

ORDINANCE NUMBER 3104

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-2 TO VESTAVIA HILLS R-9

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-2 (medium density residential district) to Vestavia Hills R-9 (planned residential district):

3276 Greendale Road
Braxton Cove Properties, LLC, Owner

More Particularly Described as Follows:

Part of Lots 12 and 13, according to Jonas Schwab Co. survey, as recorded in Map Book 5, Page 35, in the Office of the Judge of Probate of Jefferson County, Alabama, more particularly described as follows:

Begin at the northwest corner of Lot 12, run thence eastwardly along the North line of said Lot 12, for a distance of 244.40 feet; thence turn an angle to the right of 83° 27' and run southwardly for a distance of 475.25 feet; thence turn an angle to the right of 130° 23' and run northwestwardly for a distance of 161.00 feet to point of curve having a radius of 361.66 feet, a tangent distance of 107.50 feet and an intersection angle of 34° 00' left; thence continue northwestwardly around said curve for a distance of 173.2 feet, to a point in the west boundary line of said Lot 12, 9.5 feet north of the southwest corner; run thence northwardly along said west boundary line for a distance of 330.50 feet, to the point of beginning.

BE IT FURTHER ORDAINED that said zoning shall not be effective until the following conditions have been met:

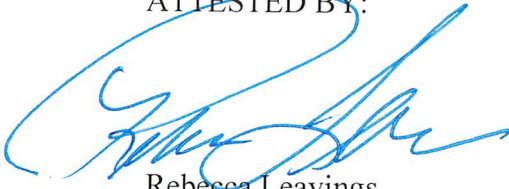
1. Said zoning is based upon the preliminary plat plan which was presented with zoning (see attached); and
2. Said rezoning shall not become effective prior to the required CC&R's are filed with the Jefferson County Judge of Probate and a copy is attached to and incorporated into this Ordinance Number 3104.

APPROVED and ADOPTED this the 11th day of July, 2022.

Ashley C. Curry

Ashley C. Curry
Mayor

ATTESTED BY:



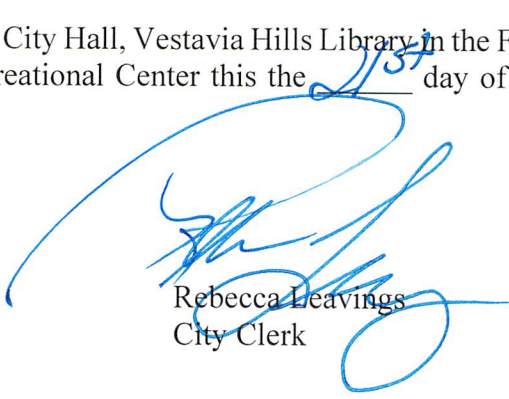
Rebecca Leavings
City Clerk

CERTIFICATION:

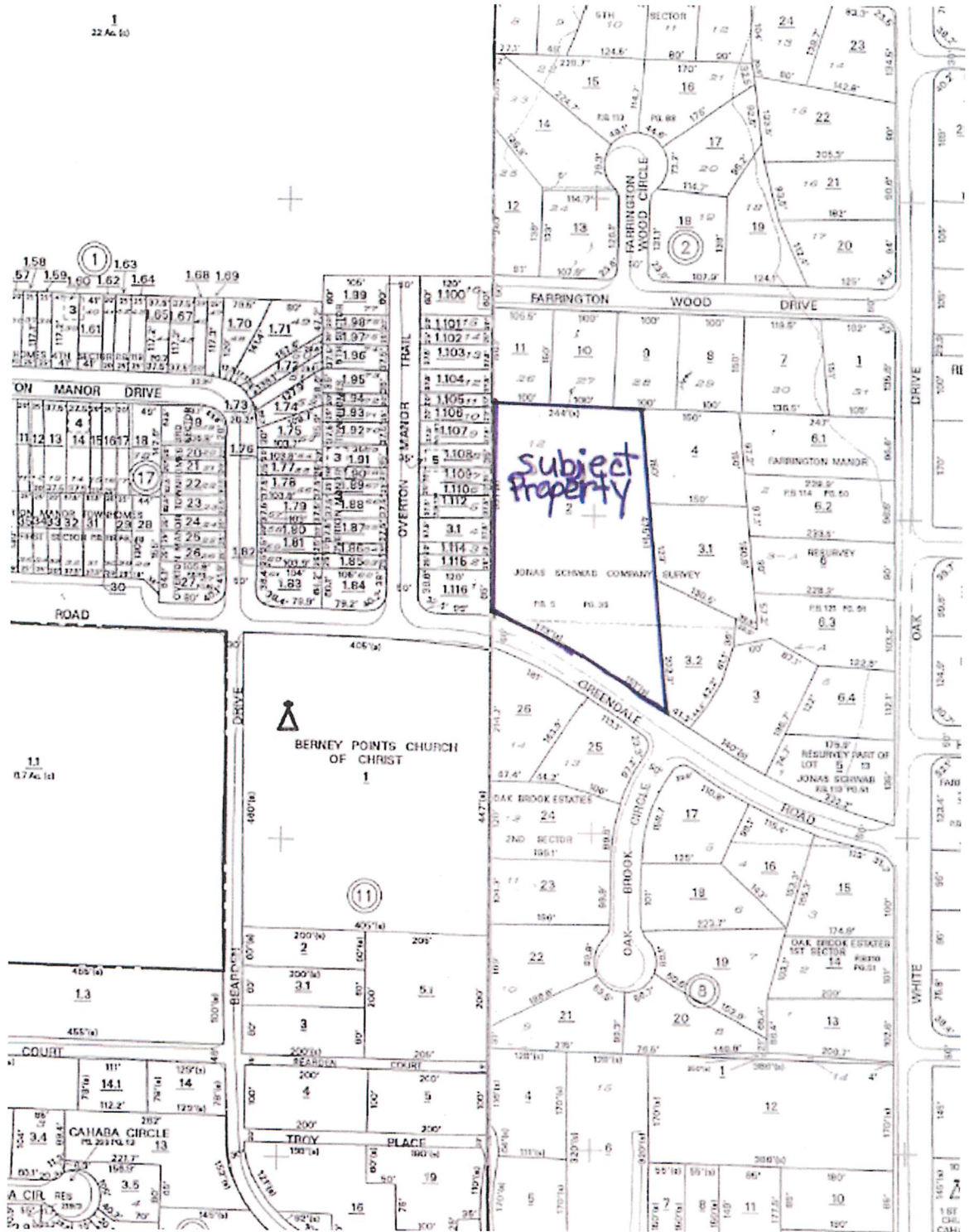
I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 3104 is a true and correct copy of such 11th day of July, 2022, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the 11th day of July, ~~2022.~~

2023.



Rebecca Leavings
City Clerk



SITE PLANS FOR BRAXTON SUBDIVISION

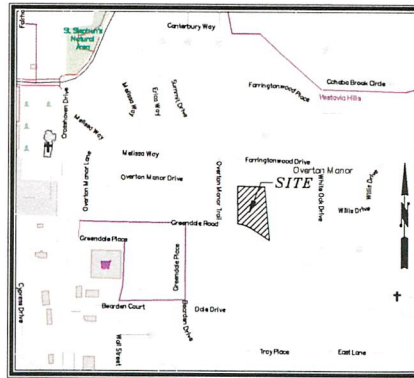
A RESIDENTIAL SUBDIVISION
SITUATED IN THE SOUTHWEST ¼ OF
SECTION 14, TOWNSHIP 18 SOUTH, RANGE 2 WEST
THE CITY OF VESTAVIA HILLS,
JEFFERSON COUNTY, ALABAMA

OWNER:
BRAXTON COVE PROPERTIES, LLC
2800 RIVERVIEW ROAD
SUITE #1136
Birmingham, Alabama 35242
PHONE: (205) 296-5545
CONTACT: SAM DARIANI
TAX ID No. 85-3444285

SITUATED IN THE SOUTHWEST ¼ OF THE
SOUTHWEST ¼ OF SECTION 14,
TOWNSHIP 18 SOUTH, RANGE 2 WEST,
AND THE SOUTHEAST ¼ OF THE
SOUTHEAST ¼ OF SECTION 15,
TOWNSHIP 18 SOUTH, RANGE 2 WEST,
CITY OF VESTAVIA HILLS,
JEFFERSON COUNTY, ALABAMA

11 LOTS
CURRENT ZONING: R-2
PROPOSED ZONING: R-9

PARCEL No: 28 00 14 3 002 002.000
LOT AREA: 2.37 ACRES



VICINITY MAP
NOT TO SCALE



ESP Associates AL, Inc.
291A Cahaba Valley Parkway North
Pelham, AL 35124
205-664-8498 (AL)
3475 Lakemont Blvd.
Fort Mill, SC 29708
704-683-4949 (NC)
803-602-2440 (SC)
www.espassociates.com

DATE OF PREPARATION
07 APRIL 2022

SHEET INDEX

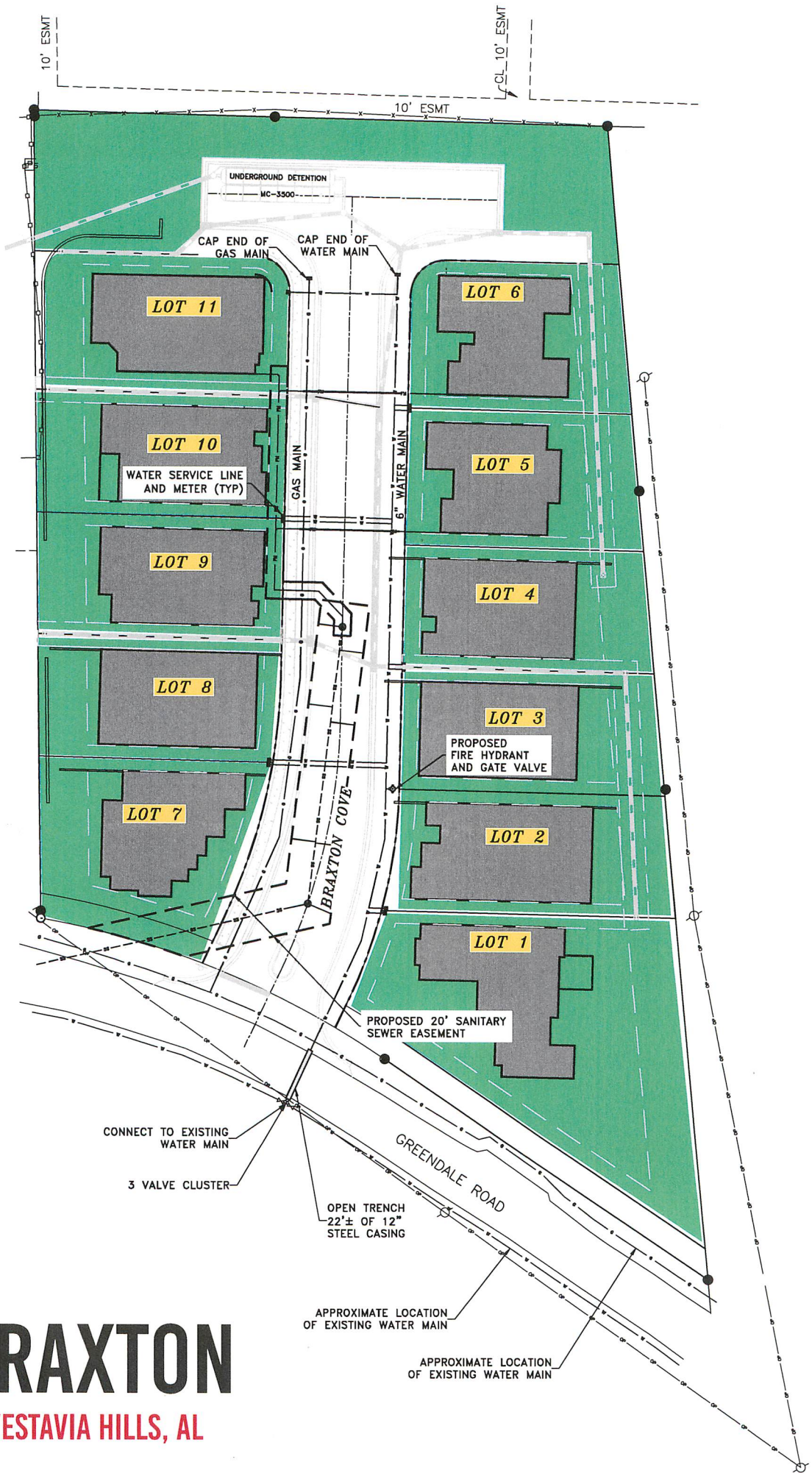
SHEET NUMBER	SHEET TITLE
C-01	TITLE SHEET
C-02	BOUNDARY AND TOPOGRAPHIC SURVEY
C-03	PRELIMINARY PLAT
C-04	GRADING PLAN
C-05	DRAINAGE PLAN
C-06	UTILITY PLAN
C-07	CBMPP - PHASE I
C-08	CBMPP - PHASE II
C-09	CBMPP - PHASE III
C-10	CBMPP - DETAILS
C-11	BRAXTON COVE and ROAD #2 PLAN / PROFILE
C-12	STORM SEWER PROFILES
C-13	RETAINING WALL PLAN / PROFILE
C-14	DETAILS (SHEET 1)
C-15	DETAILS (SHEET 2)
C-16	DETAILS (SHEET 3)
C-17	TRAFFIC CONTROL PLAN
C-18	SANITARY SEWER PLAN / PROFILE
C-19	SANITARY SEWER MAIN DETAILS
C-20	SANITARY SEWER MAIN DETAILS
C-21	LOW PRESSURE SYSTEM DETAILS
C-22	LOW PRESSURE SYSTEM DETAILS
C-23	LOW PRESSURE SYSTEM DETAILS

811
Call 2 working days before digging.
It's the Law!

Alabama Line
Location Center, Inc.
1-800-292-8525
332-4444 (Birmingham Area)

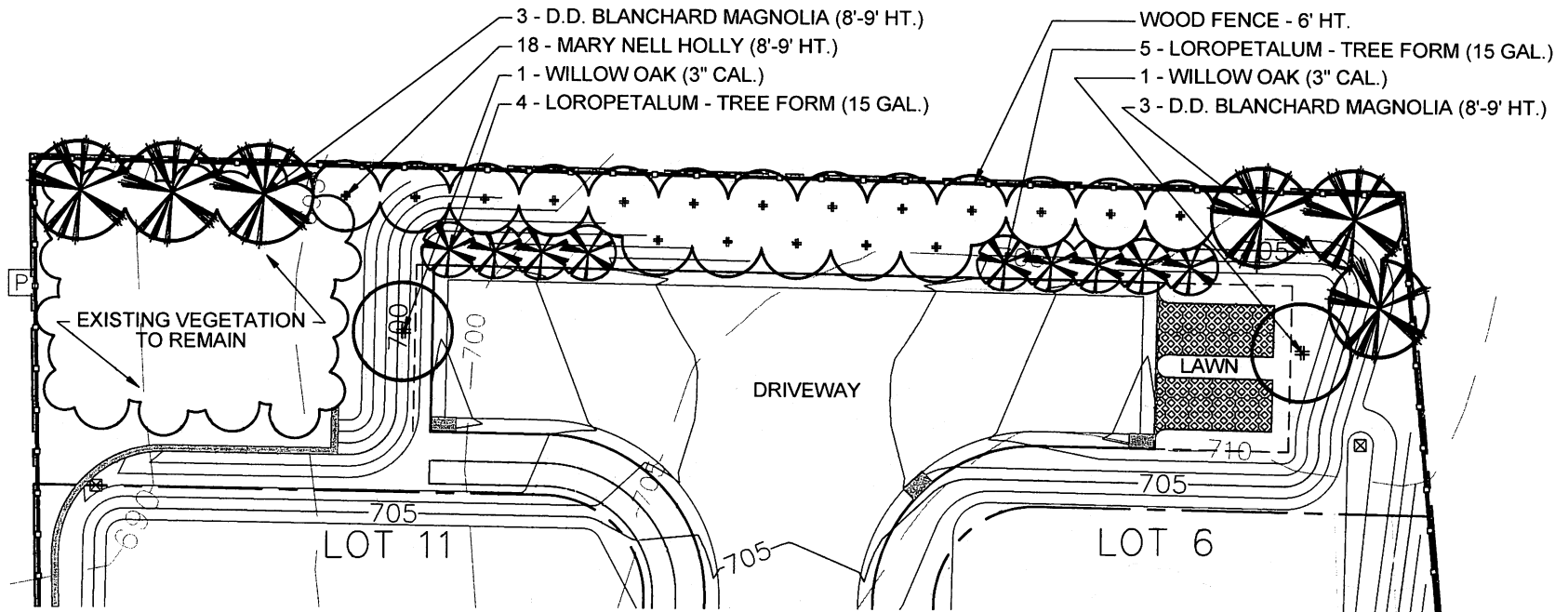


PROFESSIONAL CIVIL ENGINEER: Joel B. Childers DATE: 4/7/22
JOEL B. CHILDERS, AL. REG. NO. 22181



BRAXTON

VESTAVIA HILLS, AL



Braxton
 Landscape Buffer Plan

Scale: 1" = 20'

April 6, 2021
 Sheet 1 of 1

John S. Harrison, Landscape Architect
 205-281-8389
 jsha@bellsouth.net

NORTH



Clerk: CSBESS

37

124.00

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
"BRAXTON COVE, A PRIVATE SUBDIVISION"**

THIS DECLARATION OF PROTECTIVE COVENANTS (hereinafter referred to as the "Declaration") is made as of this 18th day of July, 2023, by **BRAXTON COVE PROPERTIES, LLC**, an Alabama limited liability company, (hereinafter referred to as the "Developer" or "Declarant"), and **BRAXTON COVE OWNERS' ASSOCIATION, INC.**, an Alabama nonprofit corporation (hereinafter referred to as the "Association") which declares that the real property hereinafter described as BRAXTON COVE, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Declaration" or "Protective Covenants").

WHEREAS, the Developer is presently the owner of certain real property to be known as "BRAXTON COVE" and located in Jefferson County, Alabama, as more particularly described on Exhibit "A" attached hereto and made a part hereof.(the "Property"); and

WHEREAS, BRAXTON COVE PROPERTIES, LLC (the " Developer" or "BRAXTON COVE"), an Alabama limited liability company, has heretofore acquired fee simple title to certain real property situated in Jefferson County, Alabama and has subdivided or shall subdivide the real property into 11 lots ("lots") as more particularly described in Exhibit "A" attached hereto, and otherwise known and referred to as "BRAXTON COVE" (the "Property"), and

WHEREAS, the Developer has developed and subdivided or shall develop and subdivide the Property into the subdivision otherwise and further known as "BRAXTON COVE".

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of real property herein described and for the maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desires to subject said real property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the said real property and each owner thereof; and

WHEREAS, the Developer further desires to include in the Declaration additional easements, covenants and restrictions for the regulation and use of the Subject Property, including without limitations architectural requirements for the construction of improvements within the Subject Property, easements and restrictions relating to the use of the Subject Property, and covenants for the repair and maintenance of Common Areas within the Subject Property, in order to promote the appearance and value of the Subject Property and for the benefit of the owners of the Subject Property;

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 of levying assessments against the owners of the Subject Property to enable the Association to perform such obligations;

NOW, THEREFORE, the Declarant declares that the real property described in Section 2.01 hereof, and such additions thereto as may hereafter be made pursuant to Section 2.02 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, 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 real property, as well as their heirs, successors and assigns.

NOW, THEREFORE, the undersigned, does hereby expressly adopt the following Declarations of Protective Covenants and Restrictions, conditions, limitations and easements for said "BRAXTON COVE" to-wit:

THAT said Property and each lot within said Property shall be, subject to the following Declaration of Protective Covenants, Restrictions and Easements (collectively referred to as the "Covenants"), all of which are for the improvement and benefit of the Property and which will run with the land for a period of not less than Ninety Nine (99) years from the date of record of this said Declaration of Protective Covenants, Restrictions and Easements, and shall be binding on all parties having any right, title or interest in the property or lots or any interest therein, their heirs, successors and assigns, and shall endure to the benefit of each owner thereof.

THAT no property other than the Property herein described (see attached Exhibit "A", Legal Description) shall be deemed subject to the Declaration of Protective Covenants, Restrictions, and Easements.

ARTICLE I

DEFINITIONS

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

1.1 "Association" shall mean and refer to BRAXTON COVE OWNERS' ASSOCIATION, Inc., an Alabama nonprofit corporation, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Certificate of Formation, Articles of Incorporation, (hereinafter referred to as the "Articles") and By-Laws, (hereinafter referred to as the "By-Laws") of the Association make reference.

1.2 "Association Obligation" shall mean, collectively, the payment of Common Expenses, and the BRAXTON COVE Landscaping Responsibilities.

1.3 "Common Area" shall mean and refer to (a) for so long as the Access Roads remain private roadways, Access Roads and all street, traffic, directional and informational signage, street lights and other lighting, storm water drainage facilities, walkways, sidewalks, gates, walls, fences, controlled access gates or devices, landscaping and landscaped areas and other improvements thereon, (b) all areas shown on the Subdivision Plat which are designated as "Common Areas" on the Subdivision Plat, (c) all of the Utility Lines within the Access Roads (to the extent the same are not owned or maintained by any public or private utility providers or any Governmental Authorities) and all storm water drains, sewers, drainage and/or watershed protection areas or detention or retention ponds, basins or other areas, whether such areas are for surface or subsurface for collection, retention and dispersion, which serve any portion of the BRAXTON COVE Property regardless of whether the same are located within or outside of the BRAXTON COVE Property (other than such areas located solely within the boundary lines of any Lot or which are maintained by any Governmental Authority, (d) all perimeter walls or fencing, if any, for the BRAXTON COVE Property erected by the BRAXTON COVE Developer Section 5.6 below, (e) all easements or access ways, walkways and trails, parks, gardens, green spaces, pool, pool clubhouse, all other recreational facilities and areas, and any other areas or improvements on or within the BRAXTON COVE Property which are designated as Common Areas by the BRAXTON COVE Developer from time to time and (f) all real and/or personal property which the Association and/or the Declarant owns, leases, or has otherwise acquired for the common use and enjoyment of the members of the Association, and all real and/or personal property within or in the vicinity of the BRAXTON COVE Property (hereinafter defined) in which the Association and/or the Declarant has an interest for the common use and enjoyment of the members of the Association, including, without limitation, a right of use (such as but not limited to, easements for surface or subsurface water collection, retention and dispersion, and licenses to use recreational facilities). The use of the Common Area shall be restricted to park landscape, entry features, directional graphic system, drainage and retention, landscape medians, walls, fencing, landscaping, green spaces, security, safety, pool, pool clubhouse, roads, streets, lighting, recreational facilities or any other use to which the Board of Directors of the Association may accede. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

Declarant agrees that all of the Common Area, fee simple title to which may be owned or held by Declarant, shall be conveyed to the Association not later than sixty (60) days after Declarant relinquishes control of the Board of Directors pursuant to Article Six of the Articles of the Association.

1.4 "Declarant" shall mean and refer to BRAXTON COVE PROPERTIES, LLC, an Alabama limited liability company or its successors or assigns if such successors or assigns acquire any portion of the Property from the Declarant and is designated as successor Declarant(s) by

BRAXTON COVE PROPERTIES, LLC.

1.5 "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association, credit union or real estate investment trust which holds a first mortgage or other first lien or charge upon any Lot or portion of a Lot or any interest therein which is of record in the Office of the Judge of Probate of Jefferson County, Alabama.

1.6 "Lot" shall mean and refer, to the individual lots (as defined in the Subdivision Regulations of the City of Vestavia Hills) as reflected on subdivision plat(s) for the Property as recorded in the Office of the Judge of Probate of Jefferson County, Alabama, as the same may be amended from time to time. Any portion of the Property not included in the subdivision plat shall be considered a single Lot.

1.7 "Owner" shall mean and refer to one or more persons or entities who or which have fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.8 "Property" shall mean and refer to all real property which is presently or may hereafter be subject to this Declaration pursuant to Article II hereof.

1.19 "BRAXTON COVE Landscaping Responsibilities shall have the meaning set forth in Section 6.12 below.

ARTICLE II

**PROPERTY SUBJECT TO THIS DECLARATION,
ADDITIONS THERETO, DELETIONS THEREFROM**

2.1 **Legal Description**. The real property which presently is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Jefferson County Alabama, and shall be described in the Final Plat of BRAXTON COVE, A PRIVATE SUBDIVISION, to be recorded in the Office of the Judge of Probate of Jefferson County, Alabama, which is more particularly described by metes and bounds legal description attached hereto and made a part hereof as Exhibit "A".

2.2 **Additions to Property**. Upon the approval in writing of the Association, the owner of any property who desires to subject it to this Declaration, may file a Supplementary Declaration to that effect in the Office of the Judge of Probate of Jefferson County, Alabama. Such Supplementary Declaration may contain such complementary additions to and modifications of

the Protective Covenants as the Association shall determine to be necessary or proper to reflect the different character, if any, of the additional property, provided they are consistent with the general plan of this Declaration.

2.3 **Withdrawals of Property.** The Association may at any time or from time to time withdraw portions of the Property from this Declaration, provided only that the withdrawal of such portions of the Property shall not, without the joinder or consent of the Owners of Lots constituting two thirds (2/3) of the then existing acreage of the Property, increase by more than one-fourth (1/4) the share of Association expenses payable by the Owners of Lots which would remain subject hereto after such withdrawal. The withdrawal of Property as aforesaid shall be evidenced by filing in the Office of the Judge of Probate of Jefferson County, Alabama, a Supplementary Declaration setting forth the portions of the Property to be so withdrawn.

2.4 **Platting and Subdivision of the Property.** The Declarant shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property. No Lot may be subdivided or re-surveyed without the express written consent of the Declarant or without the written consent of two thirds (2/3) of the Owners of the Lots which are a part of the Property.

ARTICLE III

GENERAL PROVISIONS AND RESTRICTIONS

3.1 Land Use.

(a) The Property will be used for residential purposes only. No trade, commerce, or business shall result or be permitted on and from said Property and/or any lot. A home based business shall be permitted when no goods or services are sold or provided which result in walk-in foot traffic to a dwelling.

(b) No building or structure shall be permitted for any purpose other than one single-family dwelling.

(c) No more than one garage, yard or estate sale shall be held by all of the Lot Owners no more often than annually.

(d) Single-family residences may not be rented for terms of less than twelve (12) months and may not be rented for shorter terms through VRBO or as an AirB&B. Tenants must be given copies of the covenants and acknowledge receipt thereof in writing.

3.2 Dwelling and Building Location

(a) All home plans used in the subdivision "BRAXTON COVE" shall be designed, approved and furnished by the Developer (who own the rights for the home plans), BRAXTON COVE PROPERTIES, LLC, and no other plans, changes in the plans or deviation from the plans shall be used or permitted unless expressly approved in writing in advance. All homes shall have a minimum of 2500 square feet of living area. Living area shall be defined as heated finished area not to include porches, garages, basements, carports, or attics.

(b) All single-family residences shall be constructed within the Approved Building Area shown as to each lot on the Subdivision Record Map. The Architectural Control Committee (the "ACC") shall have the authority to grant variances from this requirement on request by any lot owner and may approve or disapprove any such request within the exercise of its sole discretion. For the purpose of this covenant, eaves, steps and open decks or terraces shall not be considered as part of a single-family residence.

(c) The first mailbox and mailbox posts (which hold the mailboxes) shall be furnished by the Builder and shall be uniform in style and color in accordance with Developer's or ACC instructions. The mailboxes and mailbox posts shall be maintained by Association substantially as initially furnished in style, color, and location and uniformly in height and distance from the curb. The cost of maintenance of the mailboxes and mailbox posts shall be billed to each owner by the Association. Owners shall be responsible for the cost of all maintenance and replacement of mailboxes and mailbox posts.

3.3 Easements.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision map. No structure, plants, or other material that may damage or interfere with the installation and maintenance of utilities, or that may change the direction or flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements, shall be placed or permitted to remain within these easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

3.4 Nuisances.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done on the lot that may become an annoyance or nuisance to the neighborhood, or adjoining neighbors.

3.5 Permanent or Temporary Structures.

No structure of a permanent or temporary character, trailer, basement, tent shack, garage, barn, storage building, or other outbuilding of any kind shall be permitted or located on any lot.

3.6 Signs.

No signs of any kind shall be displayed to the public view on any lot except one professional sign of not more than three square feet advertising the property for sale or rent, or open house, or signs used by a builder to advertise the property during the construction and sales period. All signs and signage must be approved by the ACC before installation.

3.7 Oil and Mining Operations.

No oil drilling or refining, quarrying, or mining operations of any kind shall be permitted on or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any lot. No direct or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

3.8 Destroyed or Damaged Structures.

Any dwelling or other structure on any lot in the subdivision, which may be destroyed in whole or in part for any reason, must be rebuilt within one year. All debris must be removed and the lot restored to a slightly condition with reasonable promptness provided that in no event shall such debris remain on any lot in excess of 30 days.

3.9 Storage of Boats, Trailers, Recreational Vehicles, or other Vehicles.

No motor homes, boats, boat trailers, campers, service trucks or other service vans shall be parked or stored in any subdivision location that shall be visible from the street for a period in excess of 24 hours. No wrecked or disabled automobiles or other vehicles other than operating vehicles shall be stored or located on any lot. Each Lot shall provide for off-street parking for at least two (2) automobiles. All Lots shall have enclosed garages (which must be equipped with garage doors). Not more than three (3) automobiles to be parked in driveway or off-street at the same time. All garage doors shall be kept closed at all times except to exit and enter so as to maintain a clean, neat, and orderly exterior appearance.

3.10 Fences.

Fences built and maintained are permitted only under the following conditions:

(a) Fence materials are limited to masonry, wrought iron and aluminum or other material approved in writing by the ACC. No chain link material shall be permitted.

(b) The ACC or Developer must approve fence material, colors, design, location, height, size and construction in advance.

(c) Fences must be installed and maintained in a professional and good and workmanlike manner and must be installed and maintained straight, true, plumb and level.

(d) Decorative walls connecting dwellings, if permitted, will only be allowed if approved in advance and in writing by the ACC or Developer and constructed by the builder.

3.11 Animals.

No animals or any kind except for a maximum of two (2) dogs or two (2) cats shall be kept or permitted per household at any time. No more than two (2) dogs or two (2) cats shall be permitted outdoors at any time and when outside the dwelling said pets must be kept within their fenced yard or restrained on a leash and accompanied by the owner or their designated agent. Owner is responsible for cleaning and picking up the mess from their dog(s) and will be held responsible for any damages. No animals, livestock, reptiles, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot, Dwelling, Medium Density Area or other portion of the Property; provided however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot or Dwelling so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas and spaces) shall be located at the rear of a Dwelling, shall not be visible from any roadways within or adjacent to the Property and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling, as approved by the ARC, or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street right-of-way or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any of the laws, statutes, ordinances, rules or regulations of the City of Vestavia Hills, Alabama with respect to any pets or other animals maintained by such Owner or Occupant on or within any Lot or Dwelling or within any portion of the Property, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the City of Vestavia Hills, Alabama and not the Association.

3.12 Subdividing.

No lot, once subdivided and recorded by the Developer or their assigns, shall be further subdivided.

3.13 Dwelling Exteriors.

All exteriors of dwellings, fronts, sides and rear shall be of brick, hardiboard or stone veneer construction and where brick is not appropriate such as gables and dormers, etc., only "Hardiboard" siding or a comparable product which is approved in advance by the Architectural Control Committee shall be permitted. Masonite, vinyl, aluminum or other products shall not be permitted.

3.14 Sale of Lots.

Lots within the subdivision shall only be sold or resold to builders approved by the ACC or Developer and construction of dwellings within the subdivision shall only be permitted where the builder has the prior approval of the ACC or Developer.

3.15 Cultivation.

No lot shall be cultivated for crops of any sort, except for kitchen gardens of reasonable size, which must be located to the rear or any dwelling.

3.16 Weeds and Underbrush.

No weed, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of the property and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of the property, including vacant parcels. The Developer or the Association reserve the right (after 10 days' notice to the owner) to enter any residential lot during normal working hours for the purpose of mowing, removing, cleaning or cutting underbrush, weeds or other unsightly growth, or trash which in the sole opinion of the Developer or ACC or Association detracts from the overall beauty and safety of the subdivision and may charge the owner a reasonable cost for such services, which charge shall constitute a lien upon such lot enforceable by the Association or appropriate proceedings at law or equity. This provision shall not apply to the Developer or its assigns during the sale and development period, such sales period to extend until the last lot is sold by the Developer.

3.17 Trash.

No trash, garbage, or other refuse shall be dumped, stored, or accumulated on any lot. Trash, garbage, or other waste shall not be kept on any lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed on the side of a dwelling or screened by shrubbery or other appropriate material approved in writing by the ACC or Developer to lessen the visibility from the street at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period.

3.18 Fence, Wall, Hedge, or Shrubs.

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot with the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or in the case of a rounded property corner from the intersections of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. Trees shall be permitted to remain within such distances of such intersections provided the foliage lie is maintained at sufficient height to prevent obstruction of such sight lines. Issues involving fencing, wall, hedges or shrubbery shall be under the authority or the ACC.

3.19 Construction and Delivery Vehicles.

During all construction, all vehicles, including those delivering supplies, must enter the building lot on the driveway only as approved by the Developer so as not to unnecessarily damage trees, street paving and curbs. Any damage not repaired by the contractor will be repaired by the Developer or its designee (after 10 days' written notice) and will be charged to the contractor (or owner) at a reasonable cost for such services, which charge shall constitute a lien upon such lot enforceable by appropriate proceedings at law or equity. During construction, all builders must keep the homes, garages, building sites and roads clean. The builder must remove all building debris, stumps, trees, etc. from each lot as often as necessary to keep the house and lot attractive. Such debris will not be dumped in any area of the subdivision. The street must be kept clean at all times from construction work and debris.

3.20 Work Completion.

When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and must be completed within twelve (12) months.

3.21 Garage doors.

Garage doors on the front of house must have a garage door opener installed, and garage doors must be kept closed at all times except when garage is being entered or exited.

3.22 Exterior Vent.

No plumbing or heating vent shall be placed on the front of house or the roof over the front side of the house, but only on the side or rear as required, as to eliminate them being visible from the front.

3.23 Clothes Lines.

No clothes lines for the purpose of hanging clothes/wash/laundry shall be installed, nor shall there be hanging of clothes/wash/laundry on any lot where the hanging of said clothes/wash/laundry is visible from any street within the subdivision.

3.24 Landscaping.

All dwellings shall have fully landscaped lawns, front, side, and rear. The initial landscaping for each Lot shall be approved by the Developer or ACC. Any other landscaping which any Owner or Occupant desires to construct, install, place or maintain on or within any Lot must be approved by the ACC, which approval may be granted by the ACC in its sole and absolute discretion. In the event the ACC authorizes landscaping on the Lot of such Owner or Occupant, then the Owner or Occupant of such Lot shall be solely responsible for maintaining the same and such additional landscaping shall **not** constitute part of the BRAXTON COVE Landscaping Responsibilities. Furthermore, each Owner and Occupant does hereby waive, release, and forever discharge Developer and Association, and their respective agents, employees and independent contractors, from and against any and all damage, loss, liability, claim or expense suffered, paid or incurred by any Owner or Occupant as a result of any damage to or destruction of any additional landscaping installed by any Lot Owner or Occupant. The provisions of this Section 24 shall be applicable to any vegetable, herb or similar gardens or plants which Owner or Occupant desires to plant or maintain within Owner's or Occupant's Lot. Any such vegetable, herb or similar gardens or plants shall be located only in such areas on a Lot as may be approved by either Developer, ACC or Association and shall **not** constitute part of the BRAXTON COVE Landscaping Responsibilities.

3.25 Swimming Pools.

Swimming pools and/or hot tubs shall only be permitted where prior written permission is obtained from the ACC or Developer and location, size, construction and the contractor must be determined, or approved, by the Developer or ACC.

3.26 Satellite Receiving Dish.

Satellite Receiving Dishes shall only be permitted and installed where the Dish is eighteen inches (18") or less in diameter and installed and maintained where such shall not be visible from the street in front of the dwelling.

3.27 HVAC Equipment.

Outside air conditioning units may not be located in the front yard. All outside air conditioning units and air conditioning compressor units shall be hidden from view by shrubbery, or other year-round foliage or fencing.

3.28 Colors.

Exterior colors of homes, exterior trim, soffits and eaves, doors, walls, fences, lamp posts, window trim, mailbox posts, etc... and including all common area items and accessories, (i.e. entrance walls, lamp posts, park benches, etc...), must be approved in writing by the ACC or Developer, and this restriction shall apply to repainting or coloring as well as initial colors except once approved the repainting or coloring in the same color does not require re-approval.

3.29 Windows.

All windows must be of wood or clad construction and window colors must coordinate with other exterior colors. All Homeowners will be required to install either Plantation Shutters similar shutters, custom draperies, or custom window treatments, as approved by the ACC. If a Homeowner desires to cover windows in the front of the dwelling, or exposed to streets, such coverings approved by the ACC are plantation shutters, custom blinds or curtains or draperies, all of which being installed must have a white color exposed to the outside of the home. No bed sheets, wood, cardboard, newsprint, furniture, or similar unacceptable materials are allowed. All window coverings on the front of the dwelling or exposed to streets must be approved by the ACC before installation.

3.30 Basketball Goals or Outdoor Playground Equipment.

Playground Equipment shall be approved by the ACC prior to installation and shall not be placed, used or maintained where visible from the street in front of any dwelling. Due to the density of the development and activity sounds, no basketball goals are allowed in the community.

3.31 Roofing.

All roofing material will be limited and approved by the ACC or Developer. The ACC or Developer shall approve roofing color in advance in writing.

3.32(1) Sewage Treatment Facility and Other Public Services.

The sewage treatment facility available to the Subdivision is currently provided by Jefferson County Sewer Services. By accepting a deed to a lot, the owner of such lot covenants and agrees to pay to Jefferson County Sewer Services or its successors or assigns, a monthly or quarterly sewage treatment fee or charge to cover the cost of providing such service. It is agreed that the sewage treatment fee shall be charged on the land and constitute a continuing lien upon the lots against which such fee is charged, except that such lien shall be subordinate to prior recorded bona fide mortgages. Such fee charged and the cost of collection thereof shall be the personal obligation of the person owning such property at the time the fee becomes due. The owner of a lot covenants and agrees to maintain the sanitary sewer station and line on his/her lot in good working order and the association will maintain the sewer line throughout the property. Grinder pumps are the responsibility of the owner.

- a) Fire protection is currently provided to the Vestavia Hills community, which includes the Subdivision, by the City of Vestavia Hills. DEVELOPER IS UNDER NO OBLIGATION TO PROVIDE FIRE PROTECTION SERVICE, OR TO ASSURE THAT SUCH FIRE PROTECTION SERVICE IS PROVIDED BY OTHERS.
- b) Police protection is currently provided to the Vestavia Hills community which includes the Subdivision, by the City of Vestavia Hills. DEVELOPER IS UNDER NO OBLIGATION TO PROVIDE SECURITY SERVICE, OR TO ASSURE THAT SUCH SECURITY SERVICE IS PROVIDED BY OTHERS.

3.32(2) **Underground Utilities.**

All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer (to the extent available), cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground. Prior to digging on any lot, right of way or common area, the Owner must call 811 before they dig, even for installation of a fence or planting shrubbery, bushes or plants, and all utilities must be marked prior to digging.

3.33 **Soil Erosion and Drainage.**

Each owner shall provide and maintain on his or her Lot or Dwelling adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff resulting from any Improvements being or having been constructed on such Owner's Lot or Dwelling. Each compliance with (a) the Watershed Covenants, (b) all soil erosion protection requirements and regulations of all applicable Governmental Authorities, (c) all stormwater drainage and runoff requirements and regulations of all applicable Governmental Authorities and (d) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any Governmental Authority. No Owner shall construct, install or maintain or authorize any third party to construct, install or maintain on such Owner's Lot or Dwelling any drainage facility which, in the sole opinion of Developer, would result in any damage or possible damage to the Property or would otherwise be unsightly or distracting to the Property. **Each Owner, by acceptance of a deed to his or her Lot or Dwelling, shall and does hereby indemnify, defend and agree to hold Developer, the ACC, the Association, and their respective agents, employees, officers, directors, shareholders, members and representatives, harmless from and against any and all fines, penalties, cost and expenses, including court costs and reasonable attorneys' fees, and any and all other amounts suffered, paid or incurred by Developer, the ACC, the Association, and their respective agents, employees, officers, directors, shareholders, members and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants,**

contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 3.33.

3.34 No Trespass.

Whenever the Association, Developer, the ACC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot, Dwelling or Medium Density Area, the entering thereon and the taking of such action shall not be deemed a trespass.

3.35 Oral Statements.

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

3.36 Developer Control.

In view of the Developer's financial commitment to the Project, Developer's obligations as an initial owner of the lots to pay the expenses of the project, Developer hereby reserves unto itself, its successors and assigns, the right to manage all of the affairs of the project and the right to elect the directors of the board for the Homeowners' Association and members of the Architectural Control Committee until the last lot is sold to others than the Developer and retains the right to amend this Declaration until the last lot without a dwelling thereon is sold to third parties other than the Developer, or until the Developer elects to terminate its control of the project, whichever shall first occur. This period of time shall be known as the "Control Period". Developer may terminate its management rights and responsibilities by relinquishing control of the Association in writing to the Owners at any time prior to the expiration of said control period. The Developer shall have the sole and exclusive right to take all actions and do all things in behalf of the Association. During said control period, Developer shall pay all expenses otherwise payable by the Association and as reimbursement therefore 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 (see Article X) and Developer shall have all of the rights of the Association to levy and enforce payment of assessments. During said period, Developer shall not be required to assess or create any reserves and at the termination of said period and the assumption of the operation of the Association by the members. Developer shall neither be required to render an accounting of income and expenses incurred during said control period nor pay over or transfer any funds to the Association.

3.37 Builder Regulation and Approval.

In order to minimize disruption to the project and the Property and to maintain orderliness during construction of Improvements to Lots or Dwellings within the Property:

(a) The Architectural Control Committee ("ACC") or Developer shall have the right and authority from time to time to propose, adopt, alter, amend and revoke rules and regulations applicable to builders, general contractors and subcontractors who are engage in the construction of Improvements on any Lot or dwelling within the Property.

(b) The ACC or Developer shall have the right to approve an Owner's preliminary selection of a builder or contractor, whether a general contractor or subcontractor. No such builder, contractor or subcontractor shall be approved if, in the opinion of the ACC or Developer, such builder, contractor or subcontractor (i) has a history of noncompliance with this Declaration and/or the Covenants (as defined in the original Declaration) or the rules and regulations adopted by the ACC or Developer with respect to builders and contractors on the Property, and such builder or contractor has failed to provide the ACC or Developer with adequate assurance that it will abide by and comply with the requirements of this Declaration and the Re- Stated Covenants and any rules and regulations promulgated thereunder, or (ii) the builder or contractor or subcontractor working thereunder has failed to provide evidence of public liability insurance reasonably acceptable to the ACC or Developer.

(c) As a condition to the approval of any builder or contractor whether as a general contractor or subcontractor, the ACC or Developer may require such builder or contractor to post a bond or other reasonably satisfactory contract for indemnity to cover the cost of repair for any damage caused by such builder or contractor to the roads (including curbs and gutters), storm water drainage systems, and creeks on the Property.

3.38 Waiver of Liability.

The Scope of Review by the Architectural Control Committee (the "ACC") or Developer is limited to appearance only and does not include any responsibility or authority to review or inspect for structural integrity or soundness, compliance with Building Codes or Zoning requirements or Standards of other similar matters.

3.39 Common Areas.

The subject subdivision "BRAXTON COVE" shall include certain Common Areas as may be so designated and described in the Subdivision Map and said Common Areas are also subject to these Covenants and additionally the following provisions:

(a) **No structures, buildings, or improvements** may be placed upon or constructed within the Common Areas other than those built, constructed or placed

there by the Developer without the prior written consent of the Developer or the Architectural Control Committee ("ACC").

(b) Use of Common Areas. Developer expressly reserves to itself, its successors and assigns, including the Lot Owners, the common reasonable use and enjoyment of said Common Areas subject to these Covenants and reasonable rules, regulation and limitations or may hereafter be promulgated by the ACC.

(c) Improvement of Common Areas. The Developer shall have the right to improve the Common Areas or portions thereof with such amenities or improvements, as the Developer in its sole discretion may deem appropriate or desirable.

(c)(1) Developer hereby designates all the property in the subdivision outside of the lots or dwelling units as common area of the common use and benefit of all owners of lots with the subdivision subject to the provisions set forth herein.

(c)(2) The homeowners will pay for the maintenance, replacement, upkeep, repair and any other costs, including but not limited to taxes, insurance, and reserve for replacements of the recreational facilities. See Article VI (Maintenance Charges).

(c)(3) The facilities will be owned by the Developer or by the Association and will be operated by the same. Said expenses shall be payable even though the recreation facilities may or may not be constructed. The BRAXTON COVE Owners Association shall collect equal share per lot so said expenses and also for certain other expenses, all as set forth in Article VI.

(c)(4) Limitation on use of recreation facilities. In order to conserve the recreational facilities to be available for the use of the Owners in the subdivision and to preserve such facilities for the maximum enjoyment and pleasure of all concerned, the use of such facilities shall be limited to only the immediate residents of the subdivision and from time to time their occasional guest. In the event a lot is leased, the tenant and his or her family and occasional guest may use such facilities to the exclusion of the Owner of the lot and his or her family.

(d) Maintenance of Common Areas.

The "BRAXTON COVE Owners' Association, Inc.", on a pro rata basis shall have the responsibility and obligation to contribute to the maintenance and upkeep of the Common Areas and improvements thereof or for the common use and benefit of the subdivision.

(e) Drainage.

All storm water drains, sewers, drainage and/or watershed protection areas or detention or retention ponds, basins or other areas, whether such areas are for surface or subsurface for collection, retention and dispersions located in the subdivision common area shall be maintained by The Homeowners' Association of "BRAXTON COVE ". Such maintenance to include any repairs, replacement and upkeep thereof, with the procuring of services, including, but not limited to, those services specified in "Article VI."

(f) Transfer of Common Area Title.

The Developer shall convey to the Homeowners' Association, once formed, all of the Developer's right, title and interest in the Common Areas of the subdivision, and the Association agrees to accept said conveyance.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE AND PLAN APPROVAL

4.1 Design Criteria for the Property.

The general architectural objective of the Developer for the Property is to create a neighborhood of single family residences constructed in high quality styles, design, material, and colors. The Developer has adopted certain criteria in furtherance of this objective. All single family residences shall be constructed in conformity with the criteria and in accordance with the provision of this Declaration. The Developer, by the terms of this Declaration, has charged the Architectural Control Committee with the approval of all single-family residences, so as to determine that all single-family residences meet the criteria.

4.2 Method of Architectural Control.

So as to establish and maintain the criterion as generally set forth herein, in improvement or structure of any kind, including without limitation, any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer, disposal system, decorative building, landscaping, landscape device or object, shall any addition, change or alteration herein, thereof or thereto be made, unless or until the plans and specifications showing the color, nature,

kind, shape, elevation, material and location of the same, shall have been submitted to and approved in writing by the Architectural Control Committee. All plans and specifications shall be evaluated as to, among other things, the harmony of external design and location in relation to surrounding structures and topography. One set of prints of the drawings (herein referred to as "plans") for each house proposed to be constructed on each lot shall be submitted for review and approval or disapproval by the committee. The plans submitted to the Architectural Control Committee shall be retained by the committee. Said plans should be delivered to the offices of BRAXTON COVE PROPERTIES, LLC Attn: Sam Dariani, 1008 Legacy Drive, Birmingham, AL 35242.

4.3 Architectural Control Committee Membership.

The Architectural Control Committee shall consist of three (3) members. The Architectural Control Committee (the "ACC") shall consist of Sam Dariani, Clay Sweeney and Alex Mims. The majority of the committee may designate a representative to act for it in the event of death or resignation of any member of the committee. Remaining members shall have full authority to designate a successor. The initial members shall be appointed by the Developer. In the event of the death, resignation or other termination of any member, the Developer during the development state (until one hundred percent (100%) of the lots are sold by the Developer) shall have full authority to appoint successor members. The Developer's appointed members shall serve until one hundred percent (100%) of the lots are sold by the Developer whereupon, the Developer's control and authority and Developer's appointed members to the Architectural Control Committee shall close. Upon the sale and closing of one hundred percent (100%) of the lots in the subject subdivision, the Homeowners' Association shall assume full control and authority over the Architectural Control Committee.

4.4 Release.

Neither the Architectural Control Committee nor any member thereof shall be liable to any owner or to any other party for any damage, loss or prejudice suffered on account of the approval or disapproval of any plans, drawings or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its designated representative fail to approve or disapprove within 60 days after plans and specifications have been submitted to it or in any event if no suit to enjoin the construction has been commenced after the completion thereof, approval will not be required and the related covenant shall be deemed to have been fully complied with.

4.5 Powers and Duties.

The Architectural Control Committee (ACC) shall have the following powers and duties:

- (a) To require submission to the Architectural Control Committee 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 home, fence, wall sign, lighting system, site paving, grading, screen enclosure, sewer drain, disposal system, landscaping or

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 Architectural Control Committee. The Architectural Control Committee may also require such additional information as reasonably may be necessary for the Architectural Control Committee to evaluate completely the proposed structure of improvement in accordance with this Declaration.

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

(c) Neither the Architectural Control Committee nor any architect or agent thereof of 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, not for any structural or other defects in any work done according to such plans and specifications.

(d) The three (3) initial members of the Architectural Control Committee, having been appointed by the Developer are as follows:

1. Sam Dariani
2. Clay Sweeney
3. Alex Mims

(e) When the developer has sold all the lots in the subdivision, the ACC will be comprised of three (3) individuals who are lot owners of the lots within the property and at such time the affirmative vote of a majority of the members of the committee shall be required in order to issue any permit and authorization set forth herein

ARTICLE V

ENTRANCES AND EASEMENTS

5.1 **Owner's Easement With Respect to Common Areas.** Every Owner shall have a right and easement of enjoyment in and to all Common Areas subject to the limitations set forth in Section 5.4 of this Declaration.

5.2 **Owner's Mutual Reciprocal, Non-Exclusive, Easement for Ingress and Egress and/or Utilities, Other Services and Drainage.** In the event that all of the Owners shall agree, they may elect to create, by having all affected Owners file a declaration in the Office of the Judge of Probate of Jefferson County, Alabama, one or more mutual, reciprocal, non-exclusive

easement(s) in favor of each Owner, in common with all other Owners, and their respective tenants, employees, guests, invitees, licensees, agents and contractors under, through and over such portions of the Property as are designated therein in order to: (1) permit vehicular and pedestrian traffic over, through and across such areas designated therein as may from time to time be paved and intended and designated for such purposes and use, and (2) install, maintain, use, repair and replace wires, pipes, conduits, utility lines, sewer and storm drainage lines and other services located or to be located on the Property. The use of each such easement may be made subject to such terms and restrictions as the Owners may agree and set forth in such declaration. In the event that all of the Owners shall agree, they may elect to have the Association maintain any such easement or easements.

5.3 **Additional Easements and Uses**. For so long as the Declarant owns any Lot, the Declarant, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Declarants 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 Declarant 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 of Directors of the Association, 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 Office of the Judge of Probate of Jefferson County, Alabama. Such right of the Declarant 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, their respective tenants, employees, guests, invitees, licensees and agents.

5.4 **Limitation**. Any easements which may be created pursuant to this Article 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 rules and regulations governing the use and enjoyment of the Common

Areas which 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.

5.5 **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.

5.6. **Entrance maintenance, landscaping, lighting and waterfall, etc.**

The developer may elect to construct gates, walls, lighting, landscaping, waterfalls, or other amenities at the entrance to the BRAXTON COVE , which shall all be deemed as Common Areas in addition and other property deemed Common Areas in Article I Section 1.2 hereof.. The developer will be responsible for the shortfall of the above costs until all lots are sold that are accessed by such entrance. At this time the above expenses become those of the lot owners for said entrance. The annual maintenance fees paid by the lot owners in ARTICLE VI and XIII will be used to pay the above expenses.

5.7 **Grant of Nonexclusive Easements to Owners.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Board, 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 Area in common with Developer, its successors, assigns, and licensees, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 5.7 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot. The easements and rights granted pursuant to this Section 5.7 are expressly subject to the rights reserved by Developer in this Article V.

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

5.9 **Road Easement, Reservation of Controlled Access Easement.**

(a) **Common Roads.** Subject to the terms and conditions set forth in this Declaration, Developer does hereby grant to each Owner and Occupant a nonexclusive easement over and upon, and the right to use for pedestrian and vehicular travel and transportation purposes, the private streets and roadways, as a Common Area in common with each other and the Developer

and Association, and their respective, successors and assigns, and the rights of all other parties having any interest or rights in and to any or all of such private streets and roadways. Subject to the provisions of Section 5.9(b) below, the easement and right to use granted pursuant to this Section 5.9(a) shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot. To the extent that the Developer is obligated to maintain or otherwise pay any portion of the costs of maintaining Development Entrance Road, Alabama, or otherwise, the Association shall assume all of the Developer's obligations relating thereto and such costs shall be included as Common Area Expenses pursuant to Article VI Section 6.12 and 6.13 and Article VII Section 7.1, below.

(b) Maintenance and Control of Common Roads. Developer reserves for itself and the Association, and their respective successors and assigns, the exclusive right to maintain, repair and replace the private streets and roadways, including without limitation, streets, entrance ways, gates, landscaping, and related Improvements located on or about the private streets and roadways, as Common Areas in accordance with Section 5.9 hereof; provided that no fences, walls, curbs or other obstructions shall be constructed which will impair the ingress and egress of vehicles and pedestrians, or the installation of utilities as herein provided, or otherwise unreasonably interfere with the easements herein granted. Developer reserves the exclusive right to change the location of the private streets and roadways after the recording of the record plat to accommodate construction of Improvements constructed or to be constructed thereon so long as such change in location does not interfere with the easements herein granted. Developer also reserves for itself and the Association and their respective successors and assigns, the exclusive right, but not the obligation to regulate, control and police the traffic on the private streets and roadways and from time to time to establish, modify, and enforce reasonable rules and regulations regarding the use of the private streets and roadways.

5.10 Reservation of Easement for Perimeter Wall or Fence. BRAXTON COVE Developer does hereby establish and reserve for itself and its agents, employees, successors and assigns and does hereby grant to the Association, its agents, employees, successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10') feet in width running parallel to and along the boundary of any Lot which constitutes the perimeter boundary of the BRAXTON COVE Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the BRAXTON COVE Property; provided, however, that (a) neither the BRAXTON COVE Developer nor Association shall have any obligation to construct any such perimeter wall, fence, mound or berm and (b) to the extent either the BRAXTON COVE Developer or Association desires to exercise the easement rights reserved or granted in this **Section 5.10**, that the BRAXTON COVE Developer and Association shall have the further right, at any time and from time to time, to alter, change, modify, terminate and remove any improvements constructed by either of them on any portion of the BRAXTON COVE Property pursuant to this **Section 5.10**.

ARTICLE VI
COVENANTS FOR MAINTENANCE ASSESSMENTS

6.1. **Affirmative Covenant to Pay Assessments.** Each owner, by acceptance of a deed of other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the Association, in the manner set forth herein, all Assessments determined in accordance with the provisions of this Declaration.

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 and of any easement in favor of the Association or owners and for the establishment of reserves therefore, as well as for such other purposes as are property undertaken by the Association.

6.3. **Annual Assessments.** The association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Section VII below) and such other recurring or projected expenses as the Board may deem appropriate. The Assessment year for the Annual Assessment shall be the calendar year.

6.4. (a) **Special Assessments.** In addition to the Annual Assessments specified in Section 6.3 above, the Association may at any time levy one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair to or replacement of any of the Common Areas, including any fixtures and personal property related thereto.

(b) **Individual Assessments.** The Association or Developer may, in their sole discretion, at any time and from time to time, levy and assess as individual assessments against the Owner of any Lot (collectively, "Individual Assessments") the following: (a) any costs or expenses incurred by either Developer or Association as a result of the failure of such Owner, or the Occupant or Guests of an Owner or Occupant, to at all times observe and perform their respective duties and obligations under this Declaration and (b) any costs and expenses incurred by either Developer or Association pursuant to Section 3.37 of Article III, Section 6.12, 6.13, 6.14 or under Article X below. No consent or approval of any Owner shall be required for the levy of an Individual Assessment

6.5. **Board of Duties of the Directors.** The Board of Directors of the Association shall fix the amount of all Assessments, the date of commencement for each Assessment; and the due date of such Assessment, or a per lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that time, prepare a roster of the lots and Assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the amount of the Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than thirty (30) days after fixing the date of commencement.

6.6. **Date of Commencement and Due Date for Assessments.** The liability of any lot for any Assessment shall commence on the date or dates (which shall be the first day of a month) fixed by the Board in the resolution authorizing such Assessment. The due date of any such Assessment (which may be different from the commencement date) shall also be fixed in the resolution authorizing such Assessment (but which need not be the first day of a month). Such Assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as so fixed in the resolution authorizing the Assessment.

6.7. **Allocation of Assessment.** The Board shall allocate a portion of each Assessment to each lot in the proportion that each lot bears to the total number of lots within the Property (to the nearest one-thousandth).

6.8. **Certificates concerning Assessments.** The association, shall upon demand at any time, furnish to any Owner liable for any Assessment or his designee a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6.9. **Liability of Owners for Assessments.**

1. No Owner may exempt himself from liability for any Assessment levied against his lot by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of the lot or in any other manner except as provided in subparagraph (b) below.

6.10. **Effect of Non-payment of Assessments: The Lien, the Personal Obligation; Remedies of the Association.**

A. If any Assessment or other charge or lien provided for herein is not paid in full on the due date set by the Board, then such Assessment charge or lien shall become delinquent on the thirtieth day thereafter, and together with interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot encumbered thereby, and also the personal obligation of its Owner, his heirs, and his or its successors and/or assigns. The personal obligation of any Owner to pay such Assessment, however, shall remain his or its personal obligation and shall not pass to any successors or assigns unless expressly assumed by them.

B. If any Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the highest interest rate allowed by law, and the Association may bring an action against the Owner personally obligated to pay the same and/or commence the foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include the aforesaid interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. Any person (except an Institutional Mortgagee) who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to the Association and shall acquire his interest in any Lot expressly subject to any such lien of the Association.

C. The lien herein granted to the Association shall be perfected by recording a Claim of Lien in the Office of the Judge of Probate of Jefferson County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall have been fully paid. Such Claim of Lien shall include only Assessments which are due and payable when the Claim of Lien is recorded, plus interest, late charges, costs, attorneys' fees and advances to pay taxes, prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such Claim of Lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of an officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.

D. The lien of any Assessments shall be subordinate to the lien of any Institutional Mortgagee bearing a recording date in the Office of the Judge of Probate of Jefferson County, Alabama, prior to the date of recording the Association's Claim of Lien. Where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or where any Institutional Mortgagee or

its designee accepts a deed to a Lot in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for any Assessment pertaining to such Lot or chargeable to the former Owner which became due prior to the acquisition of title to such Lot, unless such delinquent Assessment was secured by a Claim of Lien recorded prior to the recordation of the Institutional Mortgagee's mortgage. Such unpaid Assessments shall be instead collectible from all Owners, including such acquirer, its successors and assigns. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or liability for the enforcement or collection thereof by means other than foreclosure.

E. Any person who acquires an interest in a Lot, except an Institutional Mortgagee as specifically provided above, including, but not limited to, persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the Common Areas until such time as all unpaid Assessments due and owing by the former Owner have been paid in full. Any party who has a contract to purchase a Lot, or who proposes to make a loan secured by a mortgage on a Lot, may, by written request, inquire of the Association whether the Lot is subject to any Assessments and the due date of any such Assessments and the amount of interest due on any delinquent Assessments and an authorized representative of such Association shall give the requesting party a written response, providing all such information, within ten days of the Association's receipt of such inquiry and such response shall be binding upon the Association. If the response is incorrect or if the Association does not make such response within said ten-day period, any such assessment shall not be an obligation of such purchaser or a lien on the Lot, but shall continue to be a personal obligation of the Owner of the Lot.

F. The Association shall have the right to assign its Claim of Lien, and any other lien rights provided for in this Article; for the recovery of any unpaid Assessments to the Developers, to any Owner or group of Owners or to any third party.

6.11. **Exempt Property.** The Board of Directors shall have the right to exempt any portion of the Property from the assessments, charge and lien 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 Common Area as defined in **Article 1.2 and Article V**;
- C. As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

6.12. BRAXTON COVE Landscaping Responsibilities.

(a) Subject to the terms and provisions of Section 6.12(b) and the timely and prompt payment by all Owners of Regular Assessments and Special Assessments, if any, payable by such Owners to the BRAXTON COVE Owners' Association, Inc. (hereinafter the "Association"), the Association covenants and agrees to provide the following (collectively, the "BRAXTON COVE Landscaping Responsibilities") with respect to all Lots and Dwellings with the BRAXTON COVE Property: (i) routine landscaping maintenance in the front, sides and rear yard of each Lot such as cutting grass and lawns, (ii) periodic lawn fertilizing and weed control, (iii) raking leaves and the removal of grass clippings and leaves from all Lots, (iv) trimming shrubbery, (v) adding or replacing mulch in the front and mulch and/or pine straw on the sides and back twice a year, (vi) plant seasonal flowers at least twice per year, (vii) replacing all dead shrubbery on any Lot (subject, however, in each case, to the provisions of Section 3.24 Article III above; and (viii) the cost of removing and replacing dead shrubbery, bushes, plants or trees on any Lot after the first year shall be the cost of the Owner; In the event that the Association removes and replaces such dead shrubbery, bushes, plants or trees, the Association shall levy and assess an individual assessment for costs incurred as provided in Section 6.4 (b).

(b) Notwithstanding anything provided in Section 6.12 (a) above to the contrary, the Association shall have no obligation of any nature to perform any of the BRAXTON COVE Landscaping Responsibilities to the extent (i) of any damage to or destruction of any portion of any Lot or Dwelling caused by or resulting from any Casualty or by virtue of any condemnation, eminent domain proceeding or other taking (in which event the Owner of such Lot shall be solely responsible for all such maintenance and repair obligations resulting therefrom as more particularly provided in Sections 6.13 and 6.14 below, respectively, (ii) any maintenance, cleaning, repair or replacement obligations for which the Association is responsible hereunder which is caused by the willful or negligent act or omission of any Owner, Occupant or their respective guest, shall be performed solely by the Owner of such Lot and (iii) Association determines, in its reasonable discretion, that any BRAXTON COVE Landscaping Responsibilities for any particular Lot are increased as a result of any additional landscaping or other improvements made to such Lot by the Owner thereof, in which event the Association, shall, at its option, have the right to either (1) undertake such additional maintenance, cleaning, repair or replacement obligations and bill to such Owner any such additional costs or expenses paid or incurred by the Association which the Association, in its discretion, determines to be applicable to such Lot or improvements, which additional costs and expenses shall constitute Individual Assessments hereunder or (2) elect not to undertake any such maintenance, cleaning, repair or replacement obligations, in which event the Owner of such Lot or Dwelling shall cause all such maintenance, cleaning, repair and replacement obligations to be performed in a good and workmanlike manner.

6.13 **Responsibilities of Owners.** Except as expressly provided in Section 6.12(a) above, the Owner of each Lot shall be solely responsible for and provide on a routine bases all necessary maintenance and repair all portions of such Owner's Lot and Dwelling and all other improvements situated thereon including, without limitation, (a) all interior and exterior portions of any Dwelling, including repainting and reroofing such Dwelling, (b) any additional landscaping installed, erected, placed or planted on any Lot by any Owner or Occupant pursuant to the provisions of Section 3.24 of Article III above, (c) any fences erected or placed on any Lot any Owner or Occupant pursuant to the provisions of Section 3.10 of Article III above, (d) all doors, windows and window glass, doorknobs, locks, driveways, walkways, sidewalks, patios, exterior lighting and light fixtures and all utility lines, pipes, conduit, equipment and other apparatus located on, under or within such Owner's Lots or Dwelling, (e) any and all other portions of Owner's Lot and Dwelling which are not specifically maintained by the Association pursuant to the terms and provisions of Section 6.12 above, (f) any damage or destruction of any Lot or Dwelling resulting from any Casualty or any taking as a result of, in lieu or in anticipation of the exercise of the right of eminent domain, condemnation or any private purchase in lieu thereof, (g) all other portions of such Owner's Lot which such Owner (and not the Association or Developer) is obligated to maintain pursuant to the terms and provisions of Section 6.12 above and this Section 6.13 and (h) all portions of such Owner's Lot to the extent a Dwelling has not been completed there (as such completion is evidenced by the issuance of a certification of occupancy for such Dwelling by the appropriate Governmental Authority).

6.14 **Owner's Failure to Maintain.** In the event that the Association determines that (a) any Owner has failed or refused to discharge properly his, her or its obligations with regard to maintenance, cleaning, repair or replacement of items for which such Owner is responsible hereunder including, without limitation, any maintenance obligations of any Owner set forth in Sections 6.12 and 6.13 above, or (b) any maintenance, cleaning, repair or replacement for which either the Association or Developer is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective guests, then, the Association or Developer, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give Owner written notice of either the Association's or Developer's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fourteen (14) days within which to complete the same in a good and workmanlike manner of, if the same is not capable of completion within such fourteen (14) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, either the Developer or Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement

at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 6.10 above.

ARTICLE VII

COMMON 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. 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.

7.1. **Maintenance and Repairs of Common Areas.** The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean, attractive, and sanitary condition.

7.2. **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.

7.3. **Fidelity and Directors' Insurance.** Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

7.4. **Enforcement 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, the By-Laws or this Declaration.

ARTICLE VIII

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

8.1. **Membership.** Every Owner, including the Developers, shall, for so long as it is an owner, at all times be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Jefferson County, Alabama, and a true copy of such recorded instrument is promptly delivered to the Association.

Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted), or upon such ownership interest being divested in some other manner.

8.2. **Voting.** Subject to the restrictions hereinafter set forth, each member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When one or more persons hold such interest, all such persons may be members, and the vote(s) for such Property shall be exercised in the manner set forth in the By-Laws, but in no event shall more than one vote be cast with respect to any one Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of this Declaration, the Articles or the By-Laws, the affirmative vote of Owners who own a majority of the total Lots of the Property that are represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth in the By-Laws.

Notwithstanding the provisions of this Article VIII, the Developers shall have the right to elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developers shall fill vacancies, until such time as all Lots have been sold to Owners other than Developers, or the Developers elect, as their option, to terminate their control of the Association, whichever first occurs.

ARTICLE IX

AMENDMENT OF DECLARATION

TERM AND AMENDMENTS

9.1 **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of the Association, Developer, all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of twenty-five (25) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots or Buildings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Jefferson County, Alabama, provided, however, that the rights of way and easements established, granted and reserved in Article V hereof shall run with the land and shall continue to benefit and burden the Property as therein provided.

9.2 **Amendment by Developer.** For so long as there is any Lot without a Dwelling constructed thereon within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Jefferson County, Alabama, without obtaining the

approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 9.4 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Building or materially and adversely affects the title to any Lot or Building, then such amendment shall be valid only upon the written consent of the Owners affected thereby (including Developer who shall have the voting rights attributable to any Lots or Buildings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendments made pursuant to this Section 9.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Building, and each Mortgagee, by acceptance of a Mortgage on any Lot or Building, agrees to be bound by all amendments permitted by this Section 9.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Buildings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Building, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Buildings within the Development.

9.3 **Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 9.2 above, shall be proposed and adopted by the Owners in the following manner:

The Owners of not less than one third (1/3) of the Lots within the Development may submit a written petition to the Association indicating their desire to amend the Declaration which petition shall be signed by said Owners and shall state the proposed amendment with particularity in the petition. The date of delivery of such petition to the Association shall be the record date and the Association shall establish a date, time and place for a meeting of the Owners not less than ten (10) nor more than fifty (50) days after the record date.

The Association shall thereupon deliver written notice of the date, time, place and purpose of the meeting to all Owners on the record date. At the meeting, the proposed amendment must be approved by the Owners holding at least three-fourths (3/4) of the Lots in the Development in order to be adopted; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Tract, Lot or Building in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 9.4 below, then the provisions of Section 9.4 below shall be applicable to such proposed amendment.

Any and all amendments which have been approved in accordance with the provisions of Section 9.3(a) and (b) above shall be set forth in a written instrument executed by the proper officers of the Association and such written instrument shall include the sworn statement of the President or the Chairman of the Board of the Association stating unequivocally that the vote of the requisite number of Owners was duly obtained in accordance with the provisions of this Declaration. Any such amendment shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama.

9.4 **Restrictions on Amendment.** Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 2.3, 2.4, 3.1, 3.2, 4.3, 5.1, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 6.1, 6.3, 6.4, 6.9, 6.12, 6.13, 6.14, 8.1, 8.2, 9.2, 9.3, and 10.1 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

9.5 **Scrivener's Error.**

Notwithstanding the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any owner or mortgages 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 Agreement, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interest of any other party, then such error or omission may be corrected by the filing of any amendment of this Declaration executed by the Developer without the consent of any other party.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 **Control by Developer.** **NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN ARTICLE VIII ABOVE.** Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Building, agrees that Developer shall have the authority to appoint and remove members of the Board of the Association in accordance with the foregoing provisions of this ARTICLE VIII and the provisions of Section 3.36 ARTICLE III above. At such time as there is no Lot without a Dwelling constructed thereon within the Development, or the Developer elects to terminate its exclusive voting rights, whichever shall first occur, a special meeting of the Association shall be

called within a reasonable time but not later than 120 days thereafter at which time the Members of the Association shall elect a new Board which shall undertake the responsibilities of the Board and Developer shall deliver all books, accounts and records of the Association, if any, which Developer has in its possession within ninety (90) days after the election of the new Board.

10.2 Legal Expenses. In addition to the rights and remedies set forth in Article XII above, in the event either the ACC, the Developer, or the Association, through their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The ACC, its agents and representatives, and the Association, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by either the ACC or the Association to cure such violation or breach.

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

10.4 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

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

10.6 Binding Effect. The terms and provisions of this Declaration shall be binding upon, and shall inure to the benefit of Developer, the Association and its members, each Owner, Tenant, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns.

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

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

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

10.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Association and its Members, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Development of 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.

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

10.12 No Partition. Each Owner, by its acceptance of a Lot or Building, waives any right to seek or obtain judicial partition of any portion of the Development.

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

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

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

10.16 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid unless a different method for delivery of notice is specified in this Declaration or applicable laws. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Building within the Development. All notices to the Association or to the ACC shall be delivered or sent in care of Developer to the following address:

BRAXTON COVE PROPERTIES, LLC

Attn: Sam Dariani, Sole Member

1008 Legacy Drive

Birmingham, AL 35242

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

10.16 Assignment. Subject to the provisions of Section 10.13 above, Developer shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer.

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

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

IN WITNESS, WHEREOF, **Developer** has executed this *Declaration of Protective Covenants, Conditions and Restrictions* on this the 18 day of July, 2023.

BRAXTON COVE PROPERTIES, LLC

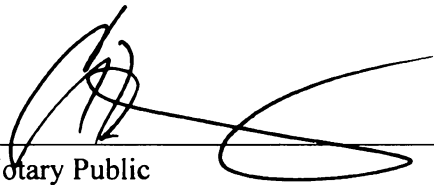
By: 
Sam Dariani
Its: Sole Member

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that **Sam Dariani**, whose name as Sole Member of BRAXTON COVE PROPERTIES, LLC, an Alabama limited liability company, is signed to the foregoing **Declaration of Protective Covenants, Conditions and Restrictions**, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, be, as such sole member and with full authority, executed the same voluntarily for and as the act of the said limited liability company.

Given under my hand and seal this 18th day of July, 2023.



Notary Public

My commission expires: 06/02/2027

This instrument prepared by:
Clayton T. Sweeney
Attorney At Law
2700 Highway 280 East Suite 160
Birmingham, AL 35223



EXHIBIT "A"

Part of Lots 12 and 13, according to Jonas Schwab Co. survey, as recorded in Map Book 5, Page 35, in the Office of the Judge of Probate of Jefferson County, Alabama, more particularly described as follows: Begin at the northwest corner of Lot 12, run thence eastwardly along the North line of said Lot 12, for a distance of 244.40 feet; thence turn an angle to the right of 8327 and run southwardly for a distance of 475.25 feet; thence turn an angle to the right of 13023 and run northwestwardly for a distance of 161.00 feet to point of curve having a radius of 361.66 feet, a tangent distance of 107.50 feet and an intersection angle of 3400 left; thence continue northwestwardly around said curve for a distance of 173.28 feet, to a point in the West boundary line of said Lot 12, 9.5 feet North of the southwest corner; run thence Northwardly along said west boundary line for a distance of 330.50 feet, to the point of beginning.