Scale: 1" = 30'-0"

**PLANT SCHEDULE**

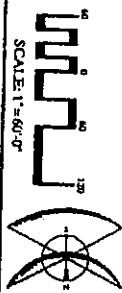
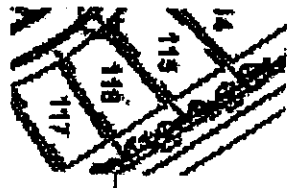
Plant Name	Quantity	Notes
Bald Cypress	10	12" cal.
Grandfather Magnolia	10	12" cal.
Savannah Holly	10	12" cal.
Parrot	10	12" cal.
Conocastier	10	12" cal.
Southern Wax Myrtle	125	3" gal. @ 5' o.c.

**MAINTENANCE NOTE**  
ALL TREES PLANTED WITHIN 10' OF ABOVE PLANT LIST SHALL BE LOCATED WITHIN THE 15' WIDE RESIDENTIAL BUFFER STRIPS AND TO REMAIN WITHIN THE BUFFER STRIPS TO THE END OF THE PROJECT.

**15' Wide Continuous Buffer**  
(Ref. Sht. L3.4)  
Case # Z-01-122  
Z-04-024



**NOTE:**  
For Reference Only,  
Setback Lines  
Also Depicted  
Within Each Lot



**SCALE: 1" = 60'-0"**

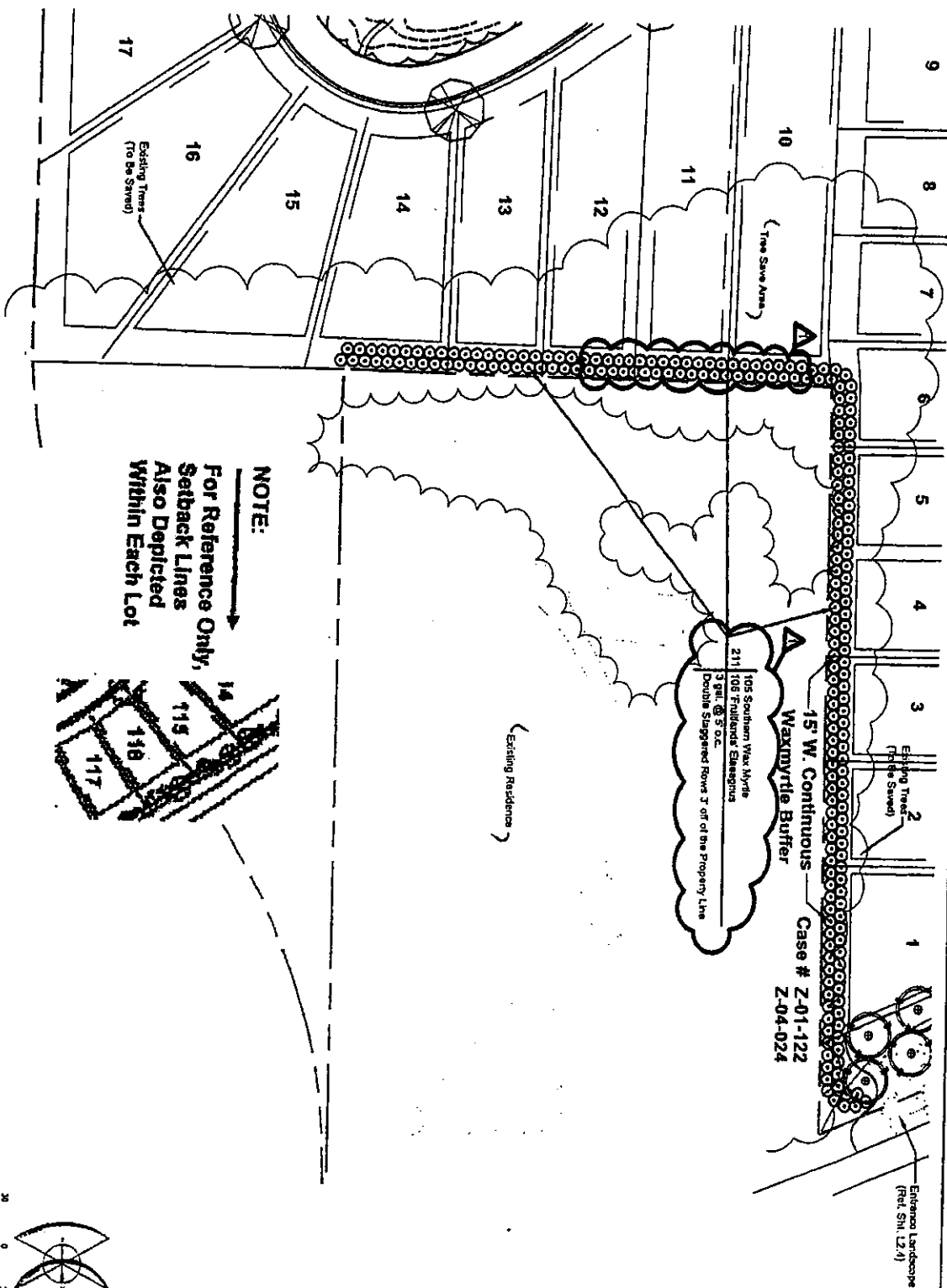
**SHEET L3.2**

DATE	DESCRIPTION

West Buffer Plan  
**The Glen at Bent Brook**  
Jefferson County, Alabama

**ROSS KELLY**  
LANDSCAPE ARCHITECTS  
1115 11th Street  
Birmingham, AL 35202  
205-988-1111

**EXHIBIT "C"**  
**To Restrictive**  
**Covenants**

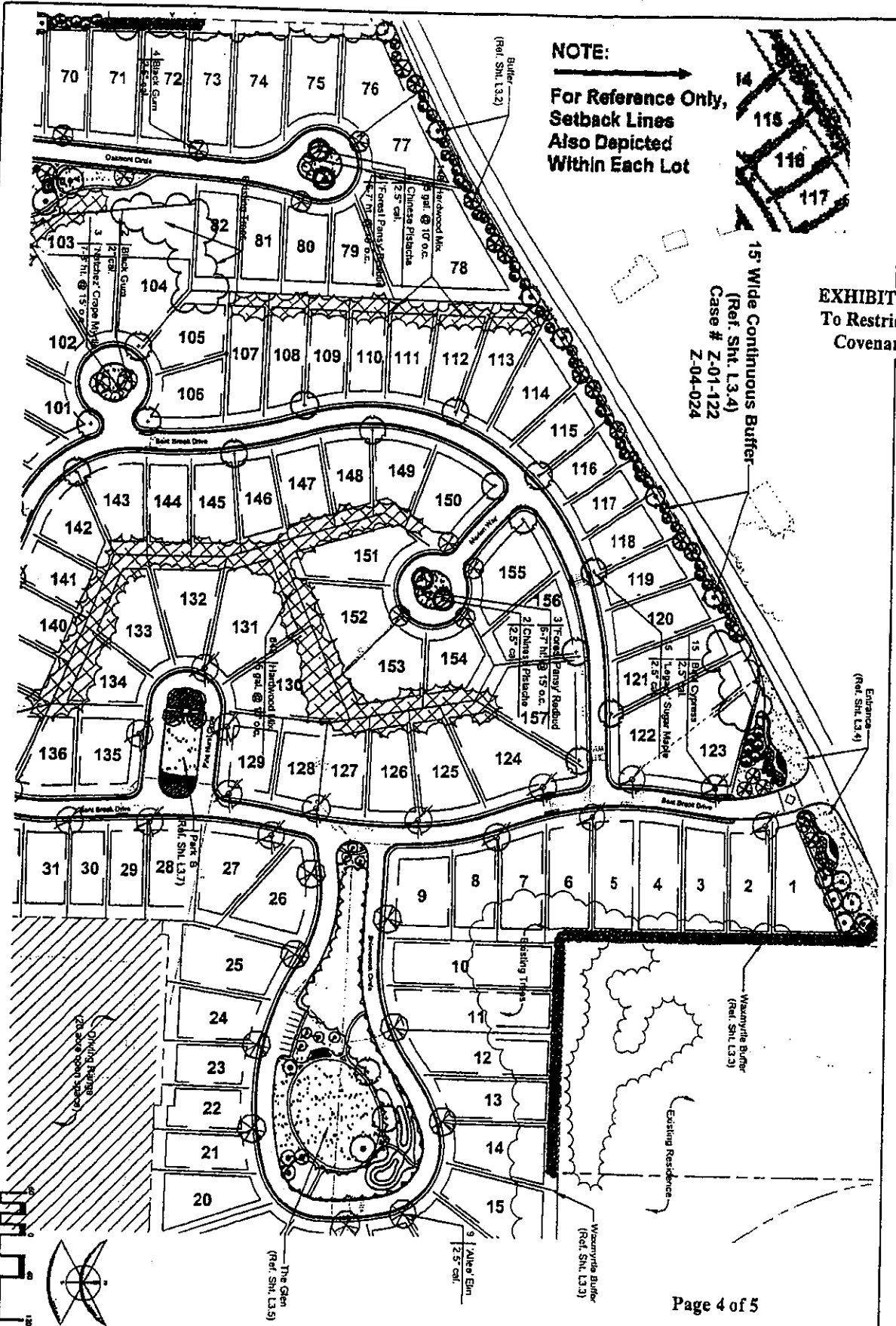


East Buffer Plan  
 The Glen at Bent Brook  
 Jefferson County, Alabama

ROSS KELLY	ARCHITECTS 1000 1/2 W. UNIVERSITY BLVD. SUITE 100 HOUSTON, TEXAS 77005 (713) 865-1111

NO. 1	DATE: 12/12/07	BY: J. KELLY
NO. 2	DATE: 12/12/07	BY: J. KELLY
NO. 3	DATE: 12/12/07	BY: J. KELLY
NO. 4	DATE: 12/12/07	BY: J. KELLY
NO. 5	DATE: 12/12/07	BY: J. KELLY
NO. 6	DATE: 12/12/07	BY: J. KELLY
NO. 7	DATE: 12/12/07	BY: J. KELLY
NO. 8	DATE: 12/12/07	BY: J. KELLY
NO. 9	DATE: 12/12/07	BY: J. KELLY
NO. 10	DATE: 12/12/07	BY: J. KELLY
NO. 11	DATE: 12/12/07	BY: J. KELLY
NO. 12	DATE: 12/12/07	BY: J. KELLY
NO. 13	DATE: 12/12/07	BY: J. KELLY
NO. 14	DATE: 12/12/07	BY: J. KELLY
NO. 15	DATE: 12/12/07	BY: J. KELLY
NO. 16	DATE: 12/12/07	BY: J. KELLY
NO. 17	DATE: 12/12/07	BY: J. KELLY

This Plan is the property of the project of the City of Houston, Texas. It is not to be used for any other purpose without the written consent of the City of Houston, Texas.



Sheet No.	130
Project Name	The Glen at Bent Brook
Client	Jefferson County, Alabama
Scale	1" = 60'-0"
Date	
Author	
Checked	
Approved	

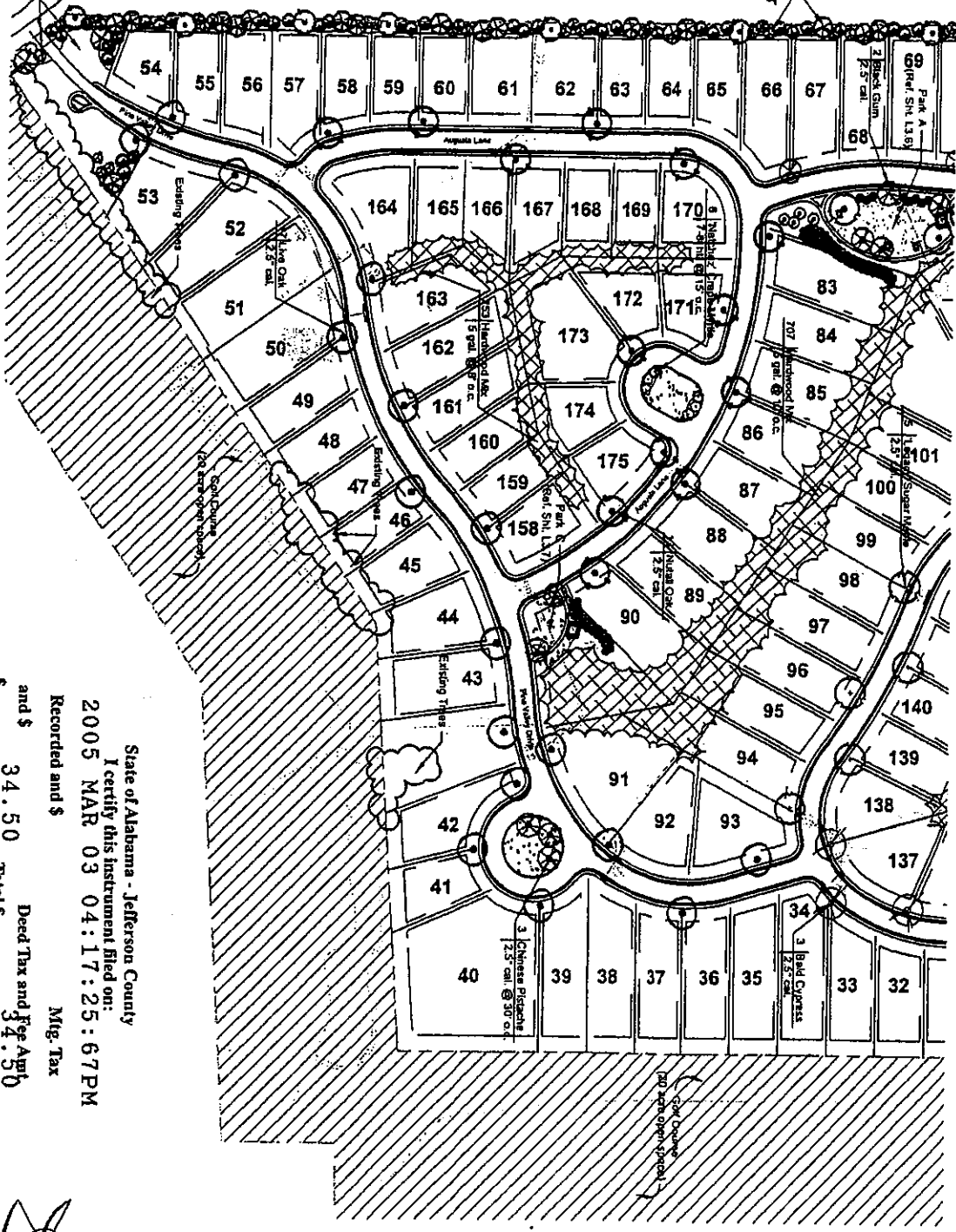
Site Tree Plan - A  
 The Glen at Bent Brook  
 Jefferson County, Alabama



**EXHIBIT "C"**  
**To Restrictive**  
**Covenants**

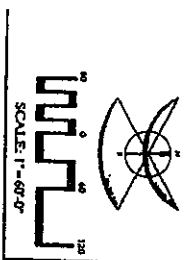
**15' Wide**  
**Continuous Buffer**  
**(Ref. Sht. L3.4)**  
**Case # Z-01-122**  
**Z-04-024**

Emergency Entrance  
 (Ref. Sht. L3.5)



State of Alabama - Jefferson County  
 I certify this instrument filed on:  
**2005 MAR 03 04:17:25:67PM**  
 Recorded and \$ \_\_\_\_\_  
 and \$ **34.50** Total \$  
**MARK GAINES, Judge of Probate**  
 Deed Tax and Fee Amt \$  
 Mig. Tax

200560/6690 BESS



Site Tree Plan - B  
**The Glen at Bent Brook**  
 Jefferson County, Alabama

**ROSS KELLY**  
 LANDSCAPE ARCHITECT  
 1111 North University Blvd.  
 Birmingham, AL 35293  
 Phone: 205-988-1111  
 Fax: 205-988-1112  
 Email: ross@rosskelly.com

Sheet No.	1A1
Project No.	200560/6690
Client	MARK GAINES, Judge of Probate
Date	2005 MAR 03 04:17:25:67PM
Scale	1" = 60'-0"
Author	ROSS KELLY
Checker	ROSS KELLY
Printer	ROSS KELLY

This instrument prepared by:  
Jack P. Stephenson, Jr.  
Burr & Forman LLP  
420 North 20th Street, Suite 3100  
Birmingham, Alabama 35203

2 0 0 4 1 2 / 6 9 5 9

**ARTICLES OF INCORPORATION  
OF  
BENT BROOK RESIDENTIAL OWNERS ASSOCIATION, INC.**

The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Act (Code of Alabama (1975), Sections 10-3A-1, et seq.) hereby adopts the following Articles of Incorporation and certifies as follows:

1. **NAME.** The name of the corporation is "Bent Brook Residential Owners Association, Inc." (hereinafter referred to as the "Association").
2. **DURATION.** The period of duration of the Association shall be perpetual.
3. **PURPOSES.** The purposes for which the Association is organized are:
  - (a) To provide for the efficient preservation of the appearance, value and amenities of the Development which is subject to the Bent Brook Residential Declaration of Covenants, Conditions and Restrictions (the "Declaration") recorded or to be recorded in the Probate Office of Jefferson County, Alabama, Bessemer Division. Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Declaration.
  - (b) To purchase, lease, or otherwise acquire, directly or indirectly, Common Areas for the benefit of the members, and to operate, maintain, manage, repair and replace Common Areas and other improvements in or benefiting the Development for which the obligation to maintain has been delegated and accepted.
  - (c) To the extent provided in the Declaration, to control the specifications, architecture, design, appearance, siting and landscaping of all Improvements to be constructed, placed or permitted to remain on any Lot or Dwelling in the Development and all alterations, changes and additions thereto.
  - (d) To perform and carry out the acts, duties, responsibilities and conditions delegated to the Association in the Declaration, these Articles of Incorporation, the Bylaws of this Association and all amendments thereto.
  - (e) To own, lease, license, operate, purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, exchange, release and dispose of, either alone or in conjunction with others, real and personal property, tangible and intangible, of every kind, character and description.

(f) To enforce all of the terms and provisions of the Declaration and to make, amend, establish and enforce reasonable rules and regulations governing the administration, operation and management of the Development.

(g) To make, levy, collect and enforce Assessments, as defined in the Declaration, and to use and expend such Assessments in the manner set forth in the Declaration.

(h) To employ personnel and contract for services, material and labor, including contracting for the management of the Common Areas and all other portions of the Development.

(i) To purchase and maintain insurance for such coverages, with such insurance carriers, in such amounts, at such rates and with such deductibles as may be necessary for the protection of the Association, its officers, directors and members or as may be otherwise required in the Declaration.

(j) To enforce any of the provisions of the Declaration by legal and equitable actions as may from time to time be necessary.

(k) To enter into, make and perform contracts of every kind for any lawful purpose without limit as to amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body politic.

(l) To operate without profit for the sole and exclusive benefit of its members.

(m) To carry on any other business in connection with the foregoing, to transact any or all lawful business for which corporations may be incorporated under the Alabama Nonprofit Corporation Act, as amended, and to have and exercise all powers necessary or convenient to effect the purpose of the Association in accordance with and subject to the terms and provisions of the Declaration.

4. **INITIAL REGISTERED OFFICE AND AGENT.** The location and mailing address of the initial registered office of the Association and the name of its initial registered agent as such address are as follows:

Stewart R. Dudley  
111 Oxmoor Road  
Birmingham, Alabama 35209

5. **MEMBERS.** The members of the Association shall consist of all Owners. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Developer shall be entitled to all voting rights attributable to any Lots owned by Developer. Notwithstanding anything provided herein or in the Bylaws of the Association to the contrary, for so long as Developer owns any Lot in the Development:



(a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association, (ii) appoint the officers of the Association and the members of the ARC, as defined in the Declaration, (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association and the members of the ARC, (iv) amend these Articles of Incorporation and the Bylaws, (v) amend the Declaration (subject to the limitations set forth in Section 10.2 of the Declaration) and (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members of the Association are entitled to vote on the matters described in item (b) below of this Paragraph 5); and

(b) the voting rights of the members of the Association shall be limited to (i) approving any Special Assessments as provided in Sections 8.4(b) and 8.5 of the Declaration and (ii) voting on amendments to the Declaration as provided in Section 10.3 of the Declaration. As long as Developer is the Owner of any Lot in the Development, the members shall have no further voting rights or privileges in the Association.

At such time as Developer no longer owns any Lot within the Development, the members shall be entitled to vote on all of the foregoing matters subject to any restrictions set forth in the Declaration. The voting rights of any member who has violated the Declaration or who is in default in the payment of Assessments (as defined in the Declaration) may be limited and suspended in accordance with the provisions of the Declaration or any rules and regulations adopted by the Association.

6. **DIRECTORS.**

(a) **Number of Directors.** The affairs of the Association shall be managed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be three (3). Thereafter, the number of Directors shall be fixed in the manner provided in the Bylaws and may thereafter be increased or decreased from time to time by amendment to or in the manner provided in the Bylaws; provided, however, that (i) the number of Directors shall in no event consist of less than three (3) Directors, (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director; (iii) as provided in Sections 4.2 and 12.1 of the Declaration, Developer shall have the right to elect all members of the Board of Directors of the Association as long as Developer owns any Lot within the Development and (iv) at such time as Developer no longer owns any Lot within the Development, the members of the Association shall elect a new Board of Directors of the Association, as provided in Section 12.1 of the Declaration. Directors need not be Owners or residents of the State of Alabama. The name and address of each person who is to serve as an initial Director of the Association until their successors are elected and qualified or until such Directors are removed as provided in Paragraph 7(b) of these Articles are as follows:

Stewart R. Dudley  
111 Oxmoor Road  
Birmingham, Alabama 35209

Dave Smith  
c/o Bent Brook Golf Course  
7900 Dickey Springs Road, S.E.  
Birmingham, Alabama 35022

Chuck Kelly  
2229 First Avenue South  
111 Oxmoor Road  
Suite 100  
Birmingham, Alabama 35233

(b) **Removal.** For so long as Developer owns any Lot within the Development, Developer shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director or otherwise fill any vacancies on the Board, in each case without any consent or approval of any of the members. At such time as Developer no longer owns any Lot within the Development, the members of the Association shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director. Any vacancies which may thereafter arise on the Board shall be filled as provided in the Bylaws.

(c) **Powers.** Except as may be otherwise provided to the contrary in the Declaration, these Articles of Incorporation or the Bylaws of the Association, all powers of the Association shall be exercised by or under the authority of, and the business and affairs of the Association shall be managed under the direction of, the Board of Directors.

7. **INCORPORATOR.** The name and address of the incorporator is as follows:

Deborah Perry Fisher  
Suite 3100  
420 North 20th Street  
Birmingham, Alabama 35203

8. **DISTRIBUTION OF ASSETS UPON DISSOLUTION.**

(a) Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

(i) Assets held by the Association upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(ii) Real property contributed to the Association without the receipt of other than nominal consideration by Developer shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part); and

(iii) All remaining assets shall be distributed among the members of the Association, as tenants in common, with each member's share of the assets to be determined in accordance with its voting rights.

(b) Dissolution of the Association shall be accomplished as set forth in the Alabama Nonprofit Corporation Act.

9. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS AND AGENTS.

(a) The Association shall indemnify any person who was or is party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee, member, manager, or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgment, fines and amounts paid in settlement, actually and reasonably incurred by him in connection with such claim, action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for willful, deliberate or wanton misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite that adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a director, officer, employee, member, manager or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or

proceeding referred to in Paragraphs 9(a) and (b) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

(d) Any indemnification under Paragraphs 9(a) and (b) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, member, manager or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraphs 9(a) or (b) above. Such determination shall be made: (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the members of the Association.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Paragraph 9(d) above upon receipt of an undertaking by or on behalf of the director, officer, employee, member, manager or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Paragraph 9.

(f) The indemnification authorized by this Paragraph 9 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provisions of these Articles of Incorporation, Bylaws, the Declaration or agreement, or the vote of members or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, member, manager or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Paragraph 9.

10. **AMENDMENT.** Subject to any restrictions set forth in the Declaration, for as long as Developer owns any Lot within the Development, these Articles of Incorporation may be amended at any time and from time to time by Developer or, provided that the approval of the Developer is first obtained, by the vote of the Board of Directors of the Association, without the consent or approval of any of the members of the Association. At such time as Developer no

longer owns any Lot within the Development, then these Articles of Incorporation may be amended, subject to the terms and provisions of the Declaration, by the affirmative vote of at least two-thirds (2/3) of the members of the Association who are entitled to vote thereon and who are present or represented by proxy at an annual or special meeting of the members.

11. **INCORPORATION BY REFERENCE.** All the terms, provisions, definitions, covenants, and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants, and conditions set forth in these Articles of Incorporation and the Declaration, then the provisions of the Declaration shall at all times control.

IN WITNESS WHEREOF, the undersigned Incorporator has hereunto subscribed his name to these Articles of Incorporation as of the 13<sup>th</sup> day of September, 2004.

  
Deborah Perry Fisher

State of Alabama - Jefferson County

I certify this instrument filed on:

2004 SEP 13 04:32:34:12PM

Recorded and \$

Mtg. Tax

and \$

Deed Tax and Fee Amt.

\$ 26.00 Total \$ 26.00

MICHAEL F. BOLIN, Judge of Probate



200412/6959

State of Alabama  
Jefferson County

CERTIFICATE OF INCORPORATION

OF

BENT BROOK RESIDENTIAL OWNERS ASSOCIATION INC

The undersigned, as Judge of Probate of Jefferson County,  
State of Alabama, hereby certifies that \_\_\_\_\_ Articles of  
INCORPORATION

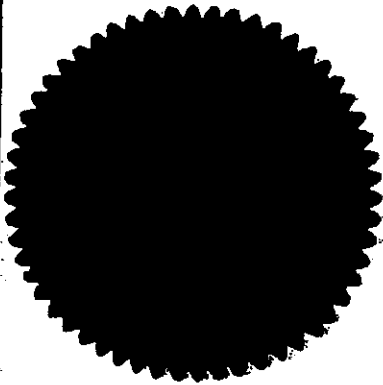
duly signed and verified pursuant to the provisions of Alabama  
NONPROFIT Corporation Act, have been received in this office  
and are found to conform to law.

Accordingly the undersigned, as such Judge of Probate, and by  
virtue of the authority vested in him by law, hereby, issues this  
Certificate of INCORPORATION

of BENT BROOK RESIDENTIAL OWNERS ASSOCIATION INC

and attaches hereto a copy of the \_\_\_\_\_ Articles of  
INCORPORATION

Given Under My Hand and Official Seal on this the 13TH  
day of SEPTEMBER, 2004.



*Michael F. Rubin*  
\_\_\_\_\_  
Judge of Probate

**BYLAWS  
OF  
BENT BROOK RESIDENTIAL OWNERS ASSOCIATION, INC.**

**ARTICLE I  
THE ASSOCIATION**

Section 1.01 **Name.** The name of this Association is "Bent Brook Residential Owners Association, Inc.", an Alabama nonprofit corporation (the "Association"), which has been formed pursuant to Articles of Incorporation of the Association (the "Articles of Incorporation") which have been filed with the Probate Office of Jefferson County, Alabama. The provisions of these Bylaws are expressly subject to the terms and provisions of the Bent Brook Residential Declaration of Covenants, Conditions and Restrictions dated February 14, 2005, which has been recorded as Instrument No. 200560-6219 in the Probate Office of Jefferson County, Alabama, Bessemer Division (which, together with all subsequent amendments thereto, is hereinafter referred to as the "Declaration"). Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Declaration.

Section 1.02 **Principal Office.** The principal office of the Association in the State of Alabama shall be located in Jefferson County, Alabama. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors of the Association (the "Board") may designate from time to time.

Section 1.03 **Registered Office.** The registered office of the Association required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama may be, but need not be, the same as the principal office of the Association. The address of the registered office may be changed from time to time by the Board.

**ARTICLE II  
MEMBERS**

Section 2.01 **Membership.** Each person who is the Owner of any Lot in the Development shall be a member of the Association. Jefferson County Golf Associates, Inc. and/or its successors and assigns (the "Developer"), which is the Developer of the Property described in the Declaration, shall be deemed a member of the Association and shall have one (1) vote for each Lot owned by Developer. In the case of a member who is a partnership, corporation, limited liability company or other business entity, the member shall designate one natural person as its representative member by notice to the Secretary of the Association, and such natural person shall be entitled to exercise all voting powers of such member as provided herein. If a Lot is owned by more than one person and if only one of those persons is present at a meeting of the Association, that person shall be entitled to cast the vote appertaining to such Lot, provided, however, that if more than one of those persons is present, the vote appertaining thereto shall be cast only in accordance with their unanimous agreement, and, if no unanimous agreement is reached, the vote appurtenant to such Lot shall be suspended. No Owner, whether one or more persons, shall be entitled to more than one vote per Lot owned. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. As used in these Bylaws, "member" shall mean an Owner as defined in the Declaration. Notwithstanding

anything provided herein to the contrary and in accordance with Section 5 of the Articles of Incorporation, for so long as Developer owns any Lot in the Development, (a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association, (ii) appoint the officers of the Association and the members of the ARC, as defined in the Declaration, (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association and the members of the ARC, (iv) amend these Bylaws and the Articles of Incorporation, (v) amend the Declaration (subject to the limitations set forth in Section 10.2 of the Declaration), (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members of the Association are entitled to vote on the matters described in item (b) below of this Section 2.01) and (b) the voting rights of the members of the Association shall be limited to (i) the approval of any Special Assessments as provided in Sections 8.4(b) and 8.5 of the Declaration, and (ii) voting on amendments to the Declaration as provided in Section 10.3 of the Declaration. As long as Developer is the Owner of any Lot in the Development, the members shall have no further voting rights or privileges in the Association. The voting rights of any member who has violated the Declaration or who is in default in the payment of Assessments (as defined in the Declaration) may be limited and suspended in accordance with the provisions of the Declaration or any rules and regulations adopted by the Association.

Section 2.02 **Annual Meeting**. The annual meeting of the members of the Association shall be held at 10:00 a.m. on the last day of January of each year or at such other time or such other day within such month as shall be fixed by the Board. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. At the annual meeting, the members of the Association shall, subject to the terms of Sections 2.01 and 3.03 of these Bylaws, elect the Board and otherwise transact such other business as may come before such meeting. If the election of Directors shall not be held on the day designated herein for any annual meeting of the members of the Association, or any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members of the Association as soon thereafter as may be convenient.

Section 2.03 **Special Meetings**. Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or the Board and shall be called by the President or Secretary of the Association upon the petition of at least one-half (½) or more of the total votes in the Association.

Section 2.04 **Place of Meeting**. The Board may designate any place, either within or without the State of Alabama, as the place of meeting for any annual or special meeting. In the absence of any designation, all meetings shall be held at the registered office of the Association in the State of Alabama.

Section 2.05 **Notice of Meeting**. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of any annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Board,



the President, the Secretary, or the officer or persons calling the meeting, to each member of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the books of the Association, with postage thereon prepaid. If given personally, such notice shall be deemed to have been delivered to the member upon delivery of the same to the Lot of such member.

Section 2.06 **Quorum**. With respect to the annual or any special meeting of the members of the Association, a quorum shall be deemed to exist if members of the Association entitled to cast over fifty percent (50%) of all of the votes of the Association are present, in person or by proxy, at such meeting. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 2.07 **Proxies**. At all meetings of the members of the Association, a member may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Section 2.08 **Voting by Members**. Subject to the provisions of Sections 2.01 and 3.03 of these Bylaws, each member of the Association shall be entitled to one (1) vote for each Lot owned by such member, and Developer shall be entitled to one (1) vote for each Lot in the Development owned by Developer. No fractional voting shall be permitted. When more than one person is the owner of a Lot, the provisions of Section 2.01 of these Bylaws shall be applicable to the exercise of such voting rights. For purposes of these Bylaws, the Articles of Incorporation and the Declaration, the vote of a "majority" of the members of the Association shall mean the vote of more than fifty percent (50%) of the total number of votes represented at a meeting, whether in person or by proxy. Unless a greater proportion is specified in these Bylaws, the Articles of Incorporation or the Declaration and, subject to the terms and provisions of Sections 2.01 and 3.03 of these Bylaws, any matter which requires the vote of, approval, disapproval or consent of the members of the Association shall be deemed to have been given if a "majority" of the members of the Association represented at a meeting, either in person or by proxy, affirmatively vote for, approve, disapprove or consent to the same.

Section 2.09 **Informal Action by Members**. Any action required or permitted to be taken at a meeting of the members of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

### ARTICLE III BOARD OF DIRECTORS

Section 3.01. **General Powers**. The business and affairs of the Association shall be managed by or under the direction of its Board.

Section 3.02 **Number, Tenure and Qualifications**. The number of initial Directors of the Association shall be three (3). Each Director shall hold office until his successor shall have

been elected and qualified. Directors need not be residents of the State of Alabama or members of the Association.

Section 3.03 **Election, Removal and Replacement of Directors.**

(a) As provided in Sections 4.2 and 12.1 of the Declaration and Section 6 of the Articles of Incorporation, for so long as the Developer is the Owner of any Lot within the Development, (i) all of the members of the Board shall be elected by the Developer and (ii) Developer shall have the right at any time and from time to time to remove any Directors, either with or without cause, and may appoint a successor to such removed Director or otherwise fill any vacancies on the Board, without any consent or approval of any of the members.

(b) At such time as the Developer no longer owns any Lot within the Development, the members of the Association shall elect, by the vote of a majority of the members of the Association, new members of the Board as provided in Section 4.2 and 12.1 of the Declaration and Section 6 of the Articles of Incorporation. Thereafter, the members of the Association, by affirmative vote of a majority of the members, shall (i) elect the members of the Board at the annual meeting of the members of the Association and (ii) have the right to remove, either with or without cause, at any time or from time to time, any of the members of the Board and appoint a successor to such removed Director. There shall be no cumulative voting by the members.

Section 3.04 **Regular Meetings.** A regular meeting of the Board shall be held, without further notice than this bylaw, immediately after, and at the same place as, the annual meeting of the members of the Association; provided, however, that any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Directors. The Board may provide, by resolution, the time and place, either within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 3.05 **Special Meetings.** Special meetings of the Board may be called by or at the request of the President, any Vice President or any two (2) Directors. The person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of Alabama, as the place for holding any special meeting of the Board called by them.

Section 3.06 **Notice.** Notice of any special meeting shall be given either (a) by written notice at least 48 hours in advance of such meeting, delivered in person or by leaving such notice at the place of business or residence of each Director, or by depositing such notice in the United States mail, postage prepaid, addressed to the Director at his address as it appears on the records of the Association; (b) verbally in person or by telephone at least 24 hours in advance of such meeting by communication with the Director in person or by telephone; or (c) by telegram delivered to the telegraph company at least 24 hours in advance of such meeting. Any Director may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 3.07 **Quorum**. A majority of the number of Directors fixed by Section 3.02 of these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. If a quorum is present when the meeting is convened, the Directors present may continue to do business, taking action by a vote of a majority of quorum as fixed above, until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum as fixed above, or the refusal of any Director present to vote.

Section 3.08 **Manner of Acting**. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by statute, the Articles of Incorporation or these Bylaws.

Section 3.09 **Action Without a Meeting**. Any action required or permitted to be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

Section 3.10 **Vacancies**. For so long as the Developer is the Owner of any Lot in the Development, any vacancy occurring in the Board shall be filled by the Developer as provided in Section 3.03(a) above. At such time as the Developer no longer owns any Lot in the Development, any vacancy occurring in the Board, other than a vacancy occurring by reason of a Director's removal pursuant to Section 3.03(b) of these Bylaws, may be filled by the affirmative vote of a majority of the remaining Directors. In the event that there are no remaining Directors, then the vacancy or vacancies occurring in the Board shall be filled by the affirmative vote of a majority of the members of the Association. A Director elected or appointed to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

Section 3.11 **Compensation**. By resolution of the Board, each Director may be paid his expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 3.12 **Committees; ARC**.

(a) Subject to Section 3.12(b), the Board, by resolution adopted by a majority of the full Board, may designate from among its members one or more committees, each committee to consist of one or more of the Directors and each of which committees, to the extent provided in such resolution, shall have and may during intervals between the meetings of the Board, exercise all the authority of the Board, except that no such committee shall have the authority of the Board in reference to issuing capital stock; amending the Articles of Incorporation; adopting a plan of merger or consolidation; filling vacancies in the Board; amending, altering or repealing the Bylaws of the Association; electing, appointing or removing any member of any such committee or any director or officer of the Association; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and other assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of the assets of the Association; or amending, altering or repealing any resolution of the Board which by its terms provides that it shall not be

amended, altered or repealed by such committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed upon it or him by law.

(b) Notwithstanding anything provided to the contrary in Section 3.12(a) above, the ARC shall be appointed in accordance with Section 5.2 of the Declaration.

(c) Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 3.13 **Resignations.** Any Director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.14 **Participation in Meetings by Conference Telephone.** Members of the Board or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at such meeting.

#### ARTICLE IV OFFICERS

Section 4.01 **Principal Officers.** The principal officers of the Association shall be appointed by the Developer until such time as Developer no longer owns any Lot within the Development; thereafter, the principal officers of the Association shall be elected by the Board. The principal officers shall include a President, one or more Vice Presidents, a Secretary and a Treasurer and may, at the discretion of the Developer or the Board, as the case may be, also include a Chairman of the Board and such other officers as may be designated from time to time. Any number of offices may be held by the same person, except the offices of President and Secretary. None of the principal officers need be Directors of the Association.

Section 4.02 **Election of Principal Officers; Term of Office.** At such time as the Developer no longer owns any Lot within the Development, the principal officers of the Association shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of the members. If the election of principal officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each principal officer shall hold office until his successor shall have been duly elected and qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. If the Board shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled by the Developer until such time as the Developer no longer owns any Lot within the Development, and thereafter may be filled at any regular or special meeting of the Board.

Section 4.03 **Subordinate Officers, Agents and Employees.** In addition to the principal officers, the Association may have such other subordinate officers, agents and employees as the Developer, until such time as Developer no longer owns any Lot within the Development, and thereafter the Board, may deem advisable, each of whom shall hold office for such period and have such authority and perform such duties as the Developer or the Board (as the case may be), the Chairman of the Board, the President, or any officer designated by the Developer or the Board (as the case may be), may from time to time determine. The Developer, until such time as Developer no longer owns any Lot within the Development, and thereafter the Board, at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any subordinate officer, agent or employee of the Association.

Section 4.04 **Delegation of Duties of Officers.** The Developer, until such time as Developer no longer owns any Lot within the Development, and thereafter the Board, may delegate the duties and powers of any officer of the Association to any other officer or to any Director for a specified period of time for any reason that the Developer or the Board (as the case may be) may deem sufficient.

Section 4.05 **Removal of Officers or Agents.** Any officer or agent of the Association may be removed by the Developer, until such time as Developer no longer owns any Lot within the Development, and thereafter the Board, at any time, either with or without cause, and the Developer or the Board, as the case may be, may appoint a successor to such removed officer and agent. Election or appointment of any officer or agent shall not of itself create contract rights.

Section 4.06 **Resignations.** Any officer may resign at any time by giving written notice of resignation to the Developer until such time as Developer no longer owns any Lot within the Development, and thereafter to the Board, the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of a resignation shall not be necessary to make the resignation effective.

Section 4.07 **Vacancies.** A vacancy in any office because of any reason, including but not limited to, death, resignation, removal, disqualification or otherwise, may be filled by the Developer, until such time as Developer no longer owns any Lot within the Development, and thereafter the Board, for the unexpired portion of the term of such office.

Section 4.08 **Chairman of the Board.** The Chairman of the Board, who must be a member of the Board, shall preside at all meetings of the members of the Association and of the Board at which he is present. The Chairman of the Board shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board.

Section 4.09 **President.** The President shall, in the absence of the Chairman of the Board, preside at all meetings of the members of the Association and of the Board at which he is present. The President shall be the chief executive officer of the Association and, subject to the control of the Board, shall have general supervision over the business and affairs of the Association. The President shall have all powers and duties usually incident to the office of the President except as specifically limited by resolution of the Board. The President shall have such

other powers and perform such other duties as may be assigned to him from time to time by the Board.

Section 4.10 **Vice Presidents**. In the absence or disability of the President or if the office of President be vacant, the Vice Presidents, in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or confine such powers and duties or to assign them to others. Any Vice President may have such additional designation in his title as the Board may determine. Each Vice President shall generally assist the President in such manner as the President shall direct. Each Vice President shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board or the President.

Section 4.11 **Secretary**. The Secretary shall act as Secretary of all meetings of the members of the Association and of the Board at which he is present, shall record all the proceedings of all such meetings in a minute book to be kept for that purpose, shall have supervision over the giving and service of notices of the Association, and shall have supervision over the care and custody of the records and seal of the Association. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Association under its seal is duly authorized, and when so affixed may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board or the President.

Section 4.12 **Treasurer**. The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Association and shall cause the funds of the Association to be deposited in the name of the Association in such banks or other depositories as the Board may designate. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board or the President.

Section 4.13 **Salaries**. The officers of the Association shall not be entitled to any salaries or other compensation except for expenses incurred on behalf of the Association which shall be reimbursed.

## ARTICLE V FISCAL MATTERS AND BOOKS AND RECORDS

Section 5.01 **Fidelity Bonds**. The Board may require that any contractor or employee of the Association handling or responsible for Association funds furnish an adequate fidelity bond. The premium for any such bond shall be paid by the Association and shall constitute a Common Expense.

Section 5.02 **Books and Records Kept by Association**. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of

the members and of the Board and committees having any of the authority of the Board; and shall keep at the registered or principal office of the Association in Alabama a record of the names and addresses of the Directors, officers and all members of the Association who are entitled to vote.

Section 5.03 **Inspections**. The books and records of the Association may be inspected by any member, director or officer, or his agent or attorney, for any proper purpose at any reasonable time. True and correct copies of the Articles of Incorporation, these Bylaws, the Declaration, and all rules and regulations of the Association with all amendments thereto, shall be maintained at the principal or registered office of the Association and copies thereof shall be furnished to any member on request on payment of a reasonable charge therefor.

Section 5.04 **Contracts**. The Board may authorize any officer or officers, or agent or agents of the Association, in addition to the officers so authorized by the Declaration and these Bylaws, to enter into any contract or execute and deliver any instrument in the name of, or on behalf of the Association, and such authority may be general or confined to specific instances.

Section 5.05 **Checks, Drafts, etc.** All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and countersigned by the President or a Vice President of the Association.

Section 5.06 **Deposits**. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

Section 5.07 **Loans**.

(a) No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.

(b) No loans shall be made by the Association to its directors and officers. Any director or officer who assents to participate in the making of such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

Section 5.08 **Gifts**. The Board may accept, on behalf of the Association, any contribution, gift, bequest or devise for the general purposes, or for any special purpose, of the Association.

Section 5.09 **Fiscal Year**. The fiscal year of the Association shall be the calendar year.

Section 5.10 **Budget**. Beginning in January 2006 the Board of Directors shall adopt a budget for each calendar year for estimated Common Expenses, and shall approve the proposed Annual Assessments to fund such expenses as contemplated by the budget. Copies of the budget and proposed Annual Assessments for each Lot within the Property, as described in the

Declaration, shall be transmitted to each Lot Owner on or before December 1 preceding the year for which the budget is made. If the budget is amended substantially, a copy of the amended budget shall be furnished to each Lot Owner. The Common Expenses considered in determining the budget therefor shall be those expenses specified in the Declaration plus any additional expenses which are deemed Common Expenses by the Board of Directors of the Association, from time to time. Monthly Assessments for each Lot shall be based upon the budget for such year as may be determined pursuant to the Declaration or by the Board of Directors of the Association from time to time.

Section 5.11 **Annual Assessments.** Annual Assessments against the Lot Owners as provided in the Declaration shall be paid monthly in advance. Such Assessments shall be due on the first day of each calendar month and shall be delinquent if not paid by the fifth day of such calendar month.

Section 5.12 **Special Assessments.** Assessments for budget deficiencies, unforeseen expenses and emergencies that cannot be paid from the Annual Assessments shall be made only after notice of the need for such is given to the members concerned, and such Special Assessments are approved by the applicable Owners as provided in the Declaration. Any such Assessment shall be due within thirty (30) days after such notice of approval is given to the applicable Owners.

Section 5.13 **Notices.** Each Lot Owner shall be obligated to furnish to the Secretary of the Association, the address, if other than the Lot of such Owner, to which any notice or demand to the Owner under the Declaration or these Bylaws is to be given, and if no address other than such Lot shall have been designated, all such notices and demands shall be mailed or delivered to such Lot.

## ARTICLE VI INDEMNIFICATION

Section 6.01 **Action Other Than By Or In The Right Of The Association.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he or she is or was a director, officer, employee, partner or agent of the Corporation, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such claim, action, suit or proceeding (including, without limitation, conduct with respect to an employee benefit plan) if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the



best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 6.02 **Action By Or In The Right Of The Association.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, partner or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Association or was adjudged liable on the basis that personal benefit was improperly received by him or her unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 6.03 **Indemnification Against Expenses of Successful Party.** Notwithstanding the other provisions of this Article VI, to the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 6.01 and 6.02 hereof or in defense of any claim, issue or matter therein including the dismissal of an action, suit or proceeding without prejudice, the disposition of a claim or issue by partial summary judgment, or any other partial success or the settlement of an action, suit or proceeding without admission of liability, such person shall be indemnified against all reasonable expenses (including attorneys' fees) incurred by him or her in connection therewith, notwithstanding that such person has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

Section 6.04 **Determination of Right to Indemnification.** Any indemnification under Sections 6.01 and 6.02 hereof (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 6.01 and 6.02 of this Article VI. Such determination shall be made (1) by the Board of Directors of the Association by a majority vote of a quorum consisting of directors who are or were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion by a majority vote of the members of the Association.

Section 6.05 **Advances of Expenses.** Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the

manner provided in Section 6.04 hereof upon receipt of a written affirmation of good faith belief that he or she has met the standards of conduct described in Sections 6.01 and 6.02 hereof and a written undertaking by or on behalf of the director, officer, employee or agent to repay such amount if and to the extent that it shall be ultimately determined that he or she is not entitled to be indemnified by the Association as authorized in this Article VI.

Section 6.06 **Right to Indemnification Upon Application; Procedure Upon Application.** Any indemnification shall be made promptly upon the written request of the person seeking indemnification, unless with respect to applications under Sections 6.01 or 6.02 hereof, a determination is reasonably and promptly made in the manner prescribed in Section 6.04 hereof that such director, officer, employee or agent acted in a manner set forth in such Sections as to justify the Association's not indemnifying such director, officer, employee or agent.

Section 6.07 **Other Rights and Remedies.** The indemnification authorized by this Article VI shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provisions of Articles of Incorporation, By-Laws, Declaration, or agreement or the vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. It is the policy of the Association that indemnification of directors, officers, employees and agents shall be made to the fullest extent permitted by law. All rights to indemnification under this Article VI shall be deemed to be provided by a contract between the Association and such director, officer, employee, or agent who serves in such capacity at any time while these By-Laws and other relevant provisions of the Alabama Nonprofit Corporation Act and other applicable laws, if any are in effect. Any repeal or modification thereof shall not affect any rights or obligations then existing.

Section 6.08 **Insurance.** The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this Article VI.

Section 6.09 **Indemnity Fund.** Upon resolution adopted by the Board of Directors, the Association may establish a trust or other designated account, grant a security interest or use other means (including, without limitation, a letter of credit), to ensure the payment of certain of its obligations arising under this Article VI and/or agreements which may be entered into between the Association and its directors, officers, employees and agents from time to time.

Section 6.10 **Survival of Indemnification.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a person who has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such director, officer, employee or agent.

Section 6.11 **Savings Clause**. Neither the repeal nor modification of this Article VI nor the adoption of any provisions of the Articles of In Association or Bylaws of the Association inconsistent with this Article VI shall adversely affect the rights of any director, officer, employee or agent with respect to any action, suit, proceeding or claim that, but for this Article VI, would accrue or arise prior to such repeal, modification or adoption of an inconsistent provision.

## ARTICLE VII GENERAL PROVISIONS

Section 7.01 **Waiver of Notice**. Whenever any notice is required to be given under any provision of law, the Articles of Incorporation, the Declaration or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, the Board or members of a committee of Directors need be specified in any written waiver of notice unless otherwise required by these Bylaws. Attendance by a Director at a meeting of the Board or by a member at a meeting of the members shall constitute a waiver of notice of such meeting, except where a Director or member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 7.02 **Incorporation by Reference**. All of the terms, provisions, definitions, covenants and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in these Bylaws and in the Declaration, then the provisions of the Declaration shall at all times control.

Section 7.03 **Power of Developer and Directors to Amend**. Subject to any restrictions set forth in the Declaration and as provided in Section 10 of the Articles of Incorporation, for as long as the Developer owns any Lot within the Development, these Bylaws may be amended or new Bylaws adopted at any time and from time to time by the Developer or, provided that the approval of the Developer is first obtained, by the vote of the Board, without the consent or approval of any of the members of the Association. Furthermore, at such time as Developer no longer owns any Lot in the Development, the members of the Association, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association, may alter, amend, or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any annual meeting or at a special meeting called for such purposes.

Section 7.04 **Seal**. The Board may, but shall not be obligated to, provide a corporate seal which shall be circular in form and have inscribed thereon the name of the Association, the state of incorporation and such other words as the Board may prescribe; provided, however, that the use of the seal of the Association on any contract or agreement shall not be required to evidence the validity, authenticity or approval of such contract or agreement.


**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the Bent Brook Residential Owners Association, Inc.;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 18<sup>TH</sup> day of March, 2005

**IN WITNESS WHEREOF**, I have hereunto subscribed my name this 18<sup>TH</sup> day of March, 2004.

  
Secretary