

Clerk: MORRISL

**RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR BROOKE'S CROSSING, A RESIDENTIAL
SUBDIVISION, INCLUDING ALL PHASES AND ALL SECTORS**

August 1, 2019

ARTICLE IV ARCHITECTURAL CONTROL	8
Section 4.1 <u>ARC Guidelines</u>	8
Section 4.2 <u>Method of Architectural Control</u>	9
Section 4.3 <u>ARC Membership</u>	9
Section 4.4 <u>Release</u>	9
Section 4.5 <u>Powers and Duties</u>	10
Section 4.6 <u>Variances</u>	11
Section 4.7 <u>Additional Remedies</u>	11
ARTICLE V RESTRICTIONS	12
Section 5.1 <u>Use Restrictions</u>	12
Section 5.2 <u>Storm Drains</u>	13
Section 5.3 <u>Common Areas</u>	13
Section 5.4 <u>Amenity Center</u>	13
Section 5.5 <u>Tenants</u>	13
Section 5.6 <u>Enforcement</u>	13
Section 5.7 <u>Model Homes</u>	13
Section 5.8 <u>Buffer Areas</u>	14
Section 5.9 <u>Storm water System Maintenance Plan</u>	14
Section 5.10 <u>Additional Restrictions</u>	15
ARTICLE VI COVENANT FOR ASSESSMENTS	15
Section 6.1 <u>Affirmative Covenant to Pay Assessments</u>	15
Section 6.2 <u>Purpose of Assessments</u>	15
Section 6.3 <u>Individual Assessment</u>	16
Section 6.4 <u>Annual Assessments</u>	16
Section 6.5 <u>Special Assessments</u>	16
Section 6.6 <u>Special Meeting</u>	16
Section 6.7 <u>Amount of Assessments</u>	16
Section 6.8 <u>Certificate</u>	17
Section 6.9 <u>Effect of Non-Payment of Assessments; Liens; Remedies</u>	17
Section 6.10 <u>Lien Subordinate to Mortgages</u>	18
Section 6.11 <u>Damages</u>	18
Section 6.12 <u>Exempt Property...</u>	18
ARTICLE VII COMMON AREA EXPENSES	18
Section 7.1 <u>Common Area Expenses</u>	18
Section 7.2 <u>Reserves.</u>	20
Section 7.3 <u>Enforcement of Declaration and Rules and Regulations</u>	20
ARTICLE VIII NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES	20
Section 8.1 <u>Protective Covenants Running with the Land</u>	20
Section 8.2 <u>Remedies for Default</u>	21
Section 8.3 <u>Nature of Remedies: Waiver</u>	21
Section 8.4 <u>No Reverter</u>	21

ARTICLE IX FUNCTION OF ASSOCIATION	21
Section 9.1 <u>Name</u>	21
Section 9.2 <u>Maintenance Responsibilities</u>	21
Section 9.3 <u>Other Rights of Association</u>	22
ARTICLE X AMENDMENT OF DECLARATION	22
Section 10.1 <u>Amendment by Association</u>	22
Section 10.2 <u>Scrivener's Error</u>	23
ARTICLE XI PERIOD OF DEVELOPER CONTROL	23
Section 11.1 <u>Developer Control</u>	23
ARTICLE XII GENERAL PROVISIONS	23
Section 12.1 <u>Deeds Subject to Covenants</u>	23
Section 12.2 <u>Obligation of Owner to Repair, Replace, or Restore</u>	23
Section 12.3 <u>Indemnity for Damages</u>	24
Section 12.4 <u>No Trespass</u>	24
Section 12.5 <u>Notices</u>	24
Section 12.6 <u>Severability</u>	24
Section 12.7 <u>Governing Law</u>	24
Section 12.8 <u>Captions</u>	24
Section 12.9 <u>Usage</u>	25
Section 12.10 Conflict	25
Section 12.11 Effective <u>Date</u>	25

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BROOKE'S CROSSING, A RESIDENTIAL SUBDIVISION INCLUDING ALL PHASES
AND SECTORS**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made as of this 15 day of August, 2019, by **BROOKE'S CROSSING HOMEOWNERS' ASSOCIATION, INC.**, an Alabama not for profit corporation ("Association"), which declares that the **Residential** real property hereinafter described, 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 "Protective Covenants"); and

WHEREAS, the Association's members are presently the owners of all of the real property described on Exhibit A attached hereto, a portion of such real property being described in the Plat of Brooke's Crossing Subdivision, Phase One and the plat of Brooke's Crossing Subdivision, Second Sector (Residential section) Lots 101-138 and Lots 201-222 (Commercial Lots 1 and 2 shall be excluded from these covenants, conditions and restrictions) prepared by Miller, Triplett and Miller Engineers, Inc. and recorded in the Office of the Judge of Probate of Jefferson County, Alabama Map Book 224, Page 74 and Map Book 230, Page 20 (such property, together with any other property which may become subject to the Protective Covenants as hereinafter property, being collectively referred to herein as the "Property"); and

WHEREAS, Brooke's Crossing, LLC (Developer) did develop the Residential Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community (collectively, the "Subdivision"); and

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

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

NOW, THEREFORE, The Association declares that the Property and such additions thereto as may hereafter be made pursuant to Section 2.2 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 Property, as well as their heirs, successors and assigns.

**ARTICLE I
DEFINITIONS**

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

Section 1.1 "**Additional Property**" shall mean any additional property, which may hereafter be subjected to the Protective Covenants as set forth in Section 2.2 hereof.

Section 1.2 "**Amenity Center**" shall mean the clubhouse, swimming pool, children's playground, and such other community features as the Association, in its sole discretion, may construct on the Property , together with all furniture, furnishings, equipment, appliances, playground equipment, parking areas, and other personal property appurtenant to the operation and use of the Amenity Center.

Section 1.3 "**Architectural Review Committee**" or **ARC**" shall mean the Architectural Review Committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

Section 1.4 "**ARC Guidelines**" shall mean the written architectural, landscaping, and use regulations, specifications, procedures, guidelines and policies for the Subdivision, each of which shall be promulgated by the **ARC** in accordance with applicable provisions of this Declaration.

Section 1.5 "**Articles**" shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

Section 1.6 "**Assessment**" shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include the Annual Assessments, Special Assessments, Individual Assessments, and Common Area Assessments, all as described in Article VI hereof.

Section 1.7 "**Association**" shall mean and refer to Brooke's Crossing Homeowners' Association, Inc., an Alabama non-profit corporation, formed or to be formed at or about the same time as the filing of this Declaration under the Alabama Nonprofit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association refer.

Section 1.8 "**Board**" or "**Board of Directors**" shall mean the Board of Directors of the Association.

Section 1.9 "**By-laws**" shall mean the By-laws of the Association, as such by-laws may be amended from time to time.

Section 1.10 "Common Area" or "Commons Areas," as the case may be, shall mean and refer to all real and/or personal property, including property which the Association owns, leases, or otherwise maintains for the use or enjoyment of the members of the Association, and which shall be responsibility of the Association to maintain, and which shall include, without limitation, the following:

- (a) the Amenity Center;
- (b) all detention ponds situated within the Property or any Additional Property hereafter subjected to these Protective Covenants;
- (c) the monument sign and landscaping for entrance areas into the Subdivision, which is subject to the Entrance Easement;
- (d) all installations for the furnishing of electricity, telephone, natural gas, sanitary sewer (including pumping stations), water service and television cable not immediately appurtenant to any Dwelling;
- (e) all outdoor exterior lighting not situated within the boundaries of any Lot;
- (f) landscaping, trees, and walkways not situated within the boundaries of any Lot (which shall include the main entrance, median, and any landscaping within the entrance areas);
- (g) all portions of the Property which are designed or designated on the Plat or otherwise for collecting, retaining and discharging surface and subsurface water from the Property, including without limitation all drainage/utility easement areas;
- (h) any and all other areas designated on any Subdivision Record Map as a "Common Area."

Section 1.11 "Control Period" shall have the meaning ascribed to it in Section 11.1 hereof.

Section 1.12 "Declaration" shall mean this entire document, as same may from time to time be amended.

Section 1.13 "Developer" shall mean Brooke's Crossing, LLC, an Alabama limited liability company, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

Section 1.14 "Dwelling" shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof and the ARC Guidelines.

Section 1.15 "Entrance Easement" shall have the meaning ascribed to it in Section 3.1 hereof.

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

Section 1.17 "Lots" shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

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

Section 1.19 "Mortgage" shall mean any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Jefferson County, Alabama.

Section 1.20 "Mortgagee" shall mean the holder of any Mortgage.

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

Section 1.22 "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

Section 1.23 "Qualified Owner" shall mean any owner whose assessments are not in arrears; whom are in full compliance with these covenants, conditions and restrictions; and are in full compliance with ARC requests.

Section 1.24 "Property" shall mean and refer to the real property more particularly described on Exhibit A attached hereto, including all the Lots within the Subdivision, all Common Areas, and all easements as reflected on the Subdivision Record Map.

Section 1.25 "Protective Covenants" shall mean all those covenants, conditions and restrictions contained in this Declaration.

Section 1.26 "Purchaser" shall mean any person who acquires any Lot

Section 1.27 "Sector" means any group of Lots within the Subdivision for which a Subdivision Record Map is recorded.

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

Section 1.29 "**Subdivision**" shall mean all Sectors or phases of Brooke's Crossing, collectively, and any amendments or supplements thereof.

Section 1.3029 "**Subdivision Record Maps**" shall mean each recorded map or plat for one or more Sectors or phases of Brooke's Crossing, each as shall be recorded in the Office of the Judge of Probate of Jefferson County, Alabama, and any amendments or supplements thereof.

ARTICLE II PROPERTY SUBJECT TO RESTRICTIONS

Section 2.1 **General Declaration.** The Property which presently is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration is in Trussville, Jefferson County, Alabama. Any part of the Property and each Lot or Dwelling thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof.

Section 2.2 **Additional Property.** The Association reserves the right, in its sole and absolute discretion and with the consent of its members, at any time and from time to time during the pendency of this Declaration, to add and submit or remove and unencumber any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by the Association, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by the Association, in the manner required for the execution of deeds and recorded in the Probate Office of Jefferson County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office of Jefferson County, Alabama where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Association, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property.

Section 2.3 **Rights of Developer.** The Developer Control Period has now ended, and Developer no longer owns any property or lots in the subdivision. As such, the Developer no longer has any rights of any kind with respect to any Lot, deed, contract, modifications of this Declaration, the Association, or its Members or any Owner, Occupant, or Mortgagee of any Lot or Dwelling

Section 2.4 **Release of Restrictions.** The Association shall have no obligation to release any portion of the Property from any part of this Declaration.

Section 2.5 **Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot or Dwelling within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot or Dwelling within the Property, and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

Section 2.6 **Development of Property.** All formal development of the subdivision has ended, but the Association retains the right, but not the obligation, to make improvements and changes to any and all common areas, including, but not limited to, (i) installation and maintenance of any water, sewer and any other utility systems and facilities, and (ii) installation of security and trash and refuse facilities.

Section 2.7 **Subdivision Plat.** The subdivision plat is now set and will no longer be open to modification, amendment, or revision.

ARTICLE III EASEMENTS

Section 3.1 **Grant of Nonexclusive Easements to Owners:**

(a) **Common Areas.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the

Common Areas, The Association does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

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

Section 3.3 **Additional Easements and Uses.** The Association, on its own behalf and on behalf of all Owners, who hereby appoint the Association, 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 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 Probate Office of Jefferson County, Alabama. Such right of the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

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

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

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

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

ARTICLE IV ARCHITECTURAL CONTROL

Section 4.1 ARC Guidelines.

- a) The general architectural objective of the Association for the Property is to maintain a neighborhood of Dwellings constructed of high quality styles, design, materials, and colors. All Dwellings shall be constructed in conformity with the ARC Guidelines applicable to the Sector within which such Dwelling is located, and in accordance with the provisions of this Declaration. The Association, by the terms of this Declaration, has charged the ARC with the approval of all Dwellings, prior to construction, to determine that all Dwellings meet the ARC Guidelines applicable to same. In appropriate cases, the ARC shall be entitled to grant variances from the ARC Guidelines, as described in Section 4.6 hereof.
- b) The ARC is hereby empowered and authorized to formulate and promulgate ARC Guidelines for the Subdivision to govern (i) the review, approval, rejection, form, content and provisions of all landscaping or architectural submissions, and (ii) the rules and regulations governing restrictions as to the use of the Property.

The ARC will provide a copy of the ARC Guidelines, and any amendments thereto, to each Owner. The ARC Guidelines must be followed by all applicants submitting plans for review and approval by the ARC. Decisions of the ARC shall be based upon the uniform application of such reasonable, but high, standards as are consistent with the ARC Guidelines, such standards to include, among other things, the harmony of external design including roof style (pitch, shingle and color), chimney, exterior siding (material and color), windows and trim, shutters (color and style), front doors, garage doors, location in relation to surrounding structures and topography, variation in front setbacks, the type, kind and character of buildings, structure and other improvements, and aesthetic qualities in general.

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

Section 4.3 **ARC Membership.** The ARC shall consist of three (3) members, with the members appointed by Association. In the event of the death, resignation or other termination of any members, the Association shall have full authority to appoint successor members. The Association shall have full control and authority over the ARC. The Association reserves the right to remove any member from the ARC at any time with or without cause, in its sole discretion.

Section 4.4 **Release.** Neither the ARC nor any member thereof shall be liable to any Owner, Occupant 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. Neither the ARC nor any member thereof shall have any liability for structural defects, building code compliance, or similar issues, the sole responsibilities of the ARC being limited to aesthetic approvals and compliance with this Declaration. Without limitation on the foregoing, the ARC shall have no obligation to review any submittals for their compliance with applicable building codes or other inadequacy or deficiency, and approval of any submitted plans by the ARC shall not constitute a basis for any liability of the members of the ARC, Members of the Board, or the Association as regards any failure of such approved plans to conform to any applicable building codes or other inadequacy or deficiency in the said plans. Neither the ARC, nor any of its members, shall in any way or manner be held liable to any Owner, the Association or any other person or entity for its good faith exercise of the discretionary authority herein conferred.

Section **4.5 Powers and Duties**. The ARC shall have the following powers and duties:

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

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

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

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

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

The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to Brooke's Crossing Home Owners Association, Inc. P.O. Box 541, Trussville, AL 35173 or such other address as may be reflected by Association's Website, or by the ARC in a duly recorded instrument filed in the Probate Court of Jefferson County, Alabama.

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

(c) In the event the ARC fails to approve or disapprove any submitted plans by notice in writing sent to the applicant within thirty (30) days following submission to the ARC, then, unless an extension of time has been accepted by the applicant, the applicant may (i) at any time thereafter inform the ARC and the Board, by written notice sent separately to both the ARC and the Board, of the ARC's failure to approve or disapprove the applicant's submitted plans (which notice shall specifically list and identify all materials comprising the applicant's submitted plans), and (ii) if the ARC shall fail to approve or disapprove the applicant's submitted plans within thirty (30) days following its receipt of the said notice, the submitted plans will be deemed to be approved by the ARC to the extent same conform to all other express terms and provisions of this

Declaration. The approval by the ARC of any plans and specifications for any Dwelling, improvement, or structure shall not be deemed a waiver of the right to object to any of the features or elements embodied in any subsequent plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any Dwelling, improvement, or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARC, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARC, then the Owner shall, upon and in accordance with a demand by the ARC, cause the Dwelling, improvement, or structure either to be restored to its original condition or to comply with the plans and specification as approved by the ARC, and shall bear all costs and reasonable attorneys' fees of the ARC. Any agent or member of the ARC may at any reasonable time enter any building or property subject to the jurisdiction of the ARC which is under construction or on or in which the agent or member may believe that a violation of these Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any Dwelling, improvement, or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the ARC that the construction thereof has been completed in accordance with the plans and specifications approved by the ARC. If the ARC shall fail, for a period of thirty (30) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The ARC may from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

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

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

Section 4.6 Variances* The ARC, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the Committee grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the Committee, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

Section 4.7 Additional Remedies. In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the ARC or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or Occupant, or

the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall have the right, at its option, (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC or the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling until any work in place which does not comply with the plans and specifications approved by the ARC or the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other enforcement rights specified in this Declaration.

ARTICLE V RESTRICTIONS

Section 5.1 **Use Restrictions.** The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the ARC and subject to any restrictions and limitations as the ARC may reasonably request), including all types of home industry, will be permitted. No building or structure other than a Dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

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

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

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

Section 5.3 **Common Areas**. The Developer has deeded deed to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The conveyance to the Association is made upon the condition that the Association takes control of the Common Areas, assesses the Common Areas in the name of the Association for tax purposes, improves and maintains the Common Areas and obtains and maintains liability insurance coverage on the Common Areas in the name of the Association.

Section 5.4 **Amenity Center**. The Association will adopt rules and regulations governing the use of the Amenity Center by the Owners, their guests and invitees, and will publish the same to the Owners. The Association is hereby empowered and authorized to formulate and promulgate such additional rules, regulations, procedures, guidelines and policies affecting the use of the Amenity Center as the Association shall from time to time deem necessary, and shall publish such additional rules and regulations, procedures, guidelines and policies to the Owners.

Section 5.5 **Tenants**. It shall be the responsibility of each Owner to ensure that any tenant of any Lot or portion thereof which is owned by him receives a copy of these Protective Covenants and that every lease utilized by such Owner contains a provision therein stating that every tenancy is subject to all the terms and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs of enforcing the same.

Section 5.6 **Enforcement** If a determination is made by the ARC that any of the restrictions in this Article V or the ARC Guidelines are being or have been violated upon any Lot, then the ARC shall so notify the Owner in writing, specifying the violation. If within fifteen (15) days from such notification, the ARC shall make a second determination that sufficient progress has not been made to remedy the violation, the ARC may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in **Section 4.7** herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the ARC may treat all such costs and expenses thereof as a charge which shall become an appropriate proceeding at law or in equity.

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

Section 5.8 **Stormwater System Maintenance Plan**. The storm water system within the Property constitute Common Areas and, as such, will be owned and maintained by the Association. Certain maintenance items are required to prevent the malfunctioning of this stormwater system. At a minimum, the maintenance and inspection listed below shall be performed by the Association (or its designated representative):

(a) **Daily Operations**:

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

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

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

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

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

(ii) The Association will inspect the riprap at the emergency spillway of the detention pond, on a monthly basis.

(iii) The Association will inspect the outlet of the detention/retention pond for any cracks, settlement, damage or erosion, on a monthly basis. In the event any cracks, settlement, damage or erosion is detected, the Association shall retain a Professional

Engineer to inspect and make recommendations for repair of these structures, if the same is required by any governmental agency.

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

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

(c) Further Maintenance Items:

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

Section 5.9 Parking. No junk vehicle, house trailer, or commercial vehicles, such as, but not limited to, moving vans, trucks, trailer, wreckers, hearses, compressors, concrete mixers, or buses, shall be kept on any lot for any reason other than original construction of a home on said lot, unless approved by the ARC as outlined in said covenants and restriction. No storage of Boats, boating equipment, travel trailers, camping equipment, jet skis, canoes, or other water craft, or recreational vehicles shall be visible from the street. The location and design of enclosures for boating, camping, traveling (other than automobiles) and related equipment shall be approved by the ARC as outlined in these said covenants and restriction.

No parking of any vehicle shall be permitted on any street, or cul-de-sac of Brooke's Crossing subdivision overnight. All vehicles, except those described herein above shall be parked in the garage or driveway of the respective homeowner.

No parking of any vehicle shall be permitted on any part of the homeowner's lawn, sidewalk, or easement of any lot overnight.

If the ARC determines that there is a violation, the homeowner can be fined \$100.00 per day if the violation continues, and the ARC can have the vehicle removed at the homeowner's expense.

Section 5.10 Pets. Only common domestic pets shall be allowed at any residence provided they are not kept or bred for any commercial purpose. Pets shall not be allowed to roam at large, and pets shall not be housed, fenced or otherwise maintained on a regular basis outside of the primary dwelling. Kennels, dog runs, dog houses and other similar pet facilities are prohibited. No farm animals, livestock, or poultry of any kind shall be kept, maintained or in any way allowed at any residence. The Association shall have the absolute authority to prohibit unusual or exotic animals, birds, or reptiles from being kept at a residence and shall have the authority to prohibit or regulate loud or noisy pets. No vicious animals shall be allowed anywhere in the neighborhood. Such animals include, but are not limited to, Pit Bulls, Rottweilers, Dobermans or any mixed breed animal that contains such animals. No owner shall be allowed to have more than two (2) dogs or two (2) cats at any residence and those animals shall be leashed if outside of the owner's property.

The Association has the right to enforce this provision. In the event a homeowner is found in violation of this section, the Association shall have the right to access a \$50.00 per day fine on said homeowner until the homeowner comes into compliance with this section.

Section 5.11 Nuisances No noxious or offensive activity or orders shall be permitted on or to escape from any homeowner's dwelling or lot. Nor shall anything be done thereon which is or may become an annoyance or nuisance, either temporarily or permanently. A dog allowed to bark repeatedly and for an extended period will be considered a nuisance. The playing of loud music that can be heard in a neighboring yard will be considered a nuisance.

Section 5.12 **Lot and Lawn Maintenance** All lots shall be maintained in a manner by homeowners to preserve the beauty and uniformity of the subdivision. No Weeds, Grass over five (5) inches, 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 upon any part of any lot. Lawns will be sodded in all visible areas except for ARC approved nature areas and landscaping. If a homeowner does not correct a violation of this section within 5 days of notice by the Association, the association or its agent(s) has the right to enter the lot during normal working hours and correct the violation at the homeowner's expense.

Section 5.13 **Additional Restrictions**. Additional restrictions may be contained in the ARC Guidelines and each Owner shall be subject to the terms and conditions thereof.

ARTICLE VI COVENANT FOR ASSESSMENTS

Section 6.1 **Affirmative Covenant to Pay Assessments**. Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of these Protective Covenants. The Annual, Special, and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due and shall constitute a charge or lien upon the Lot against which the Assessment is made.

Section 6.2 **Purpose of Assessments**. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

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

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

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

Section 6.6 **Special Meeting.** Written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 above shall be sent to all Qualified Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Qualified Owners, either in person or by proxy, entitled to cast fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

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

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

Section 6.9 **Effect of Non-Payment of Assessments: Liens: Remedies.** Any Assessments (whether Annual, Special, or Individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any Assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

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

(b) The Association may enforce the lien created pursuant to Section 6.1 above as hereinafter provided. The lien created pursuant to Section 6.1 above shall secure the payment of any and all Assessments (Annual, Special, and Individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the Assessments and in maintaining any legal action in connection therewith. If any Assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on the defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Association may file a claim of lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Directors of the Association or any officer of the Association and shall be filed for record in the Probate Office of Jefferson County, Alabama. The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to

bring all actions against such Owner personally for the collection of all amount due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner may waive or otherwise be exempt from the liability to pay the Assessments provided herein.

Section 6.10 **Lien Subordinate to Mortgages**- The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot, but not subordinate to any other lien or encumbrance of any type. No Mortgagee shall be required to collect Assessments on behalf of any Owner. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot.

Section 6.11 **Damages**. In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then the Association or the ARC, or any Member thereof, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, the Association or the ARC, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 6.9(b) above. The failure of the Association or the ARC to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

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

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

ARTICLE VII COMMON AREA EXPENSES

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

of the Common Areas and/or the Property as expenses subject to collection by assessment:

(a) Maintenance and Repair of Common Areas:

(i) The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean and attractive condition, if any, including the charges in Section 6.5 of this Declaration, as well as the following charges:

(ii) Any electrical costs to run all common lighting and any other electrical device necessary to the Common Areas;

(iii) Pool Maintenance;

(iv) Utility bills for the Amenity Center and maintenance of the Amenity Center;

(v) Sanitary sewer and storm sewer lines within private drives;

(vi) Gas bills of the Association, if any;

(vii) Water bills and sprinkler systems for use on the Common Areas;

(viii) Any insurance for the Common Areas;

(ix) Any management fees, accounting fees, and legal expenses incurred by the Association;

(x) Any and all other property owned by the Association; and

(xi) Such other matters which involve the use of the Common Areas as determined by the Association.

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

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

(d) Insurance:

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

(ii) Adequate property and casualty insurance for the benefit of the Association insuring all insurable improvements in and to the Common Areas against loss or

damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

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

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

(v) All insurance coverage authorized hereunder shall be written in the name of the Association. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

Section **7.2 Reserves.** The Association may establish reserves in escrow for the payment of Common Expenses in the future or large upcoming expenses. Reserves may be carried over from year to year if necessary.

Section **7.3 Enforcement of Declaration and Rules and Regulations.** All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, the By-Laws, or this Declaration shall be paid by the homeowner(s) in violation of said covenants, rules, or regulations.

ARTICLE VIII NATURE OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES

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

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

Section 8.3 **Nature of Remedies: Waiver.** All rights, remedies and privileges granted to the ARC, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

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

**ARTICLE IX
FUNCTION OF ASSOCIATION**

Section 9.1 **Name.** The name of the Association for the Property is Brooke’s Crossing Homeowners' Association, Inc., which has been incorporated as a nonprofit corporation.

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

- (a) Maintain, install, reinstall, construct and repair all the improvements within the Common Areas, to include plantings and shrubbery, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;
- (b) Maintain and manage the Common Areas shown on the Subdivision Record Map to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity to be conducted thereon;
- (c) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

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

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

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

ARTICLE X AMENDMENT OF DECLARATION

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

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

**ARTICLE XI
PERIOD OF DEVELOPER CONTROL**

Section 11.1 Developer Control The period of developer control has now ended, and the Developer no longer owns any lots in the subdivision

**ARTICLE XII
GENERAL PROVISIONS**

Section 12.1 **Deeds Subject to Covenants**, Each deed for the sale of a Lot in the Subdivision will be subject to the terms and conditions of this Declaration and the said Deed will contain a reference to this Declaration.

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

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

Section 12.4 No Trespass. Whenever the Association, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

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

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

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

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

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

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

Section 12.11 Effective Date. This Declaration shall become effective upon its recordation in the Probate Court of Jefferson County, Alabama.

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EXHIBIT A

Legal Description

Lots 101 - 138 of Brooke's Crossing Phase One as recorded in Map Book 224 Page 74 in the probate office of Jefferson County, Alabama and lots 201-222 of Brooke's crossing Second Sector as recorded in Map Book 230, Page 20 in the probate office of Jefferson County, Alabama

IN WITNESS WHEREOF, the Association has caused this Declaration to be executed on the 30th day of August, 2019.

ASSOCIATION:

Name: Robin Thrailkill
Its President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

Andrea Thraetford, a Notary Public in and for said County, in said State, hereby certifies that Robin Thrailkill, whose name as President Brooke's Crossing Home Owners Association Inc., an Alabama not for profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this, the 20 day of August, 2019.

[SEAL]

Notary Public Andrea Thraetford
My Commission Expires: 12-27-2019