



20080117000033990 1/31 \$94.75
Madison Cnty Judge of Probate, AL
01/17/2008 12:11:08PM FILED/CERT

DECLARATION

OF

PROTECTIVE COVENANTS

FOR

INDIAN CREEK TOWNHOMES

This instrument prepared by:

Keith S. Jones

WOLFE, JONES & BOSWELL

905 Bob Wallace Avenue

Huntsville, Alabama 35801

(256) 534-2205

TABLE OF CONTENTS

ARTICLE	SECTION	PAGE
I.	DEFINITIONS	6
II.	PLAN OF DEVELOPMENT	
	1. Phase I	6
	2. Subsequent Phases	6
	3. Incremental Development	6
III.	PROPERTY RIGHTS	
	1. Owner's Easement of Enjoyment	6
	2. Delegation of Use	7
	3. Owner's Right to Ingress, Egress and Support and Easements Therefore	8
	4. Easements of Encroachment	8
	5. Use of Common Area	8
	6. Rules and Regulations	8
	7. Lot Use and Building Restrictions	
	a. Residential Use	9
	b. General	9
	c. Leasing	9
	d. Signs	10
	e. Garbage	10
	f. Vehicles/Parking	10
	g. Artificial Vegetation, Exterior Sculpture, and Similar Items	11
	h. Window Coverings	11
	i. Occupants Bound	11
	j. Animals and Pets	11
	k. Antennas/Satellite	11
	l. Nuisance	12
	m. Unsightly or Unkempt Conditions	12
	n. Guns	12
	o. Tree Removal	12
	p. Drainage	12
	q. Storm Doors	13
	r. Architectural Standards	13

TABLE OF CONTENTS

ARTICLE	SECTION	PAGE
IV.	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	
	1. Membership	14
	2. Voting	14
V.	MAINTENANCE	
	1. Association's Responsibility	15
	2. Owner Responsibility	16
VI.	INSURANCE AND CASUALTY LOSSES	
	1. Insureds	17
	2. Coverage	17
	3. Premiums and Deductibles	18
	4. Proceeds	18
	5. Individual Insurance	18
VII.	ANNEXATION AND TRANSFER OF PROPERTY	
	1. Annexation and Transfer of Property	18
	2. Conveyance of Common Property By Declarant to Association	18
VIII.	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	
	1. The Common Area and Area of Common Responsibility	19
	2. Personal Property and Real Property for Common Use	19
	3. Implied Rights	19
IX.	ASSESSMENTS	
	1. Assessments	19
	2. Creation of the Lien and Personal Obligation of Assessments	20
	3. Computation of the Annual Assessment	20
	4. Special Assessments	20
	5. Notice of Meeting	21
	6. Lien for Assessments	21
	7. Effect of Nonpayment of Assessments Remedies of the Association	21
	8. Date of Commencement of Annual Assessments	22

TABLE OF CONTENTS

ARTICLE	SECTION	PAGE
IX.	ASSESSMENTS	
	9. Notice of Assessment Status	21
	10. Association's Assignment of Assessment Rights to Creditor	21
	11. Association's Grant of Power of Attorney to Creditor	21
X.	PARTY WALLS	
	1. General Rules of Law to Apply	22
	2. Sharing of Repair and Maintenance	23
	3. Arbitration	23
	4. Right to Contribution Runs with Land	23
XI.	ARCHITECTURAL CONTROL COMMITTEE	
	1. Committee Membership	23
	2. Committee Authority	23
XII.	GENERAL PROVISIONS	
	1. Enforcement	24
	2. Severability	24
	3. Protective Covenants Run with Land	24
	4. Notice of Sale, Lease or Mortgage	24
	5. Amendments	24
	6. Indemnification	25
XIII.	MORTGAGE PROVISIONS	
	1. Consent of Owners Required	26
	2. Payment of Taxes	26
	3. No Priority	26
	4. Notice of Default	27
EXHIBIT A	Definitions	
EXHIBIT B	Description of Real Property	
EXHIBIT C	Site Plan	

DECLARATION
OF PROTECTIVE COVENANTS
FOR
INDIAN CREEK TOWNHOMES

This Declaration of Protective Covenants for Indian Creek Townhomes is made this 14 day of January, 2008, by Indian Creek Townhomes, LLC, an Alabama corporation, hereinafter collectively together with any successors who may take the properties described herein for purpose of development and hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "B", attached hereto and incorporated herein by reference. Declarant desires to subject said property to the provisions of this Declaration and to create thereon a community of single family attached housing. Declarant desires to provide a flexible and reasonable procedure for the overall development of the property and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property as is now or may hereafter be submitted to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Exhibit "B" and any additional property as may by subsequent amendment be added to and subjected to this Declaration, hereinafter "Properties", shall be held, sold, and conveyed subject to the following easements, restrictions, protective covenants which are for the purpose of protecting the value and desirability of and which shall run with the real property submitted to this Declaration and which shall be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, successor-in-title and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

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

ARTICLE II

Plan of Development

Section 1. Phase I

The improvements of Phase I shall consist of thirty (30) town homes and shall be constructed by Declarant substantially in accordance with legal description and proposed site plan at Exhibit "C" attached hereto and made a part hereof.

This Declaration may be amended as to the Phase I improvements by the filing of such additional plans as may be required to accurately describe the improvements of Phase I. No such amendment shall change the location of any town home, after such town home has been deeded by Declarant, without the prior written consent of the Owner and the mortgagee thereof, if any.

Section 2. Subsequent Phases

Subsequent phases, if developed, shall be constructed in substantial conformity with the plans and specifications of Phase I to include architectural style and size of townhouses.

Section 3. Incremental Development

Declarant, in its sole discretion, may develop the project on an incremental basis by filing amendments to this Declaration at the time of or before the recordation of the first conveyance of a town home in any subsequent phase.

ARTICLE III

Property Rights

Section 1. Owner's Easement of Enjoyment

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to easements reserved for the Declarant and to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area.

(b) The right of the Association to suspend an Owner's voting rights and right to use the facilities for any period during which any assessment of the Association, or of any other association, if any, as may be made a part of the Properties, against said Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's rules and regulation's for the duration of the infraction

and for an additional period thereafter not to exceed thirty (30) days.

(c) The right of the Declarant with regard to the Properties which may be owned for the purpose of development to grant easements in and to the Common Area contained within the Properties to any public agency, authority or utility for such purposes as in Declarant's discretion benefit the Properties or portions thereof and the Owners thereof.

(d) The right of the Association to borrow money for the purpose of improving the Properties or any portion thereof, or acquiring additional Common Area, or for constructing, repairing or improving any facilities located or to be located on the Properties, and to get as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area; provided, however, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner, and to the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within Indian Creek Townhomes.

(e) The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer (1) has been signed by at least seventy-five percent (75%) of the votes which the members of the Association present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and (2) has been accepted by the appropriate agency of government to which it is dedicated or transferred.

(f) The right of Declarant and its successors or assigns to use the Common Area, including, without limitation, all roadways and streets, for ingress and egress to developed and undeveloped parts of Indian Creek Townhomes for all lawful purposes, including, without limitation, for constructing, maintaining, repairing or building roadways and streets, sidewalks, entrance walks, mail boxes (if in central locations), lighting, recreational amenities, residences, buildings, maintenance facilities or any other improvements.

Section 2. Delegation of Use

Any Owner may delegate in writing his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants and social invitees subject to reasonable regulation by the Board and only in accordance with procedure the Board may adopt. The maximum number of social invitees shall be two unless special arrangements in writing are made with the Board.

Section 3. Owner's Right to Ingress, Egress and Support and Easements Therefore

Each owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support. Such rights shall be appurtenant to, shall run with the land and shall pass with the title to each Lot. For the purpose of exercising said rights and for maintenance as hereinafter set out, the Declarant hereby grants to the Indian Creek Townhomes Home Owners Association, Inc., and to each Lot Owner a permanent easement over, upon and across that portion of the real property as described in Exhibit "B" over which said sidewalks pass.

Each owner of any Lot over which said sidewalks pass, whether or not it shall be so expressed in such deed, is deemed to have granted to the Association and to the other Lot Owners a permanent easement of ingress and egress over, upon and across said sidewalks. Said easements shall be appurtenant to, shall run with the land and shall pass with the title to each Lot.

Section 4. Easements of Encroachment

The Declarant shall construct on each of the aforesaid lots a townhouse. In the matter of the construction and completion of each of said townhouses, certain eaves, siding, roof overhangs, utility meters and brick veneer attached to the structural walls will or may encroach over into the air space and onto the property of an adjoining or contiguous lot. There is hereby created on each of said lots so affected an easement for said encroachments or overhangs created by said construction. In addition to the valid easements for each of said encroachments or overhangs, there is also granted the right to maintain and repair, the same so long as said encroachments and overhangs shall and do exist. In the further event that any structure comprising a said townhouse is totally destroyed and then rebuilt, the Owners of said townhouse so affected agrees that said encroachments and easements shall be permitted in the matter of the reconstruction and the right of maintenance shall continue to exist. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. There shall be reciprocal appurtenant easements between adjacent Lots for the maintenance and repair of a party wall or walls or fence or fences, if any.

Section 5. Use of Common Area

Except for the right of ingress and egress as set out above, the Owners are hereby prohibited and restricted from using any of the Properties outside their respective Lots except as may be allowed by the Association's Board of Directors or as may be expressly permitted in this Declaration or the By-Laws.

Section 6. Rules and Regulations

The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area and Area of Common Responsibility and facilities located thereon, including the imposition of reasonable user fees and limits upon the number of permitted guests. Additionally, the Board of Directors may establish rules and regulations concerning use of the Lots, including architectural and environmental controls. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's

effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement is specifically overruled, canceled or modified by the Board or, in a regular or special meeting, by the vote of the members. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and fore-closure as provided in Article IX.

Section 7. Lot Use and Building Restrictions

(a) Residential Use. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted on in or upon any Lot at any time except with the written approval of the Board.

(b) General. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil, or any other substance, shall be erected, maintained or permitted upon any lot.

No structure of a temporary character, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept in any Lot or in the Common Area or any part thereof to increase the rate of insurance on the Properties or any part thereof over what the Association, but for such activity, would pay Noxious, destructive or offensive activity or any activity constituting an unreasonable source of annoyance shall not be carried on in any Lot or in the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment/ discomfort or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

(c) Leasing. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this Covenant so long as the lease is in compliance with reasonable rules and regulations as the Board of Directors may promulgate. Residences may be leased for residential purposes. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also

apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the By-Laws, and the rules and regulations adopted hereunder.

- (d) Signs.** Woodland Homes of Huntsville, Inc., or their designee shall be allowed to advertise the property for sale or rent with a sign and information box. Each lot owner shall display signs in windows with no signs or information boxes permitted in the yard. The exception to this restriction will be the easement for a billboard sign located on the southeast corner of the Community as further described in Document Number 20080117000033970 as recorded in the Office of the Judge of Probate of Madison County, Alabama, and any other exceptions approved by the Board. The owner of said sign easement and their heirs, successors, successor-in-title and assigns shall have rights of ingress and egress as denoted in Article III, Section 3 of this Declaration to access said easement.
- (e) Garbage.** All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Private garbage collection is provided for the Community all trash must be placed in the provided containers. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and same shall not be kept on any lot except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.
- (f) Vehicles/Parking.** Each Townhome shall have two (2) designated parking spaces. There shall be eighteen (18) additional common parking spaces. Said designated assigned and additional common parking spaces are delineated on the site plan attached hereto as Exhibit "C." Parking spaces shall not be used for dead storage of vehicles, nor for the parking of trailers, boats, canoes, trucks (except for pickups and vans), campers, motor homes, motorcycles or off the road vehicles without the prior written approval of the Board of Directors. All vehicles shall be parked within designated parking spaces. Parking in yards and unpaved areas is prohibited. Any vehicles that are kept in the Community, other than in a Board designated area, for periods longer than five (5) days shall be considered a nuisance and The Board, at it's discretion, shall have the authority to remove the vehicle from the Community at the vehicle owners expense. No eighteen wheel trucks or the cabs of such trucks shall be parked, kept or stored within the Community, and if so parked, kept or stored shall be considered a nuisance and may be removed by the Board. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles or vehicles authorized by The Board. The Board of Directors may, in its discretion, assign specific parking spaces to the Townhome Owners and change the assignment of such specific parking spaces from time to time. The Board of Directors shall also have the authority to remove any unauthorized vehicles.

- (g) Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flag poles, and similar items must be approved by the Architectural Control Committee or its designee.
- (h) Window Coverings.** Aluminum foil on window panes, mirrored or reflective glass is not allowed.
- (i) Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.
- (j) Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residence, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Owners shall be responsible for waste clean-up of their pets in outside areas. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury to any person or property may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.
- (k) Antennas/Satellite.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Residence without the prior written consent of the Architectural Control Committee or its designee. No free standing antennas whatsoever shall be placed on any Residence. The Architectural Control Committee or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. The Architectural Control Committee or its designee may, at its discretion, approve a "satellite receiving dish". You must obtain prior written approval from the Architectural Control Committee before installation. There may be fees associated with installation of a "satellite receiving dish".

- (l) Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Residence to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.
- (m) Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community. All maintenance of yards, unless specifically identified as being the responsibility of The Association, shall be the responsibility of such lot owner. In the event that The Board of Directions of The Association determines that a yard is unsightly or unkempt The Board shall give the owner written notice of noncompliance and demand for compliance. If owner fails to comply the Board may assess a fine and/or bring the yard into compliance at the owner's expense.
- (n) Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.
- (o) Tree Removal.** No trees shall be removed without the express consent of the Declarant or Board or their respective designee, except for (a) diseased or dead trees; (b) trees needing to be removed for safety reasons; or (c) trees in the immediate location of building approved by the Architectural Control Committee. Any tree(s) removed for death or disease must be replaced by Lot owner within 30 days by a like and kind of tree(s) such as in the community.
- (p) Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Control Committee. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

(q) Storm Doors. Only solid glass storm doors will be permitted on the property and any such addition of same shall be permitted only if approved in accordance with Article III, Section 7(r) titled "Architectural Standards" herein below.

(r) Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition erection, or alteration of any nature whatsoever shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by Architectural Control Committee established by the Declarant. The Declarant may employ for the Architectural Control Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to pay any fees charged by such architects or other qualified persons. The Declarant/Architectural Control Committee may also delegate certain responsibilities to one or more Owners or other individuals.

In the event that the Architectural Control Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted, unless additional information is required of homeowner, therefore thirty (30) from last correspondence. If no approval or no correspondence received within thirty days (30), approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Control Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

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

ARTICLE IV

Association Membership and Voting Rights

Section 1. Membership

Every person or entity, including Declarant, which is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration, shall be deemed to have a membership in the Association. The foregoing is not intended to include persons who or entities which hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event of multiple Owners, votes and rights of use and enjoyment shall be as provided herein. Ownership of a Lot shall be the sole qualification for membership, which shall be appurtenant to and may not be separated from such ownership. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each Lot.

Section 2. Voting

The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A": Class "A" Members shall be all Owners with the exception of the Class "B" members, if any.

Class "A" Members shall be Voting Members entitled to one (1) vote in the Association for each membership as set forth in Article IV Section 1 hereof. There shall be only one vote per membership. When more than one Person is the Owner of any Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

Any Owner of a Unit which is leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting.

(b) Class "B": The Class "B" Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The Class "B" Member shall be a Voting Member and shall be entitled to cast the number of votes which are contained in the total of all Class "A" Members, plus one (1) vote, until such time when Class "B" votes terminate and convert to Class "A" votes.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- (i) When the last unit of the total Units permitted for the property delineated on the site plan attached hereto as Exhibit "C" has been conveyed; provided however, that there is no evidence of continuing development of any of the remaining property within one year from sale of the last unit of Indian Creek Townhomes; the Class "B" Member shall be deemed a Class "A" Member; or
- (ii) January 1, 2015; or
- (iii) When, at his discretion, the Declarant so determines, with the approval of first mortgagee of Declarant.

From and after the happening of one of these events, whichever occurs earlier, the Class "B" Member shall be deemed to be a Class "A" Member. At such time, the Declarant shall call a meeting, as provided in the By-Laws of the Association for special meetings, to advise the membership of the termination of Class "B" status and to elect the remaining members of the Board of Directors.

ARTICLE V

Maintenance

Section 1. Association's Responsibility

There shall be no city/county service for utilities and street repair provided within the subdivision property lines and thus the Association shall maintain and keep in good repair all common areas to include the streets, street lights & sidewalks over which all Owners have a right of ingress and egress as set out in Article III Section 3 herein.

Madison County shall have easements as is evidenced on the plat. Should it become necessary for the County to use these easements or to perform work within the subdivision, the

County shall only be responsible to the extent of bringing the property back to grade. The Association shall be responsible for any and all maintenance to return subject property to its prior condition.

All repairs within the subdivision including sprinkler systems, street, street lights, electric, and water and sewer repairs shall be the responsibility of the Association.

The Association shall arrange and provide for private garbage collection for the development.

The Association shall arrange and provide for lawn and landscaping service. These services will be performed by a licensed landscape/lawn maintenance company. The maintenance shall include, without limitations, maintenance, repair and replacement of all landscaping and improvements situated on the common area, including but not limited to water line, electrical and sewer.

The Association shall arrange and provide for an individual pest maintenance that will fund the treatment of pests for each lot by a licensed pest control company. Pest control and maintenance other than that provided by the contractual services of the pest control company shall be the sole responsibility of the Lot owner.

All of the maintenance and expenses, without limitations, outlined in this Article V, Section 1 and in Article IX, Section 1, shall be funded by the General Assessment to be assessed as provided herein against all Lots subject to this Declaration.

In the event the Association ceases to exist, or otherwise fails to perform as specified herein, each owner shall be jointly and severally liable, without limitations, for said maintenance and expenses outlined in this Article V, Section 1 and in Article IX, Section 1.

Section 2. Owner Responsibility

(a) All maintenance of Lots and fences thereon, unless specifically identified as being the responsibility of the Association, shall be the responsibility of the Owner of such Lot. Said maintenance shall be in accordance with the rules and regulations of Madison County, Alabama and the Association.

(b) In the event that the Board of Directors of the Association determines that:

- (i) Any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or
- (ii) The need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance in whole or in part; then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have fifteen (15) days within which to complete said maintenance,

repair or replacement, or in the event that such maintenance, repair or replacement is not capable of completion within said fifteen (15) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at Owner's sole cost and expense; and said cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. Any fee not received within fifteen (15) days of the due date shall be deemed late and the Association shall have the right to pursue legal actions to recover said fee to include any reasonable attorney fees.

(c) Each lot owner must maintain his lawn in as good or better condition that its original landscaping plans. It is not the intention of the architectural control committee to monitor every planting but if a lawn, at the sole discretion of the architectural control committee, has deteriorated then the lot owner will be required to bring his lot into compliance with the guidelines at Owner's sole cost and expense.

(d) There will be a landscape sprinkler system in place for each individual lot and thus each lot owner shall be responsible for watering of lawns, plants, shrubs and beds on each owner's individual lot. Should any of the foregoing need replacement as result of lack of water, the lot owner shall be responsible for replacing the item with a like item within the time specified by the Board. If any Owner does not comply with the provision hereof, the Association may provide any such replacement at Owner's sold cost and expense.

ARTICLE VI

Insurance and Casualty Losses

Section 1. Insureds

Insurance policies upon the Common Areas and Areas of Common Responsibility covering the items described below shall be purchased by the Board for the benefit of the Association, the members, and any mortgagees, as their interests may appear, as is determined by the Board of Directors to be desirable. If insurance is purchased, provision shall be made for the issuance of certificates of insurance and such policies and endorsements shall be deposited with and held by the Secretary.

Section 2. Coverage

Insurance shall cover the following, when available:

- (a) public liability in such amounts and with such coverage as shall be determined by the Board of Directors;
- (b) such other insurance as the Board of Directors may from time to time determined to be desirable.

Section 3. Premiums and Deductibles

Premiums upon insurance policies and that portion of any covered loss not compensated for because of the loss deductible clause of the policy shall be paid by the Association as a common expense, but charged to members, as appropriate.

Section 4. Proceeds

The proceeds received by the Association from any indemnity paid under an insurance policy shall be held by the Board of Directors. After deduction of all reasonable expenses of the Board in administering such proceeds, the net proceeds shall be used to repair the damages for which claim was made under the policy.

Section 5. Individual Insurance

By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance. Each individual Owner agrees to provide the Association with evidence of insurance annually at time of renewal. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual unit Owner shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed, the Owner agrees to rebuild the structure in a manner consistent with the original construction.

ARTICLE VII

Annexation and Transfer of Property

Section 1. Annexation

Subject to the consent of the Declarant thereof, upon the affirmative vote of at least a majority of the total vote of the members of the Association present or represented by proxy at a meeting duly called for such purpose, the Association may annex real property. Any real property annexed shall be made subject to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Probate Records of Madison County, Alabama, a supplemental amendment in respect to the property being annexed. Any such supplemental amendment shall be signed by the President and the Secretary of the Association, and any such annexation shall be effective upon filing unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the members of the Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association for regular or special meeting as the case may be.

Section 2. Conveyance of Common Property by Declarant to Association

The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is

or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association even if it already encumbered by a mortgage loan, and the Association will be responsible for that loan. The property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

The Association shall accept such transfer or conveyance of Common Property from the Declarant subject to, and shall be responsible for, any mortgage loan encumbrance on said Common Property.

ARTICLE VIII

Rights and Obligations of the Association

Section 1. The Common Area and Area of Common Responsibility

The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto and the Area of Common Responsibility), and the sidewalks, streets, brick pedestals, and lawns, and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 2. Personal Property and Real Property for Common Use

The Association through action of its Board of Directors may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 3. Implied Rights

The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IX

Assessments

Section 1. Assessments

These assessments for common expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots, and of maintaining the Properties, all as may be specifically authorized from time to time by the Board of Directors. Assessments to include the following and, any expenses from maintenance items in Article V, Section 1, and any other expenses as decided by the Indian Creek Townhomes Home Owners' Association, Inc.

- (a) An annual assessment shall include, but not be limited to, garbage collection; limited lawn maintenance and landscaping of common areas; sprinkler system maintenance and repair; electric, water and sewer expense for sprinkler systems; electricity expense for lighting public alleys, liability insurance for common areas and maintenance; ad valorem (property) taxes on common areas; fees for preparation and filing of corporate tax returns, if applicable.
- (b) A quarterly assessment shall include, but not be limited to, pest maintenance fee and limited individual lawn maintenance.

Section 2. Creation of the Lien and Personal Obligation of Assessments

Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for each Residential Unit owned and in accordance with the provisions hereof (a) annual assessments or charges, (b) special assessments, such assessments to be established and collected as hereinafter provided, and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with Article III, Section 6, hereof. All such assessments, together with interest at the highest rate allowable under the laws of Alabama from time to time relating to usury for residential real estate loans, costs, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents unless the Board otherwise provides, the assessments shall be payable as decided by the Board.

Section 3. Computation of the Annual Assessment

The Board of Directors of the Association shall annually consider the maintenance, insurance and other needs and responsibilities of the Association, including both short and long term reserves. It shall thereafter fix the assessment, if any, to be levied against each Lot during the succeeding fiscal year.

Section 4. Special Assessments

In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only. Any special assessment shall have the assent of at least a majority of the total vote of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice of Meeting

Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all members not less than seven (7) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast over fifty percent (50%) of all the votes of the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Lien for Assessments

All sums assessed against any Lot pursuant to this Declaration, together with interest as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except only for:

(a) tax liens in favor of the federal, state or local government; and

(b) all sums unpaid on a first mortgage of record. Any first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for unpaid assessments which accrued prior to acquisition of title except to the extent all Owners become responsible. All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in said records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments as provided herein, whether or not prior consent be specifically set forth in the instruments creating such liens or encumbrances.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association

Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may determine from time to time, but not to exceed the lesser of Twenty-Five Dollars (\$25.00) or the maximum amount allowable under the laws of the State of Alabama. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days from the due date, a lien shall attach, and shall include the late charge, interest on the principal amount due at the maximum allowable rate from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amount; provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days from the due date, the Association may as the Board shall determine institute suit to collect such amounts or to foreclose its lien. Each Owner, by his or her acceptance of a deed to a Lot vests in the Association or its agent the right and power to bring all actions against him or her personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners.

The Association, acting on behalf of the Owners, shall have the power to bid on the residence at any foreclosure sale or to acquire hold, lease, and mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration, but not limitation, abandonment of his or her Lot.

Section 8. Date of Commencement of Annual Assessments

The annual assessments provided for herein shall commence as to all Lots as shall be determined by the Board.

Section 9. Notice of Assessment Status

Any Owner, contract purchaser, lender considering a loan of funds on a Lot, or mortgagee shall be entitled upon request to a statement from the Association or its manager setting forth the amount of the assessment past due and unpaid against an Owner's Lot. Such request shall be in writing, delivered to the manager's or the registered office of the Association and shall state an address to where the statement is to be directed. Payment of a fee not to exceed Ten Dollars (\$10.00) may be required as a prerequisite to the issuance of such a statement.

Section 10. Association's Assignment of Assessment Rights to Creditor

The Declarant, for so long as the Declarant has the authority to appoint the Directors and officers of the Association, or thereafter, the Board of Directors of Directors, may assign the rights to receive payments for assessments or Special Assessments from Lot Owners, as well as the right to enforce the collection of assessments and special assessments by exercising the Association's authority under Section 6 of the Declaration to impose a lien against any Lot in favor of the Association for the benefit of the Creditor, or directly for the benefit of the Creditor, as a result of nonpayment of assessments.

Section 11. Association's Grant of Power of Attorney to Creditor

The Declarant, for so long as the Declarant has the authority to appoint the Directors and officers of the Association, or thereafter, the Board of Directors of Directors, may grant a limited purpose power of attorney to a Creditor for the specific purpose of enforcing the right to collection of assessments and special assessments by exercising the Association's authority under Section 6 of the Declaration to impose a lien against any Lot in favor of the Association for the benefit of the Creditor, or directly for the benefit of the Creditor, as result of nonpayment of assessments.

ARTICLE X

Party Walls and Fences

Section 1. General Rules of Law to Apply

Each wall or fence built which shall serve and separate any two (2) adjoining Residences shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to

negligence or willful acts or omissions shall apply thereto. No party wall or fence shall be constructed in a manner that will interfere with the functioning of established drainage easements as set out on the plat for Indian Creek Townhomes as the same is recorded in the office of the Judge of Probate for Madison County, Alabama.

Section 2. Sharing of Repair and Maintenance

The cost of reasonable repair and maintenance of a party wall or fence shall be shared equally by the Owners who make use of the wall or fence in equal proportions.

Section 3. Arbitration

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

Section 4. Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land, shall run with the land and shall pass to such Owner's successors in title.

ARTICLE XI

Architectural Control Committee

Section 1. Committee Membership

The initial Architectural Control Committee is composed of Michael W. Friday. On or before, but not later than, the completion of the last unit or on resignation, the initial Architectural Control Committee shall be dissolved and the Architectural Control Committee shall then be composed of the Board of Directors of Indian Creek Townhomes Home Owners Association, Inc., as provided in the By-Laws of said organization. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this Covenant.

Section 2. Committee Authority

The authority of the Architectural Control Committee shall include the approval of exterior paint colors, brick type and color, roof type and color of shingles, elevations and landscaping. The builder and the subsequent Owner of a townhouse shall not change or deviate from those selections approved by the Architectural Control Committee unless such deviation or change is approved in writing by the Committee.

The Committee's approval or disapproval, as required in these Covenants, shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the constructions has been commenced prior to the completion thereof, approval will not be required and the related Covenants shall be deemed to have been fully complied with.

ARTICLE XII

General Provisions

Section 1. Enforcement

Each Owner and occupant shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the Protective Covenants set forth in this Declaration and in the deed or lease to his or her Lot. Failure to do so shall be grounds- for an action to recover sums due, for damages or injunctive relief or both, maintainable by the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. The Board of Directors may also impose fines or other sanctions, collection of which shall be as provided for in Article IX hereof. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability

Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Protective Covenants and Restrictions Run with Land

The Protective Covenants and Restrictions herein shall run with the land and shall be binding on all parties for a period of twenty-five (25) years from the date of the recordation of this Declaration of Records of Madison County, Alabama, after which time said Protective Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless amended as herein set out.

Section 4. Notice of Sale, Lease or Mortgage

In the event an Owner sells leases or mortgages the Owner's property, the Owner will be required to give to the Association in writing, the name of the purchaser, lessee, or mortgagee of the property. Owner agrees to provide to the Association a copy of lease and signed documentation that the purchaser, lessee or mortgagee has received a copy of the regulations and restrictions governing subject property.

Section 5. Amendments

These Declarations may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be

in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Residences subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Residences subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Residences subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, as long as Declarant owns a Townhome and from six months from the date Declarant has sold its last Townhome in subject subdivision, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to the property of any Owner without the consent of the affected Owner or Occupant.

The Covenants and Restrictions of this Declaration may also be amended by an instrument signed by not less than a majority of the members of the Association. Any amendment must be properly recorded in the public records of Madison County, Alabama. Notwithstanding any provision of this Declaration to the contrary, no amendment to this Declaration shall divest Declarant of any rights or powers specifically provided for Declarant or reserved in Declarant, including, without limitation, Declarant's right to use and develop the Properties.

Section 6. Indemnification

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

The Association shall indemnify and hold harmless the Owners, including Declarant, of the sidewalks set out in Article III, Section 3 herein against any and all claims, actions, and causes of action or liability arising from the use by any person or persons of said sidewalks set out in Article III, Section 3. The Association may in the discretion of its Board of Directors as a common expense maintain adequate personal injury liability insurance on said sidewalks, if such insurance is available at a reasonable cost.

ARTICLE XIII

Mortgage Provisions

The following provisions apply to the Properties, and none may be amended without the consent of at least two-thirds (2/3) of the lot owners:

Section 1. Consent of Owners Required

Unless all institutional holders of first mortgages in Indian Creek Townhomes have given their prior approval, the Association shall not be entitled to:

- (a) by act or omission seek to abandon, alienate, release, partition, hypothecate, subdivide, encumber, sell, or transfer any common property owned, directly or indirectly by the Association, for the benefit of the Lots; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property shall not be deemed a transfer within the meaning of this clause;
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) by act or omission change, waive or abandon the system of regulations and enforcement established in this Declaration for architectural design or the exterior appearance and maintenance of Lots, and the maintenance of the Common Area;
- (d) use insurance proceeds for losses to any common property for other than repair, replacement or reconstruction of such common property.

Section 2. Payment of Taxes

First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on insurance policies, or secure new insurance coverage on the lapse of a policy, for such common property. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 3. No Priority

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner, or any other party, priority over any rights of the first mortgagee of a unit pursuant to its mortgage in the case of a distribution to such unit owner of insurance proceeds or condemnation

awards for losses to or a taking of common property. Additionally, the mortgage of Declarant is superior to any subsequently granted mortgage covering the same property later owned by the Association.

Section 4. Notice of Default

Notwithstanding anything contained herein which might otherwise be construed to the contrary, a first mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by an Owner of a Lot, in which such mortgagee has an interest, of any obligation under the development documents which is not cured within sixty (60) days.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration under seal this 14 day of January, 2008.

INDIAN CREEK TOWNHOMES, LLC

BY: _____

MICHAEL W. FRIDAY, Member

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael W. Friday, whose name is signed to the foregoing Declaration,* and who is known to me, acknowledged before me on this day, that he signed the foregoing Declaration voluntarily on the day the same bears date.
*as Member of Indian Creek Townhomes, LLC

Given under my hand this 14 day of January, 2008.

Karen Edger

Notary Public

My Commission Expires: 6-6-11

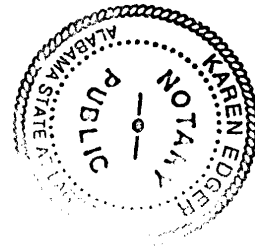


EXHIBIT "A"

DEFINITIONS

1. "Area of Common Responsibility" shall mean and refer to the Common Area or Common Property together with those areas, if any, which become the responsibility of the Association.
2. "Association" shall mean and refer to Indian Creek Townhomes and the Indian Creek Townhomes Homeowners Association, Inc., and Alabama nonprofit corporation, its successors and assigns.
3. "Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the Bylaws and the Articles of Incorporation.
4. "Board of Directors" or "Board" shall mean the governing body of the Association, and the Board shall have such duties as are provided in the Declaration, the Bylaws and the Articles of Incorporation.
5. "Bylaws" shall refer to the bylaws of the Association; as such documents may be amended from time to time.
6. "Certificate of Occupancy" shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Residence.
7. "Common Area or Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, located in Indian Creek Townhomes, for the common use and enjoyment of the Owners and Occupants, whether located within or without the boundaries of the Community and whether owner by Declarant or the Association.
8. "Community" shall mean and refer to that certain real property and interests therein described in Exhibit
9. "Community-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and Bylaws. Such determination, however, must be consistent with the Community-wide Standard originally established by the Declarant.
10. "Declarant" shall mean and refer to Diltina Development, Corporation and its successors-in-title and assigns, provided any such successors-in-title or assigns, shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Community or any land adjacent to Indian Creek Townhomes; provided, further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B" attached hereto, and the adjacent lands thereto, which are now or hereafter subjected to this Declaration, there shall be only one (1) person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

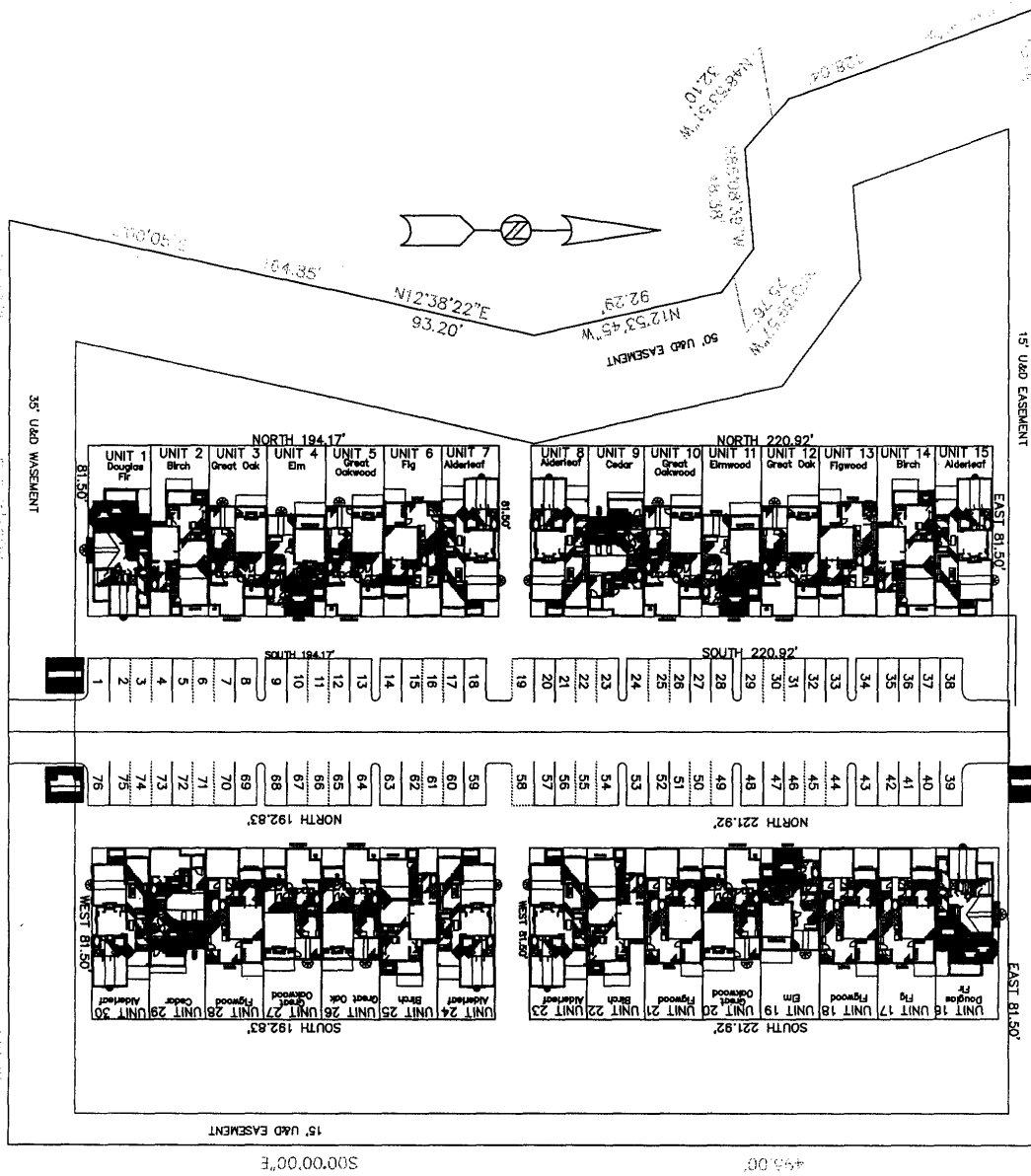
11. "Declaration" shall mean this Declaration of Protective Covenants for Indian Creek Townhomes; as such document may be amended from time to time.
12. "General Assessments" shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants. Such assessment shall be allocated among all Owners and Occupants. Such assessment shall be allocated among all residences in the community.
13. "Indian Creek Townhomes" shall mean Indian Creek Townhomes, as recorded in the Office of the Judge of Probate of Madison County, Alabama.
14. "Lot" shall mean any plat of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, as single-family dwelling site as shown on a plat recorded or to be recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a membership in the Association, and thereby the rights conferred on members of the Association, including, but not limited to use and enjoyment of the Common Property."
15. "Majority" means those eligible votes, Owners or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
16. "Member" shall mean a person that is a member of the Association as provided in the Declaration.
17. "Mortgage" means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.
18. "Mortgagee" shall mean the holder of a mortgage.
19. "Occupant" shall mean any Person occupying all or any portion of a Residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.
20. "Owner" shall mean the record owner, whether one or more persons, of the fee simple title to any real property located within the Community, including contract sellers, excluding, however, any person holding such interest merely as security for the performance or satisfaction of any obligation and excluding contract purchasers, their subsequent grantor, successor or assign.
21. "Person" means any natural person, as well as a corporation, joint venture, partnership (General or limited), association, trust or other legal entity.
22. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be annexed by amendment to this Declaration.
23. "Residence" shall mean a portion of the Community designated on an approval layout plan or subdivision plat for any type of independent use and occupancy as a residence by a single family. Residence shall include all portions of the land owned, as well as any structure thereon. A residence shall come into existence when a Certificate of Occupancy is issued by the proper governing authority.
24. "Supplementary Declaration" shall mean an amendment to the Declaration subjecting additional property to the Declaration.

EXHIBIT "B"
DESCRIPTION OF REAL PROPERTY

INDIAN CREEK TOWNHOMES, A RESUBDIVISION OF LOT 1, BLOCK 1, ACCORDING TO THE PLAT OF LOTUS POINTE SUBDIVISION, AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY ALABAMA IN PLAT BOOK 23, PAGE 34.

THE PROPERTY ACCORDING TO THE FINAL PLAT OF SURVEY OF INDIAN CREEK TOWNHOMES AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA AS DOCUMENT NUMBER 20080104000008220. LOTS 1-30.

SITE PLAN *EXHIBIT C*



UNIT #	PARKING SPACE #
UNIT 1	1-2
UNIT 2	4-5
UNIT 3	7-8
UNIT 4	9-10
UNIT 5	12-13
UNIT 6	14-15
UNIT 7	17-18
UNIT 8	20-21
UNIT 9	23-24
UNIT 10	26-27
UNIT 11	28-29
UNIT 12	31-32
UNIT 13	33-34
UNIT 14	37-38
UNIT 15	39-40
UNIT 16	41-42
UNIT 17	43-44
UNIT 18	46-47
UNIT 19	48-49
UNIT 20	51-52
UNIT 21	53-54
UNIT 22	56-57
UNIT 23	59-60
UNIT 24	62-63
UNIT 25	64-65
UNIT 26	67-68
UNIT 27	69-70
UNIT 28	72-73
UNIT 29	74-75
UNIT 30	76-77

ADDITIONAL PARKING	PARKING SPACE #
3	6
6	11
11	16
16	21
21	26
26	31
31	36
36	41
41	46
46	51
51	56
56	61
61	66
66	71
71	76