

BALDWIN COUNTY, ALABAMA
JUDGE ADRIAN T. JOHNS
Filed/cert. 2/27/2009 12:56 PM
TOTAL \$ 115.00
35 Pages

1164858



D-0812-19813

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DUNMORE, A RESIDENTIAL SUBDIVISION

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
1.1 <u>Additional Property</u>	2
1.2 <u>Architectural Review Committee or ARC</u>	2
1.3 <u>Architectural Standards</u>	2
1.4 <u>Articles</u>	2
1.5 <u>Assessment</u>	2
1.6 <u>Association</u>	2
1.7 <u>Board</u>	2
1.8 <u>Bylaws</u>	2
1.9 <u>Common Areas</u>	2
1.10 <u>Control Period</u>	3
1.11 <u>Declaration</u>	3
1.12 <u>Developer</u>	3
1.13 <u>Dwelling</u>	3
1.14 <u>Entrance Easement</u>	3
1.15 <u>Improvement</u>	3
1.16 <u>Living Area</u>	4
1.17 <u>Lots</u>	4
1.18 <u>Member</u>	4
1.19 <u>Mortgage</u>	4
1.20 <u>Mortgagee</u>	4
1.21 <u>Occupant</u>	4
1.22 <u>Owner</u>	4
1.23 <u>Person</u>	4
1.24 <u>Probate Office</u>	4
1.25 <u>Property</u>	4
1.26 <u>Protective Covenants</u>	4
1.27 <u>Purchaser</u>	5
1.28 <u>Single Family Unit</u>	5
1.29 <u>Stormwater System</u>	5
1.30 <u>Subdivision</u>	5
1.31 <u>Subdivision Record Maps</u>	5
ARTICLE II PROPERTY SUBJECT TO RESTRICTIONS.....	5
2.1 <u>General Declaration</u>	5
2.2 <u>Additional Property</u>	5
2.3 <u>Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer</u>	6
2.4 <u>Mutuality of Benefit and Obligation</u>	6
2.5 <u>Additional Covenants</u>	6
2.6 <u>Development of Property</u>	6
2.7 <u>Subdivision Record Maps</u>	6
ARTICLE III EASEMENTS.....	7
3.1 <u>Grant of Nonexclusive Easements to Owners</u>	7

3.2	<u>Utility Easements</u>	7
3.3	<u>Additional Easements and Uses</u>	7
3.4	<u>Reservation of General Access Easement</u>	8
3.5	<u>Additional Documents</u>	8
3.6	<u>Limitations</u>	8
ARTICLE IV	ARCHITECTURAL CONTROL	9
4.1	<u>Architectural Standards</u>	9
4.2	<u>Method of Architectural Control</u>	9
4.3	<u>ARC Membership</u>	9
4.4	<u>Powers and Duties</u>	9
4.5	<u>Variances</u>	11
4.6	<u>Construction Without Approval</u>	11
4.7	<u>Inspection</u>	11
4.8	<u>Subsurface Conditions</u>	11
4.9	<u>Limitation of Liability</u>	11
4.10	<u>Additional Remedies</u>	12
4.11	<u>Compliance Certification</u>	12
ARTICLE V	RESTRICTIONS	12
5.1	<u>Use Restrictions</u>	12
5.2	<u>Storm Drains</u>	13
5.3	<u>Common Area</u>	13
5.4	<u>Tenants</u>	13
5.5	<u>Enforcement</u>	13
5.6	<u>Model Homes</u>	14
5.7	<u>Buffer Areas</u>	14
5.8	<u>Stormwater System Maintenance Plan</u>	14
5.9	<u>Additional Restrictions</u>	15
ARTICLE VI	COVENANT FOR ASSESSMENTS	15
6.1	<u>Affirmative Covenant to Pay Assessments</u>	15
6.2	<u>Purpose of Assessments</u>	15
6.3	<u>Individual Assessment</u>	16
6.4	<u>Annual Assessments</u>	16
6.5	<u>Special Assessments</u>	16
6.6	<u>Special Meeting</u>	16
6.7	<u>Amount of Assessments</u>	16
6.8	<u>Certificate</u>	16
6.9	<u>Effect of Non-Payment of Assessments; Liens; Remedies</u>	16
6.10	<u>Lien Subordinate to Mortgages</u>	17
6.11	<u>Damages</u>	17
6.12	<u>Exempt Property</u>	18
ARTICLE VII	COMMON AREA EXPENSES	18
7.1	<u>Common Area Expenses</u>	18
7.2	<u>Reserves</u>	19
7.3	<u>Interested Transactions</u>	19
7.4	<u>Enforcement of Declaration and Rules and Regulations</u>	19

ARTICLE VIII NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES.....	20
8.1 <u>Protective Covenants Running with the Land</u>	20
8.2 <u>Remedies for Default</u>	20
8.3 <u>Nature of Remedies: Waiver</u>	20
8.4 <u>No Reverter</u>	20
ARTICLE IX FUNCTION OF ASSOCIATION.	20
9.1 <u>Name</u>	20
9.2 <u>Maintenance Responsibilities</u>	20
9.3 <u>Other Rights of Association</u>	21
ARTICLE X AMENDMENT OF DECLARATION	22
10.1 <u>Amendment by Association</u>	22
10.2 <u>Scrivener's Error</u>	22
ARTICLE XI PERIOD OF DEVELOPER CONTROL.....	22
11.1 <u>Developer Control</u>	22
ARTICLE XII GENERAL PROVISIONS.....	23
12.1 <u>Deeds Subject to Covenants</u>	23
12.2 <u>Obligation of Owner to Rebuild</u>	23
12.3 <u>Indemnity for Damages</u>	23
12.4 <u>No Trespass</u>	23
12.5 <u>Notices</u>	23
12.6 <u>Severability</u>	23
12.7 <u>Governing Law</u>	24
12.8 <u>Captions</u>	24
12.9 <u>Usage</u>	24
12.10 <u>Conflict</u>	24
12.11 <u>Effective Date</u>	24
ARTICLE XIII DISPUTE RESOLUTION	24
13.1 <u>Agreement to Resolve Disputes Without Litigation</u>	24
13.2 <u>Dispute Resolution Procedures</u>	25
13.3 <u>Initiation of Litigation by Association</u>	26
13.4 <u>Developer's Right to Cure Alleged Defects</u>	27

STATE OF ALABAMA)
COUNTY OF BALDWIN)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DUNMORE, A RESIDENTIAL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DUNMORE, A RESIDENTIAL SUBDIVISION (this "Declaration") is made as of this ____ day of February, 2009, by **HEARTHSTONE MULTI-ASSET ENTITY D, L.P.**, a California limited partnership ("Developer").

WITNESSETH:

WHEREAS, the Developer is presently the owner of all of the real property described on Exhibit A attached hereto, a portion of such real property being described in the Plat of Dunmore, Phase One, recorded in Slides 2414-A and 2414-B in the Office of the Judge of Probate of Baldwin County, Alabama (such property, together with any other Additional Property which may become subject to this Declaration as hereinafter provided, being collectively referred to herein as the "Property");

WHEREAS, the Developer is in the process of developing the Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community to be known as "Dunmore" (collectively, the "Subdivision"); and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefits all Owners of the Property and, to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the Property and each Owner thereof; and

WHEREAS, the Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Subdivision and of levying assessments against the Owners of Lots within the Subdivision to enable the Association to perform such obligations.

NOW, THEREFORE, the Developer declares that the Property and any Additional Property as may hereafter be made subject to this Declaration pursuant to Section 2.2 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and the Protective Covenants described herein, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said Property, as well as their heirs, successors and assigns.

**ARTICLE I
DEFINITIONS**

As used in this Declaration, the following terms shall have the following meanings, 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 **Architectural Review Committee or ARC.** The terms "Architectural Review Committee" or "ARC" shall mean the Architectural Review Committee appointed pursuant to Article IV 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 Article IV below for the purpose of establishing policies, guidelines and minimum requirements with regard to the construction, location, landscaping, design, architectural style and elements and any other matters relating to the construction of Improvements on the Lots. In addition, the term "Architectural Standards" shall include, without limitation, any additional construction and development guidelines adopted from time to time by the ARC or the Board.

1.4 **Articles.** The term "Articles" shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

1.5 **Assessment.** The term "Assessment" shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include annual assessments, special assessments, individual assessments, and Common Area Assessments, all as described in Article VI hereof.

1.6 **Association.** The term "Association" shall mean and refer to Dunmore Residential Homeowners' Association, Inc., an Alabama non-profit corporation, formed or to be formed under the Alabama Nonprofit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association make reference.

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 the Bylaws of the Association, as such by-laws may be amended from time to time.

1.9 **Common Areas.** The term "Common Areas" shall mean and refer to all real and/or personal property, including property which the Association owns, leases, or otherwise maintains for the common use and enjoyment of the Owners, and which shall be responsibility of the Association to maintain, and which shall include (regardless of whether legal title has been conveyed to the Association), without limitation, the following:

- (a) all detention ponds or lakes;
- (b) all signage for the Property situated on or within the Entrance Easement or within rights-of-way of any public roads within the Property (but specifically excluding any signage located within the boundaries of any Lot unless an easement has been granted to (and accepted by) Developer or

the Association for signage on such Lot), including, without limitation, informational, traffic and street signage;

(c) all installations for the furnishing of electricity, telephone, natural gas, sanitary sewer, water service and television cable not immediately appurtenant to any Dwelling;

(d) all outdoor exterior lighting not situated within the boundaries of any Lot, including street lights and street and landscaping lighting situated within the right-of-way of any streets within any portion of the Property (to the extent the same are not being maintained by any Governmental Authority;

(e) landscaping, trees, and walkways not situated within the boundaries of any Lot (which shall include the main entrance, median, and any landscaping within the Entrance Easement);

(f) all portions of the Property which are designed or designated on the Subdivision Record Map or otherwise for collecting, retaining and discharging surface and subsurface water from the Property, including without limitation all drainage/utility easement areas;

(g) any and all other areas designated on the Subdivision Record Map as a "Common Area," "Recreational Green Area," or "Green Area"; and

(h) any other areas or Improvements on or within the Property which are designated by Developer as Common Areas during the Control Period.

1.10 **Control Period.** The term "Control Period" shall have the meaning set forth in Section 11.1 hereof.

1.11 **Declaration.** The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Dunmore, a Residential Subdivision, together with all amendments thereto.

1.12 **Developer.** The term "Developer" shall mean Hearthstone Multi-Asset Entity D, L.P., a California limited partnership, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

1.13 **Dwelling.** The term "Dwelling" shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof.

1.14 **Entrance Easement.** The term "Entrance Easement" shall have the meaning ascribed to it in Section 3.1 hereof.

1.15 **Improvement.** The term "Improvement," with an initial capital letter, shall mean and refer to any Dwelling, structure or device constructed, erected or placed upon any Lot which in any way affects, alters or causes a change in the exterior appearance of any Lot. Improvements shall include, by way of illustration and not limitation, any fence, wall, sign, lighting system, site paving, grading, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, decorative building, landscaping, landscape device or object.

1.16 **Living Area.** The term "Living Area" shall mean enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditioning equipment, exclusive of porches, garages, basements, carports, or attics.

1.17 **Lots.** The term "Lots" shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time, and all individual lots contemplated by Developer for any Additional Property submitted to the provisions of this Declaration (the total number of such Lots being a good faith estimate of Developer until such time as said Additional Property shall be platted). A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

1.18 **Member.** The term "Member" shall mean any person who is a member of the Association. Every Owner shall be a Member.

1.19 **Mortgage.** The term "Mortgage" shall mean any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office.

1.20 **Mortgagee.** The term "Mortgagee" shall mean the holder of any Mortgage.

1.21 **Occupant.** The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees and any other person who occupies or uses any Dwelling within the Subdivision. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

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

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

1.24 **Probate Office.** The term "Probate Office" shall mean and refer to the Office of the Judge of Probate of Baldwin County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Baldwin County, Alabama.

1.25 **Property.** The term "Property" shall mean and refer to the real property more particularly described on Exhibit A attached hereto, including all the Lots within the Subdivision, all Common Areas, and all easements as reflected on the Subdivision Record Maps. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.2 hereof.

1.26 **Protective Covenants.** The term "Protective Covenants" shall mean all of those covenants, conditions and restrictions contained in this Declaration.

1.27 **Purchaser.** The term "Purchaser" shall mean any person who acquires any Lot.

1.28 **Single Family Unit.** The term "Single Family Unit" shall mean a group of one or more persons each related to the other by marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a Dwelling.

1.29 **Stormwater System.** The term "Stormwater System" shall have the meaning ascribed to it in Section 5.21 hereof.

1.30 **Subdivision.** The term "Subdivision" shall mean all sectors or phases of Dunmore Subdivision, collectively, and any amendments or supplements thereof.

1.31 **Subdivision Record Maps.** The term "Subdivision Record Maps" shall mean each recorded map or plat for one or more phases of the Subdivision, each as shall be recorded in the Probate Office, and any amendments or supplements thereof. The initial Subdivision Record Map for Dunmore, Phase One, is recorded in Slides 2414-A and 2414-B in the Probate Office.

ARTICLE II

PROPERTY SUBJECT TO RESTRICTIONS.

2.1 **General Declaration.** The Property is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration. Any part of the Property and each Lot or Dwelling 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 such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof.

2.2 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the Control Period and without the consent of the Association or its Members or by any Owner, Occupant or Mortgagee of any Lot or Dwelling, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by the Association or any Member thereof or by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Subdivision. 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 (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 Section 2.2 of this Declaration.

2.3 Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer. With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Dwelling.

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

2.5 Additional Covenants. During the Control Period, Developer may, in its sole and absolute discretion, create additional restrictive covenants, in addition to the terms and provisions of this Declaration, for any portions of the Property. Furthermore, other owner associations may be created for portions of the Property subject to any such additional covenants. Only those portions of the Property which are specifically subjected to and encumbered by any such additional restrictive covenants shall be bound by the terms and provisions thereof or shall be allowed to have any membership interest in any such additional owners' associations which may be established from time to time by Developer. In the event of any conflict or ambiguity between the terms and provisions of any such additional restriction covenants and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall at all times control.

2.6 Development of Property. At any time during the Control Period, Developer shall have the right to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installing and maintaining any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) installing and maintaining any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas, (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses and (f) removing or exempting any portion of the Property and any Lots or Common Areas from the terms and provisions of this Declaration. The exercise by Developer of any of the rights reserved unto Developer in this Section 2.6 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer and its respective Affiliates may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.2 above.

2.7 Subdivision Record Maps. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the Subdivision Record Maps of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas,

Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats 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. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by Developer.

ARTICLE III **EASEMENTS.**

3.1 Grant of Nonexclusive Easements to Owners.

(a) **Common Areas.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot. If ingress or egress to any Dwelling is through a Common Area or a portion thereof, any conveyance or encumbrance of such Common Area which is made in accordance with the provisions hereof, shall be subject to such Owner's easement for ingress and egress across such Common Areas.

(b) **Entrance Easement.** Developer hereby declares an easement over the "Green Area" (as defined in the Subdivision Record Map for Dunmore, Phase One) immediately east of U.S. Highway No. 181, for a landscaped entrance area into the Subdivision (the "Entrance Easement"). The Entrance Easement shall constitute a Common Area and shall be subject to all terms and conditions set forth in this Declaration with respect to Common Areas.

3.2 **Utility Easements.** Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter appear on any plat of record of Property subject to these Protective Covenants. Without limitation upon the foregoing, Developer specifically reserves a ten (10) foot easement on the rear property line and a five (5) foot easement on the side of each Lot for surface water drainage, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary. In addition, no utility junction boxes, enclosures, pedestals, or other above ground utility apparatus (other than street lights) may be situated in the front yard or any Lot which is serviced by a rear private alley, unless the approval of the ARC is first obtained.

3.3 **Additional Easements and Uses.** For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the

Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

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

3.5 **Additional Documents.** All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

3.6 **Limitations.** Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

- (a) All provisions of this Declaration and the Articles and By-Laws of the Association;
- (b) All the rules and regulations governing the use and enjoyment of the Common Areas which may or may have been or may hereafter be adopted by the Association; and
- (c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

ARTICLE IV
ARCHITECTURAL CONTROL

4.1 Architectural Standards.

(a) The general architectural objective of the Developer for the Property is to create a neighborhood of Dwellings and Improvements constructed in high quality styles, design, materials, and colors. All Dwellings shall be constructed in conformity with the Architectural Standards and in accordance with the provisions of this Declaration. The Developer, by the terms of this Declaration, has charged the ARC with the approval of all Dwellings and Improvements on any Lot, prior to construction, so as to determine that all Dwellings and Improvements meet the Architectural Standards. In appropriate cases, the ARC shall be entitled to grant variances from the Architectural Standards, as described in Section 4.6 hereof.

(b) The ARC is hereby empowered and authorized to formulate and promulgate Architectural Standards to govern: (i) the review, approval, rejection, form, content and provisions of all landscaping or architectural submissions, and (ii) the rules and regulations governing restrictions as to the use of the Property. The ARC will provide a copy of the Architectural Standards, and any amendments thereto, to each Owner. Such Architectural Standards must be followed by all applicants submitting plans for review and approval by the ARC. Decisions of the ARC shall be based upon the uniform application of such reasonable, but high, standards as are consistent with the Architectural Standards, such standards to include, among other things, the harmony of external design including roof style (pitch, shingle and color), chimney, exterior siding (material and color), windows and trim, shutters (color and style), front doors, garage doors, location in relation to surrounding structures and topography, variation in front set backs, the type, kind and character of buildings, structure and other improvements, and aesthetic qualities in general.

4.2 Method of Architectural Control. So as to establish and maintain the Architectural Standards set forth in this Declaration, no Improvement or structure of any kind, including, without limitation, any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, window awnings, or other exterior window covering, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed, or maintained upon a Lot, nor shall any addition, change, or alteration therein, thereof, or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, elevation, materials and location of the same, together with such information as the ARC may require, shall have been submitted to and approved in writing by the ARC.

4.3 ARC Membership. The ARC shall consist of three (3) members and the initial members shall be appointed by the Developer. In the event of the death, resignation or other termination of any members, the Developer, during the Control Period, shall have full authority to appoint successor members. The Developer's appointed members shall serve during the Control Period until all Lots owned by Developer are sold by the Developer whereupon, the Developer's control and authority and Developer's appointed members to the ARC shall cease. Upon the sale and closing of the last Lot in the subject subdivision, the Association shall assume full control and authority over the ARC. Developer, during the Control Period, and the Association (from and after the time that it has assumed control of the ARC) reserve the right to remove any member from the ARC at any time with or without cause, in such parties' sole discretion.

4.4 Powers and Duties. The ARC shall have the following powers and duties:

(a) To require submission to the ARC of plans and specifications for any improvement or structure of any kind, and any change, modification, or alteration thereof, including, without limitation, any such improvement or change to any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, decorative building, landscaping, landscape device or object, the construction or placement of which is or is proposed upon any Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARC and shall include but not necessarily be limited to:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks.

(ii) A foundation plan, floor plan, landscape plan, and exterior elevations of the Dwellings as they will actually appear after all back filling and landscaping is done from finished ground up.

(iii) All plans must include a specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the ARC is unfamiliar.

(iv) The name and address of the Lot Owner's contractor who will construct the residence and all other improvements to the Lot.

The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to c/o Hearthstone Multi-Asset Entity D., L.P., 781 Lincoln Avenue, Suite 300, San Rafael, California 94901, Attention: Tracy T. Carver, or such other address as may be reflected by the ARC in a duly recorded instrument filed in the Probate Court of Baldwin County, Alabama.

(b) To approve or disapprove the submitted plans and specification for any Dwelling, Improvement, structure as herein above described prior to commencement of construction or such Dwelling, Improvement, or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted.

(c) To adopt fees which may be designed to reimburse the ARC for the necessary and reasonable costs incurred by it in processing requests for ARC approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the ARC, in cash, at the time that any application for approval is sought from the ARC.

(d) Neither the ARC nor any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

(e) The initial three members of the ARC appointed by the Developer are as follows: Tracy T. Carver, Cindy Gilmore, and Will Moody.

4.5 **Variances.** The ARC, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the ARC grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the ARC, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

4.6 **Construction Without Approval.** If (a) any Dwellings or Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot 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 below.

4.7 **Inspection.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot 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.

4.8 **Subsurface Conditions.** 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 the ARC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot 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. Each Owner, for such Owner and all Occupants of any Improvements situated on the Lot owned by such Owner, does hereby irrevocably and unconditionally waive and release Developer the ARC, the Association and each agent, employee, representative, shareholder, partner, officer, director or the holder of any ownership or financial interest in any of the foregoing entities or committees (but specifically excluding a release of any members of the Association (which members also constitute Owners)), of and from any and all damage, loss, action, cause of action, liability, cost, expense or prejudice suffered, claimed, paid or incurred by any Owner or Occupant of such Owner's Lot or any buildings constructed thereon on account of the use of fill dirt or the possibility that underground mines, tunnels, sink holes and other subsurface conditions which may result in sinkholes or other types of ground subsidence exist on, upon or under any of the Lots.

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

performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, or any Improvements situated thereon.

4.10 **Additional Remedies.** In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the ARC or the Association hereunder 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 Association shall have the right, at its option (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling or Improvement until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC and the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling or Improvement until any work in place which does not comply with the plans and specifications approved by the ARC and the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling or Improvement and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, 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 Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of 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 other enforcement rights specified in this Declaration.

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

ARTICLE V **RESTRICTIONS.**

5.1 **Use Restrictions.** The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the ARC and subject to any restrictions and limitations as the ARC may reasonably request), including all types of home industry, will be

permitted. No building or structure other than a Dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

- (a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners; and
- (b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs (2) and/or cats as domestic pets on a single Lot and provided further that the ARC may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the ARC; and
- (c) exploring, mining, boring, quarrying, drilling or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas; and
- (d) use of a Dwelling by more than a Single Family Unit.

Any Owner may request from the ARC at any time a determination of whether a prospective use of a Lot is permitted. A certificate to that effect signed by a member of the ARC shall be deemed to be dispositive of this issue.

5.2 **Storm Drains.** Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets and other structures necessary for proper control of storm drainage and runoff. Owners shall not alter, modify, or in any way interfere with the functionality of these structures. Additionally, Owners shall not allow debris, grass clippings, or any other items to impede the function of the drainage structure and shall maintain the same.

5.3 **Common Area.** The Developer shall deed to the Association the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The conveyance to the Association is made upon the condition that the Association takes control of the Common Areas from and after completion of construction of such amenities by the Developer, assesses the Common Areas in the name of the Association for tax purposes, maintains the Common Areas and obtains and maintains liability insurance coverage on the Common Areas in the name of the Association.

5.4 **Tenants.** It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by him receives a copy of these Protective Covenants and that every lease utilized by such Owner contains a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs of enforcing the same.

5.5 **Enforcement.** If a determination is made by the ARC that any of the restrictions in this Article V or the Architectural Standards are being or have been violated upon any Lot, then the ARC shall so notify the Owner in writing, specifying the violation. If within thirty (30) days from such notification, the ARC shall make a second determination that sufficient progress has not been made to remedy the violation, the ARC may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the ARC may treat all such costs and expenses therefor as a charge which shall become an appropriate proceeding at law or in equity.

5.6 **Model Homes.** Developer shall have the right to construct or allow others to construct and maintain one or more model homes on the Property during the Control Period; and to furnish and decorate same to show them and hold open houses as it in its discretion may determine.

5.7 **Buffer Areas.** Any Owner who accepts title to its Lot subject to a landscape or planted "buffer area" as shown on the recorded plat for such Lot, will maintain such area solely as a planted buffer area as intended by the Subdivision Record Map and as prescribed by the ARC. No buffered area may be altered without the approval of the ARC (routine maintenance of such buffer area excluded). The Owner of such Lot shall be responsible for the maintenance of such buffer area, at such Owner's sole cost and expense.

5.8 **Stormwater System Maintenance Plan.** A portion of the stormwater system within the Property (including any detention areas designated on one or more of the Subdivision Record Maps) constitute Common Areas and, as such, will be owned and maintained by the Association (collectively, the "Stormwater System"). Certain maintenance items are required to prevent the malfunctioning of the Stormwater System. At a minimum, the maintenance and inspection listed below shall be performed by the Association (or its designated representative):

(a) **Daily Operations:**

(i) No Owner or Occupant shall deposit or place by any means into the Stormwater System any item that would tend to block or obstruct the Stormwater System. No Owner or Occupant shall place items in gutters, streets, ditches, or swales that could wash into the Stormwater System.

(ii) Blockage of inlets can cause local flooding which would be a safety hazard. Common items that cause this type of problem are, blowing or raking leaves or other landscaping debris into inlets or gutters where the debris can wash into inlets, and placing garbage bags or can in gutters where flowing water can wash these items downstream and into inlets or block inlets. The foregoing are strictly prohibited.

(iii) The outlet structure for all detention ponds shall be kept free of debris and trash at all times. The outlet structures for all detention ponds shall be inspected before and after each rainfall event, with all trash and debris removed.

(b) **Periodic Inspections and Maintenance Items:**

(i) The Association will inspect all inlets, manholes, junction boxes, headwalls, ditches, swales and other drainage structures and features on a quarterly basis and will remove any debris, rocks, silt, etc. found during inspection. WARNING: MANHOLES, JUNCTION BOXES, PIPES, ETC. ARE CONSIDERED CONFINED SPACES AND MAY CONTAIN CERTAIN GASSES OR OTHER DANGERS WHICH COULD CAUSE INJURY OR DEATH. ONLY PERSONS PROPERLY TRAINED AND EQUIPPED TO WORK IN CONFINED SPACES SHALL ENTER THESE AREAS AND SHALL COMPLY WITH ALL LAWS AND INDUSTRY STANDARDS WHEN DOING SO.

(ii) The Association will inspect the riprap at the emergency spillway of the detention ponds on a quarterly basis.

(iii) The Association will inspect the outlet of each detention/retention pond for any cracks, settlement, damage or erosion on a quarterly basis. In the event any cracks, settlement,

damage or erosion is detected, the Association shall retain a professional engineer to inspect and make recommendations for repair of these structures, if the same is required by any government agency.

(iv) The Association will inspect each detention/retention pond basin for excessive sedimentation on a quarterly basis. Sediment shall be removed to approximately the original ground level. Care should be taken not to disturb any part of the pond basin not impacted by silt deposits. Erosion control shall be required per current ADEM standards while performing this work.

(v) The Association will inspect the site for any erosion or washes, especially slopes around the site which may be prone to erosion if the vegetation cover is lost or in exceptionally heavy rainfall events.

(c) Further Maintenance Items:

(i) Inspection of the detention/retention ponds shall not only occur at the monthly intervals, but also after any major rainfall event. Inspection shall be as stated above under "Monthly Inspections and Maintenance Items" with the same course of action taken if cracks, settlement, damage or erosion is detected.

5.9 Additional Restrictions. Additional restrictions may be contained in the Architectural Standards and each Owner shall be subject to the terms and conditions thereof.

ARTICLE VI
COVENANT FOR ASSESSMENTS.

6.1 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of these Protective Covenants. Lots owned by Developer shall not be subject to any Assessment by the Association, be it Annual, Special, or Individual Assessments. Furthermore, no Lot which is owned by D.R. Horton, Inc. - Birmingham, an Alabama corporation ("Horton") shall be subject to any Assessment by the Association, be it Annual, Special, or Individual Assessments prior to such time as a certificate of occupancy has been issued for a Dwelling to be constructed by Horton on such Lot. The Annual, Special and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly

undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments; but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

6.3 **Individual Assessment.** Any expenses incurred by the Association in enforcing any of the provisions of these Protective Covenants against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

6.4 **Annual Assessments.** The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board may deem appropriate. The Annual Assessment for the Subdivision shall commence on January 1 of each year, and shall be paid in advance.

6.5 **Special Assessments.** In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at anytime, one or more Special Assessments for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such Assessment must have the assent and approval of: (a) the Developer during the Control Period; and (b) subsequent to the Control Period, at least fifty-one percent (51%) of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

6.6 **Special Meeting.** Subject to Section 6.5, written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 above shall be sent to all Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners, either in person or by proxy, entitled to cast fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

6.7 **Amount of Assessments.** Both Annual and Special Assessments must be fixed at a uniform rate for all Lots, shall commence as to each Lot when such Lot is improved with a completed Dwelling, and shall be due and payable in such manner as established by the Board. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice).

6.8 **Certificate.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessment on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

6.9 **Effect of Non-Payment of Assessments; Liens; Remedies.** Any Assessments (whether Annual, Special or Individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any Assessments not paid by the due date for the same shall be subject to a late charge which the Board may from time to time establish. In the event any Assessments or other amounts due to the Association are not paid by any

Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

(a) The Association may commence and maintain a suit at law against the Owner for a personal money judgment to enforce all such charges and obligations for Assessments and other amounts include the late charge and interest specified above as well as all attorneys' fees, court costs and all other costs and expenses paid or incurred by the Association in connection therewith; and/or

(b) The Association may enforce the lien created pursuant to Section 6.1 above as hereinafter provided. The lien created pursuant to Section 6.1 above shall secure the payment of any and all Assessments (Annual, Special and Individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the Assessments and in maintaining any legal action in connection therewith. If any Assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on the defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Association may file a claim of 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 and shall be filed for record in the Probate Office. 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 purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amount due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner (other than Developer) may waive or otherwise be exempt from the liability to pay the Assessments provided herein.

6.10 **Lien Subordinate to Mortgages.** The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot. No Mortgagee shall be required to collect Assessments on behalf of any Owner. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due more than six (6) months prior to such sale or transfer.

6.11 **Damages.** In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the ARC, or any member thereof, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association or the ARC, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in

Section 6.9(b) above. The failure of Developer, the Association or the ARC to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

6.12 **Exempt Property.** The Board shall have the right to exempt any portion of the Property from the Assessments and liens created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

- (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) As a Common Area;
- (c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

ARTICLE VII

COMMON AREA EXPENSES.

7.1 **Common Area Expenses.** The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article VI hereof; provided, however, that the enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by assessment:

- (a) **Maintenance and Repair of Common Areas:**
 - (i) The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean and attractive condition, if any, including the charges in Section 6.5 of this Declaration, as well as the following charges:
 - (ii) Any electrical costs to run all common lighting and any other electrical device necessary to the Common Areas;
 - (iii) Sanitary sewer and storm sewer lines within private drives;
 - (iv) Gas bills of the Association, if any;
 - (v) Water bills and sprinkler systems for use on the Common Areas;
 - (vi) Any insurance for the Common Areas;
 - (vii) Any management fees, accounting fees, and legal expenses incurred by the Association;
 - (viii) Any and all other property deeded to the Association by the Developer; and
 - (ix) Such other matters which involve the use of the Common Areas as determined by the Association.

(b) Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

(c) Property Taxes. All ad valorem taxes and other Assessments relating and connected to the Common Areas, if any.

(d) Insurance:

(i) Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any;

(ii) Adequate property and casualty insurance 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 Association may determine;

(iii) Public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and all members, directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

(iv) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine; and

(v) All insurance coverage authorized hereunder shall be written in the name of the Association. 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 Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

7.2 Reserves. The Association may establish reserves for the payment of Common Expenses in the future.

7.3 Interested Transactions. The Association may obtain materials and/or services from the Developer and/or any of their Affiliates in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party providing similar materials and/or services which can be reasonably made available to the Association.

7.4 Enforcement of Declaration and Rules and Regulations. All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, by the By-Laws or this Declaration.

ARTICLE VIII
NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES.

8.1 **Protective Covenants Running with the Land.** The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with the Property and inure to the benefit of and be enforceable by the Developer, its designated successors and assigns, or by any Owner and its respective heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive period of ten (10) years, unless an agreement which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Probate Court of Baldwin County, Alabama.

8.2 **Remedies for Default.** The existence of any default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give the Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them; provided, this Declaration shall be recorded for the benefit of the Developer, the ARC, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

8.3 **Nature of Remedies: Waiver.** All rights, remedies and privileges granted to the Developer, the ARC, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them 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 point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

8.4 **No Reverter.** No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter.

ARTICLE IX
FUNCTION OF ASSOCIATION.

9.1 **Name.** The name of the Association for the Property is Dunmore Residential Homeowners Association, Inc., which shall be incorporated as a nonprofit corporation.

9.2 **Maintenance Responsibilities.** The Association may, at any time, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct and repair all of the improvements within the Common Areas, to include plantings and shrubbery, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain and manage the Common Areas shown on the Subdivision Record Map so as to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity to be conducted thereon;

(c) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(d) Do all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

9.3 **Other Rights of Association**. The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII hereof, and adopt rules, regulations, procedures and policies with respect to:

- (a) garbage and trash collection and removal;
- (b) motor vehicle operation;
- (c) parking of motor vehicles on streets or roads in the Property; and
- (d) such other matters including the general welfare of the Property as a whole.

ARTICLE X
AMENDMENT OF DECLARATION

10.1 **Amendment by Association.** During the Control Period, this Declaration may be amended by the Developer in Developer's sole discretion. Following the expiration of the Control Period, an amendment to this Declaration may be proposed by written instruction signed by the Owners of not less than one-fourth (1/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten (10) days nor more than thirty (30) days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the Association and ARC as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Court of Baldwin County, Alabama, within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered at or prior to such meeting.

10.2 **Scrivener's Error.** Notwithstanding the foregoing amendment provisions, any scrivener's error omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any Owners or Mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by the Developer without the consent of any other party.

ARTICLE XI
PERIOD OF DEVELOPER CONTROL

11.1 **Developer Control.**

(a) Notwithstanding any provisions contained herein to the contrary, in view of the Developer's financial commitment to the Subdivision, until such time as Developer has sold and no longer retains ownership of any of the Lots within the Subdivision, or until the Developer elects to terminate its control of the Association, whichever is earlier (such period of time being referred to herein as the "Control Period"), the Developer shall have (a) the right to manage all of the affairs and decisions of the Association, (b) the exclusive right to elect the Directors of the Association (who need not be Owners), and (c) the right to amend this Declaration, the Articles, and the Bylaws of the Association. Developer

may terminate its management rights and responsibilities, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time prior to the expiration of the Control Period.

(b) During the Control Period, Developer shall pay all expenses otherwise payable by the Association and as reimbursement therefor and as compensation for its management services, Developer shall be entitled to receive and retain all of the Assessments payable by the Owners during said Control Period, and Developer shall have all of the rights of the Association to levy and enforce payment of Assessments. Developer's contributions to the Subdivision via the development thereof shall be credited against any Assessments otherwise due by Developer for Lots owned by the Developer. During the Control Period, Developer shall not be required to assess or create any reserves and at the termination of the Control Period and the assumption of the operation of the Association by the Members, Developer shall not be required to render an accounting of income and expenses incurred during said Control Period.

ARTICLE XII

GENERAL PROVISIONS.

12.1 **Deeds Subject to Covenants.** Each deed for the sale of a Lot in the Subdivision will contain a statement that acknowledges the existence of these Covenants and that, notwithstanding any provision herein to the contrary, the provisions of Section 7.1 contained herein cannot be and will not be amended by action of the Association.

12.2 **Obligation of Owner to Rebuild.** In the event a Dwelling on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace said structure within one (1) year from the date of such damage or destruction and such repair or replacement of such structure shall be in accordance with the covenants and restriction set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a slightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

12.3 **Indemnity for Damages.** Each and every Owner and future Owner, in accepting a deed or contract for any lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such Owner, or the contractor, agent or employee or such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water drainage or storm sewer lines, or sanitary sewer lines owned by the Developer, or for which Developer has responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by any said land owner, said owner accepts his/her knowledge of this Declaration, and ratifies the covenants contained herein and thus releases his/her right to prosecute Developer for the inconveniences said lot owner deems inadequate or unbecoming of said lot owner's needs.

12.4 **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.

12.5 **Notices.** Any notice required to be sent to any Owner under the provisions of this declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, return receipt requested, to the street address of the Lot owned by such Owner.

12.6 **Severability.** Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

12.7 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

12.8 **Captions.** The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

12.9 **Usage.** Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

12.10 **Conflict.** If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.

12.11 **Effective Date.** This Declaration shall become effective upon its recordation in the Probate Office.

ARTICLE XIII **DISPUTE RESOLUTION**

13.1 Agreement to Resolve Disputes Without Litigation.

(a) Developer, the Association and its officers, directors, and committee members, all Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Party**"), agree that it is in the best interest of all concerned to resolve disputes involving Developer, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (hereinafter defined), and to submit such Claim to the alternative dispute resolution procedures set forth in **Section 13.2** in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of this Declaration; or
- (ii) the rights, obligations and duties of any Bound Party under this Declaration or related agreement;

except that the following shall not be considered "**Claims**" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 13.2**:

- (i) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(iii) any suit between Owners, which does not include Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;

(iv) any suit in which any indispensable party is not a Bound Party, except the construction contractor or marketing agent; and

(v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

13.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 13.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama selected by both sides if the Association is a party. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be required to file suit or to initiate arbitration proceedings on the Claim, as set forth in Section 13.2(e) below. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Arbitration; No Trial by Jury. All Claims, Disputes regarding Alleged Defects (as defined below) or other matters in question arising out of, or relating in any way to the development of the Subdivision or the breach of and contract between the Bound Parties that are not resolved by negotiation or mediation shall be resolved by binding arbitration by a single arbitrator in Baldwin County, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

EACH PARTY ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS.

All disputes concerning the arbitrability of any Claim or the enforceability or scope of this provision shall be subject to the same binding arbitration. The arbitrator shall follow the law applicable to any Claim and shall be empowered to award any damages or other relief which would be available under the law applicable to any such Claim. All costs of the arbitration, including the costs and fees of the arbitrator, expense of transcription, third party expenses, including but not limited to, costs of discovery, reasonable attorneys' fees, accountants' fees, investigation expenses, and experts' fees, shall be paid by the prevailing party in such arbitration. The determination of the arbitrator shall be final, binding on the parties, and non-appealable and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by, and relating to, the development of the Subdivision, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.

13.3 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceedings unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge property taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 13.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings or as otherwise set forth in this Declaration.

13.4 Developer's Right to Cure Alleged Defects. Due to the complex nature of construction and the subjectivity involved in evaluating quality of construction, disputes may arise as to whether a defect exists and the Developer's responsibility therefor. It is the Developer's intent to resolve all disputes and claims regarding any Alleged Defect (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association and all Owners shall be bound by the following claim resolution procedure with respect to Alleged Defects:

(a) Developer's Right to Cure. In the event that the Association, Board or any Owner (a "Complaining Party") claim, contend or allege that any portion of the Subdivision which has been developed by the Developer (which, as of the date hereof, consists of infrastructure such as utilities, streets, drainage systems, detention basins or ponds, street lighting, improvements within Common Areas, landscaping, etc., but not the construction of any Dwellings), is defective or that the Developer or its agents, consultants, contractors or subcontractors (collectively, the "Developer's Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively an "Alleged Defect"), the Developer hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) Notice to Developer. In the event that a Complaining Party discovers any Alleged Defect, such Complaining Party shall, within a reasonable time after discovery, notify the Developer, in writing, at such address as the Developer may from time to time provide to the Association, or such other address at which the Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Developer of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Developer, the Developer shall have the right, upon reasonable notice to the Complaining Party and during normal business hours, to enter onto or into, as applicable, the Common Areas, any Dwelling, and/or any improvements or other portion of the Subdivision for the purposes of inspecting and, if deemed necessary by the Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, the Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Invocation of Dispute Resolution Procedures. No Complaining Party shall initiate dispute resolution procedures as set forth above against the Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, unless and until the Complaining Party has (i) delivered to the Developer a Notice of Alleged Defect and (ii) the Developer has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) failed to repair or replace such Alleged Defect or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion.

(e) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 13.4 shall be construed to impose any obligation on the Developer to inspect, repair, or replace or pay for any item or Alleged Defect for which the Developer is not otherwise obligated to do under applicable law, any applicable warranty, or other agreement to which the Developer is a party. The right of the Developer to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and

may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Developer in the Probate Office. This provision does not create any warranties, express or implied, on the part of the Developer or the Association.

(f) **Arbitration; No Trial by Jury.** Any disagreement between an Owner, the Board, and/or the Association, on the one hand, and the Developer on the other, concerning Developer's efforts to remedy or repair any Alleged Defect (a "Dispute"), after compliance with the foregoing provisions of this Section 13.4, shall be resolved by binding arbitration by a single arbitrator conducted in Baldwin County, Alabama in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Without limiting the foregoing, it is expressly agreed that this agreement to arbitrate also covers any and all claims that an Owner may assert against the construction contractor(s) and/or design-builder(s) for a Dwelling within the Subdivision, and its/their subcontractors, sub-consultants and affiliates (sometimes herein referred to as "Contractor Parties") or the Developer. At the option of the Developer, any other person or entity with whom or which the Developer has an agreement for binding arbitration may be joined in an arbitration proceeding hereunder.

PARTIES ALL ACKNOWLEDGE THAT THEY ARE KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS ARISING FROM ALLEGED DEFECTS.

The award rendered by the arbitrators shall be a reasoned award and shall be final and binding upon the parties to the arbitration, and judgment upon the award may be entered in any court having jurisdiction over any of the parties thereto. Arbitration proceedings pertaining to a Dispute arising from Alleged Defects shall be transcribed verbatim by a competent court reporting company selected by the American Arbitration Association. All costs of the arbitration, including the costs and fees of the arbitrators, expense of transcription, third party expenses, including but not limited to, costs of discovery, reasonable attorneys' fees, accountants' fees, investigation expenses, and experts' fees, shall be paid by the prevailing party in such arbitration. The determination of the arbitrator shall be final, binding on the parties, and non-appealable and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by, and relating to, the Subdivision and the Dwellings therein, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

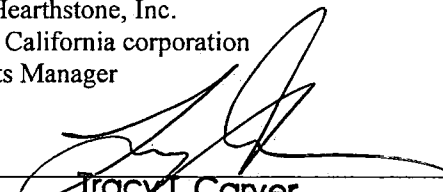
IN WITNESS WHEREOF, the Developer has executed this Declaration on the day and year first above written.

DEVELOPER:

HEARTHSTONE MULTI-ASSET ENTITY D., L.P.,
a California limited partnership

BY: Gulf States GP, LLC
a California limited liability company
Its General Partner

BY: Hearthstone, Inc.
a California corporation
Its Manager

BY: 
Print Name: Tracy T. Carver
Title: Executive Vice President
General Counsel

STATE OF _____)

COUNTY OF _____)

I, the undersigned authority, Notary Public, in and for said County, in said State, hereby certify that _____, whose name as _____ of Hearthstone, Inc., a California corporation, in its capacity as Manager of Gulf States GP, LLC, a California limited liability company, in its capacity as General Partner of Hearthstone Multi-Asset Entity D, L.P., a California limited partnership, is signed to the foregoing instrument, and who is known to me acknowledged before me on this day, that, being informed of the contents of the instrument, he, as such office and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this ____ day of _____, 2009.

Notary Public _____
My commission expires: _____

THIS INSTRUMENT PREPARED BY:

Gail Livingston Mills, Esq.
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
(205) 251-3000

STATE OF CALIFORNIA } ss:
COUNTY OF Marin

On 2/18/09 before me, B. Curiel,
(here insert name and title of the officer)

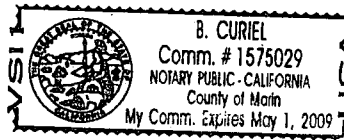
a Notary Public, personally appeared Tracy T. Carver

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]



(This area for notary stamp)

EXHIBIT A

LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SECTION 35, T5S-R2E, BALDWIN COUNTY, ALABAMA; SAID POINT BEING THE SOUTHWEST CORNER OF SECTION 26, T5S-R2E, BALDWIN COUNTY, ALABAMA; THENCE ALONG THE LINE BETWEEN SAID SECTIONS 26 AND 35, T5S-R2E, RUN N 89° 49' 17" E 40.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE CONTINUING N 89° 49' 17" E ALONG SAID LINE BETWEEN SECTIONS 26 AND 35, T5S-R2E, RUN A DISTANCE OF 1962.76 FEET TO A POINT; THENCE RUN N 00° 14' 28" E 1335.11 FEET TO A POINT; THENCE RUN S 89° 40' 17" W 666.55 FEET TO A POINT; THENCE RUN N 00° 17' 11" E 666.69 FEET TO A POINT; THENCE RUN N 89° 35' 47" E 670.00 FEET TO A POINT; THENCE RUN S 00° 24' 13" E 450.15 FEET TO A POINT; THENCE RUN S 05° 05' 10" E 50.00 FEET TO A POINT; THENCE RUN N 84° 56' 25" E 55.37 FEET TO THE P.C. OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 15° 26' 41" AND A RADIUS OF 725.00 FEET; THENCE ALONG THE ARC OF SAID CURVE RUN EASTWARDLY 195.43 FEET TO THE P.T. OF SAID CURVE; THENCE RUN N 69° 29' 45" E 156.00 FEET TO A POINT; THENCE RUN N 89° 35' 47" E 261.80 FEET TO A POINT; THENCE RUN S 00° 11' 45" W 261.71 FEET TO A POINT; THENCE RUN N 89° 45' 32" W 100.00 FEET TO A POINT; THENCE RUN N 77° 41' 25" W 125.00 FEET TO A POINT; THENCE RUN S 89° 45' 32" W 107.38 FEET TO A POINT; THENCE RUN S 00° 14' 28" W 139.45 FEET TO A POINT; THENCE RUN N 89° 45' 32" W 6.90 FEET TO A POINT; THENCE RUN S 00° 14' 28" W 1229.00 FEET TO A POINT; THENCE RUN S 89° 45' 32" E 140.00 FEET TO A POINT; THENCE RUN S 00° 14' 28" W 1.11 FEET TO A POINT; THENCE RUN S 89° 45' 32" W 197.57 FEET TO A POINT; THENCE RUN N 89° 49' 17" E 1335.18 FEET TO A POINT; THENCE RUN S 00° 40' 28" W 683.58 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 75.00 FEET TO A POINT; THENCE RUN N 85° 31' 51" W 225.58 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 140.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 200.00 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 200.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 10.00 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 822.82 FEET TO A POINT; THENCE RUN N 00° 39' 23" E 15.00 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 200.00 FEET TO A POINT; THENCE RUN N 00° 39' 23" E 200.00 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 250.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 42.90 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 450.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 12.98 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 200.00 FEET TO A POINT; THENCE RUN N 00° 39' 23" E 135.00 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 167.00 FEET TO A POINT; THENCE RUN N 00° 39' 23" E 6.40 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 347.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 0.95 FEET TO A POINT; THENCE RUN N 89° 20' 37" 217.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 2.80 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 167.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 625.34 FEET TO A POINT; THENCE RUN N 89° 20' 37" W 14.00 FEET TO A POINT; THENCE RUN S 00° 39' 23" W 188.58 FEET TO A POINT; THENCE RUN S 89° 57' 50" W 490.04 FEET TO A POINT; THENCE RUN S 89° 57' 50" W 490.04 FEET TO A POINT ON THE AFOREMENTIONED EAST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; THENCE ALONG SAID EAST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181, RUN N 00° 39' 23" E 1343.85 FEET TO THE POINT OF BEGINNING. CONTAINING 95.0082 ACRES. THIS DESCRIPTION INCLUDES PORTIONS OF LOTS 11, 12, 21 AND 28 SITUATED IN SECTION 26, T5S-R2E, AND PORTIONS OF LOTS 3 THROUGH 14 IN SECTION 35, T5S-R2E, AS SHOWN ON PLAT OF HIGHLAND FARMS, AS RECORDED IN MISCELLANEOUS BOOK 1, PAGES 290 AND 291 OF THE PROBATE COURT RECORDS OF BALDWIN COUNTY, ALABAMA..