

**DECLARATION OF PROTECTIVE COVENANTS FOR  
BLACKBERRY VILLAGE**

As recorded in Map Book 7, Page 195 in the  
Probate Office of Lauderdale County, Alabama

RLPY 2010 10611  
Recorded In Above Book and Page  
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Dewey D. Mitchell  
Probate Judge  
Lauderdale County, AL  
Recording Fee 59.00  
TOTAL 59.00

STATE OF ALABAMA)  
COUNTY OF LAUDERDALE)

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, the undersigned, BLACKBERRY VILLAGE DEVELOPERS, LLC, an Alabama corporation (which together with its successors and assigns, is hereinafter referred to as "Developer") is the owner of all of that certain real property situated in Lauderdale County, Alabama, which is more particularly described as Blackberry Village, Seventh Sector, as recorded in Map Book 7, Page 195, in the Probate Office of Lauderdale County, Alabama, (the "Property"). All lots shown on the subdivision plat (the "Subdivision Plat") for the Property are hereinafter referred to individually as a "Lot" and collectively as "Lots". The Property is part of a residential development planned by a Developer. As used in these Protective Covenants, the term "Development" shall mean and refer to any subdivision or real estate property filed for record with the Judge of Probate which may be developed in the future by Developer as a residential subdivision. THESE PROTECTIVE COVENANTS ARE APPLICABLE ONLY TO THE PROPERTY AND SHALL NOT EXTEND TO OR BINDING UPON ANY OTHER PORTIONS OF THE DEVELOPMENT OR ANY OF THE OTHER REAL PROPERTY.

WHEREAS, the Developer desires to subject all of the Property and each Lot located thereon to the easements, covenants, conditions, assessments, limitations, and restrictions hereinafter set forth.

NOW THEREFORE, Developer does hereby expressly adopt the covenants and limitations for the Property as set forth in these Protective Covenants and does hereby declare that the Property and each Lot located within the Property shall be and the same are hereby subject to the following easements, covenants, conditions, assessments, limitations, and restrictions.

ARTICLE 1

EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

- 1.01 All Lots shall be known and described as residential Lots and shall be used for single family residential purposes exclusively. No Lot shall be subdivided or re-subdivided without the prior written approval of Developer.
- 1.02 No structure shall be erected, altered, placed or permitted to remain on any Lot other than (1) detached single family dwelling not to exceed two and one half (2-1/2) stories, or thirty five (35) feet in height, and a private garage, and other outbuildings incidental to and necessary for proper residential use of the Lot. No mobile home or modular housing is allowed. Separate garage

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buildings or other out buildings are permitted if approved by the architectural control committee, hereinafter referred to as "Committee", established by Developer pursuant to Article III hereof.

- 1.03 Notwithstanding anything provided to the contrary herein, Developer shall be permitted to construct and maintain on any Lot a structure and related facilities which may be designed and used as a construction field office and as a sales/marketing office.
- 1.04 Subject to provisions of Articles VII or VIII below and the rights retained below the Committee, each Lot and any dwelling, building, or other structure constructed or placed thereon shall be subject to the following minimum setbacks:

- Front: As per local governing ordinances;
- Side: As designated by Developer;
- Rear: As per local governing ordinances.

The Committee reserves and shall have the right to grant variances to the foregoing setback requirements. No structure other than the residential dwelling and any attached garage or guest house may be constructed closer to the ingress and egress road than the back of the residential dwelling. Any buildings of any nature and must be approved by the Committee.

- 1.05 No Lot shall be used except for single-family residential purposes. No dwelling shall be erected on any Lot without the approval of the Architectural Control Committee. All plans shall conform to minimum heated living space as determined and/or required by Developer. All dwellings will have wooden, vinyl clad, aluminum clad or painted aluminum windows.
- 1.06 The entrance ways to the Development, all areas on the recorded Subdivision Plat which are depicted as common area or beautified easements and any and all other areas or improvements within the Development which Developer may from time to time in its sole discretion designate as common areas within the Development, shall be, for the purpose of maintenance and upkeep, considered common area, (collectively, the "Common Area"), and shall be maintained by the Blackberry Village Homeowner Association, Inc. (the "Association") as hereinafter provided.

ARTICLE II  
GENERAL REQUIREMENTS

- 2.01 It shall be the responsibility of each Lot owner (which together with their respective heir executors, personal representatives, successors, and assigns is herein individually referred to as an "Owner" and collectively as "Owners") to prevent any unclean, unsightly, or unkempt conditions of any dwelling buildings or grounds on such owner's Lot which may tend to decrease the beauty of the specific area of the neighborhood as a whole. Any and all dwellings, buildings, structures, and any other improvements of any nature to any Lot much be approved by the Committee.
- 2.02 No refuse pile or unsightly object shall be allowed to be placed or suffered to remain upon any part of any Lot or the Property, including vacant Lots or Common Area. Developer, for itself and the Association reserves the right (after ten (10) days prior to written notice to an Owner) to enter any Lot during normal working hours for the purpose of removing trash or refuse there from which, in the sole opinion of either Developer or the Association, detracts from the overall beauty

and safety of the Property, and may charge the Owner of such Lot a reasonable cost for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity or as hereinafter provided.

- 2.03 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs and/or cats (not to exceed two (2) in number) and other indoor household pets may be kept on each Lot provided they are not kept, bred, or maintained for any commercial purpose. Subject to appropriate zoning ordinances, no household pets shall be permitted to run at large and shall be kept on a leash at all times when they are allowed off property by their owner.
- 2.04 No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to the other Owners, or which would be in violation of any applicable governmental law, ordinance or regulation.
- 2.05 No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or any other structure designed for use in boring oil or nature gas shall be erected, maintained, or permitted upon any Lot.
- 2.06 No trash, garbage, or other refuse shall be dumped, stored, or accumulated on any lot or common area. 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. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted, except during the construction of a dwelling on such Lot, or with approval of or by the Fire Department having jurisdiction over the Property.
- 2.07 Except as authorized in Section 1.03 above, no structure of a temporary character, trailer, basement, tent, or shack shall be used at any time as a residence either temporarily or permanently or otherwise allowed remaining on any Lot without the Committee's approval. There shall be no occupancy of any dwelling unit until the interior and exterior of the dwelling is completed and a Certificate of Occupancy for such dwelling has been issued by the appropriate governmental authorities.
- 2.08 No signs of any type, kind or character shall be displayed in public view on or around any lot except as follows:
  - (a) Professional sign of not more than five square feet (2.5 ft x 2 ft) advertising the property for sale, i.e., real estate sign;
  - (b) Professional sign of not more than five square feet (2.5 ft x 2 ft) promoting or supporting the candidacy of an identified individual seeking public office in an upcoming election, i.e., a political sign, but said sign must be promptly removed following said election.
  - (c) The signs permissible under this section shall be placed on lots so as not to impede or interfere with the mowing and maintaining of lawns.
  - (d) No information boxes or signs of any kind, commercial signs including "For Rent", "For Sale", Contractor and other similar signs shall be erected or maintained on any Lot except as may be required by legal proceedings. In the event signs are required by legal

proceedings, the Developer reserves the right to restrict size, color and content of such signs. Developer also reserves the right to erect sales signs at appropriate locations to include individual signs on Lots. Signs for temporary events like "open houses" may be utilized as determined by the Association.

- 2.09 When the construction of any dwelling is once begun, work thereon must be prosecuted diligently and continuously and the dwelling on such Lot must be completed within twelve (12) months.
- 2.10 Openings of garages may be visible from the street. All garage doors on the front of the dwelling shall be solid with no windows. The garage doors shall be closed when not in use.
- 2.11 Outside air conditioning units shall not be located in the front yard. Unless required by any applicable governmental authority utility meters shall not be located on the front of a dwelling. All outside air conditioning units and utility meters shall be screened by appropriate landscaping so as not to be visible from any public street.
- 2.12 Wood frame, vinyl, or painted aluminum windows will be used exclusively on the sides, fronts, and rears of all dwellings constructed.
- 2.13 No concrete block work, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted, or otherwise, shall show above ground or from exterior of any dwelling.
- 2.14 The Committee shall have the right, in its sole and absolute discretion, to establish what types of exterior building materials may be utilized on any dwelling or other structures or improvements to a Lot.
- 2.15 No fencing may be utilized on any Lot prior written approval of the same by the Committee.
- 2.16 No individual water supply system shall be permitted on any lot unless such system is located, constructed, and equipped in accordance with the requirements, standards and recommendations of both state and local public health authorities. Approval of such system as installed shall be obtained from such authority.
- 2.17 No automobiles or other vehicles will be stored on any Lot or Common Area or kept on blocks unless in the basement or garage of a dwelling. Boats, utility trailers, recreational vehicles and travel trailers must be parked or stored in the garage of a dwelling or within a completely enclosed structure, which structure must be approved by the Committee. No tractor trailer trucks, panel vans, or other commercial trucks in excess of one (1) ton classification shall be parked or stored on any Lot or Common Area, except during initial construction of a dwelling on a Lot.
- 2.18 No satellite, microwave dishes or television or radio antennas shall be placed on any Lot unless first approved in writing by the committee, except that eighteen (18) inch digital receivers shall be permitted. Best efforts shall be made for any receivers to be placed on the dwelling as long as it is not visible from the street.
- 2.19 No individual sewage disposal system shall be permitted on any Lot.
- 2.20 Upon the completion of the dwelling, all front and side yards which are not left in a natural state will be landscaped with sod and other landscaping approved by the Committee.

- 2.21 The roof pitch on any dwelling shall not be less than eight (8) and twelve (12) unless first approved in writing by the Committee. All roof vents and pipes shall be painted as near the color of the roof as possible, and shall be located on the rear or side of the dwelling and not visible from the front. All roofs will be three tab dimensional roofing product as designated by the Committee. No solar or other energy collection device or equipment shall be maintained on any Lot or dwelling if the same would be visible from the street. No projections of any type shall be allowed above the roof of any dwelling except for approved chimney, vent stacks, or items permitted under section 2.18. Variances may be granted by the Committee.
- 2.22 All porches on the front and sides of any dwelling shall be supported by the foundation of the dwelling, unless otherwise approved by the Committee.
- 2.23 No cantilevered chimney chases shall be allowed on the front of any dwelling. All chimney chases shall be supported by the foundation of the dwelling.
- 2.24 All driveways visible from the street must be of concrete finish.
- 2.25 All mailbox posts are to be of a style and type designated by the Committee.
- 2.26 No lot shall be cultivated for crops of any kind, except gardens of reasonable size, which are to be located at the rear of a dwelling and not visible from any public street.
- 2.27 No fence, wall, hedge or shrub planting which obstructs sight lines from any roadways within the Property shall be placed or permitted to remain on any lot.
- 2.28 Developer reserves the right to make any road or other improvements within the Property, to change or extend the present road or street grades, if necessary, without liability to the Owners for any claims of damages; and further reserves the right to change or modify the restrictions on any Lots within the Property.
- 2.29 During all construction, all vehicles, including those delivering supplies, must enter each Lot on the driveway only as approved by the Committee so as not to unnecessarily damage trees, street paving and curbs. Any damage not repaired by the Owner or his contractor will be repaired, by the Developer or the Committee ( after ten (10) days of written notice.) and will be charged to the Owner of such lot at a reasonable cost for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity or as hereinafter provided.
- During construction, all Owners must keep the homes, garages, and building sites clean and attractive. No construction debris will be dumped in any area of the Property or Common Area.
- 2.30 Except with prior written consent of Developer, no Lot shall be sold or used for the purpose of extending any public or private road, street or alley or to provide a means of access to any other real property situated adjacent to or in close proximity with the Property.
- 2.31 To insure maintenance of the natural beauty, no Owner shall be allowed to dam up the creeks which flow through said Property nor shall any owner change the flow of said creek or any wet weather streams.
- 2.32 Motorized vehicular traffic of any type is strictly prohibited on any Common Area except as may be required by the Developer or the Association for maintenance or construction.

- 2.33 Wood piles shall be located only at the rear of a dwelling and should be screened from the view of public streets and adjacent Lots. Children's toys, swing sets, jungle gyms, trampolines, and other outdoor recreational equipment and appurtenances shall be allowed only at the rear or behind a dwelling and shall be located so as not to be visible from any public street. Free-standing playhouses and tree houses must be approved by the Committee; no above ground swimming pools shall be allowed on any Lot. No statues, water fountains, bird baths, flagpoles, or furniture shall be placed or maintained on the front or side yard of any lot. All outdoor furniture for any dwelling shall be kept and maintained only at the rear or behind the dwelling. Outside clothes lines and other facilities for drying or airing clothes are prohibited. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of the dwelling and should not be visible from the street. No rocks, rock walls, fencing or other substance shall be placed on any Lot as a front or side yard border to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or otherwise impede or limit access to the same. Seasonal or holiday decorations (e.g. Christmas trees and lights, pumpkins, Thanksgiving decorations) shall be promptly removed from any Lot or dwelling within thirty (30) days following such holiday.

ARTICLE III  
ARCHITECTURAL REVIEW COMMITTEE

- 3.01 The Committee will consist of no more than three (3) persons of whom will be designated and may be removed at any time by the Developer, until such time as Developer relinquishes in writing the authority to appoint members to the Committee to the Association. At such time as Developer no longer owns any Lot within the Property or upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint or remove members of the Committee, then the Board of Directors of the Association shall have the right to appoint and terminate, with or without cause, all members of the Committee.
- 3.02 All plans and specifications, including plot plans, grading and draining plans for any improvements to a Lot, exterior materials, texture and color selections for any dwellings and the plans for all mailboxes and entrance columns serving any Lot within the property shall be first filed with and approved by the Committee before any construction is commenced on such Lot. The Committee shall have the authority to require modifications and changes in plans and specifications if it deemed the same necessary.
- 3.03. The authority to review and approve plans and specifications as provided herein is a right and not an obligation. Owners and their respective contractors shall have the sole obligation to oversee and construct dwellings in accordance with the restrictions hereof and the plans and improvements of any nature shall be constructed, erected, placed or maintained on any Lot until such time as the Committee has approved in writing the plans therefore. The Committee shall have the right to establish and amend from time to time written rules, regulations, and standards governing polices, guidelines, and minimum requirements relating to the construction and alteration of any dwellings or other improvements on any Lot, as well as the content and types of information required to be submitted to the Committee for its approval, each of which shall be in addition to the provisions and requirements set forth herein.

- 3.04 Neither the Committee or any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications submitted, revises, 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. EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT, DOES HEREBY WAIVE AND RELEASE THE COMMITTEE AND DEVELOPER AND ANY OF THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, MEMBERS, AND SUCCESSORS AND ASSIGNS, FROM ANY LIABILITY OF ANY NATURE WHATSOEVER INCURRED BY ANY OWNER ON ACCOUNT OF ANY DEFECTS IN ANY PLANS AND SPECIFICATIONS SUBMITTED TO OR APPROVED BY THE COMMITTEE, ANY DEFECTS RESULTING IN ANY WORK DONE IN ACCORDANCE WITH SUCH PLANS OR OTHER DATA SUBMITTED PURSUANT TO THE REQUIREMENTS OF THEIR ARTICLE III AND ANY INJURY TO PROPERTY OR PERSON, INCLUDING DEATH, ARISING FROM ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED ON SUCH OWNER'S LOT.
- 3.05 The Committee shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any owner for approval are acceptable. Any approval granted by the Committee shall be effective only if such approval is in writing. The Committee shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of the Protective Covenants, including, without limitation, purely aesthetic considerations, failure to comply with any of the provisions of the Protective Covenants, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the Property, objection to location of any proposed improvements on any Lot, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any dwellings or other improvements on any Lot or any other matter which in the sole and absolute judgment of the Committee would render the proposed dwelling or other improvements inharmonious with the general plan of development for the Property. The approval of plans, specifications, and other data for any one specific dwelling shall not be deemed an approval or otherwise obligate the Committee to approve similar plans, specifications or data for any dwelling to be constructed on any Lot within the Property.
- 3.06 THE PROPERTY MAY BE LOCATED IN AN AREA WHICH INCLUDES UNDERGROUND MINES, TUNNELS, SINKHOLES, AND SUBSURFACE CONDITIONS. THE APPROVAL OF PLANS AND SPECIFICATIONS BY THE COMMITTEE SHALL NOT BE CONSTRUED IN ANY RESPECT AS A REPRESENTATION OR WARRANTY BY THE CONDITIONS OF ANY LOT ARE SUITABLE FOR THE CONSTRUCTION OF A DWELLING OR OTHER STRUCTURES THEREON. IT SHALL BE THE SOLE RESPONSIBILITY OF EACH OWNER TO DETERMINE THE SUITABILITY AND ADEQUENCY OF THE SURFACE AND THE SUBSURFACE CONDITIONS OF THE LOT. NEITHER DEVELOPER NOR COMMITTEE SHALL BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE OR INJURY SUFFERED OR INCURRED BY OWNER OR ANY OTHER PERSON AS A RESULT OF SURFACE OF SUBSURFACE CONDITIONS AFFECTING A LOT OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATIONS, ANY SURFACE OR SUBSURFACE DRAINAGE OR UNDERGROUND MINES, TUNNELS, SINKHOLES, OR OTHER

CONDITIONS, OR TYPES OF GROUND SUBSIDENCE OCCURRING ON OR UNDER ANY LOT.

- 3.07 The Committee, in its sole and absolute discretion shall have the right to establish, amend, change and modify from time to time reasonable charges and fees for the review of any plans and specifications submitted pursuant to the provisions hereof. Furthermore, the Committee shall, upon request and at reasonable charges, furnish to any owner written certificate setting forth whether all necessary Committee approvals have been obtained in connection of any dwelling or other improvements on any Lot.
- 3.08 The Committee, in its sole and absolute discretion shall have the exclusive right to grant variances with respect to any of the matters set forth in these Protective Covenants. Any variance approved by the Committee shall be in writing and shall be executed by either the chairman or the vice-chairman of the Committee.
- 3.09 Each and every covenant and restriction contained herein shall be considered to be an independent or separate covenant and agreement, and in the event any one (1) or more of said covenants or restrictions shall, for any reason, be held invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

ARTICLE IV

BLACKBERRY VILLAGE HOMEOWNER ASSOCIATION, INC.

- 4.01 Every Owner of a Lot within the Property and the Owner of every "Residential Lot", as hereinafter defined in the Development, is subject to assessments, as hereinafter provided, and shall be a member of the Association. The Articles of Incorporation for which are recorded in the Probate Office of Lauderdale County, Alabama. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot and shall be subject to the provisions of these Protective Covenants and the rules, regulations and by laws of the Association, as the same may be modified and amended from time to time. This Article IV is subject to the exceptions for assessment to the Developer and Lot 40 as contained in Article V.
- 4.02 The Association shall have one (1) class of voting membership. All owners, together with the Owners of all "Residential Lots", as hereinafter defined, shall be members of the Association and, subject to the rights reserved by Developer in the Articles of Incorporation and by laws of the Association, shall be entitled to (1) vote for each residential lot owned. When more than (1) person holds an interest in any Lot, all persons shall be members; however the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote acknowledge and agree that (a) Developer, for so long as Developer owns any portion of the Development, shall be exclusively entitled to take all actions and vote on all matters to be voted on by the members of the Association in the manner set forth in the articles of Incorporation and Bylaws of the Association, and (b) if Developer elects to add Additional Property to this Declaration or as part of the association or modify the description of the Development to add or delete real property from such description, each owner consents and agrees to the dilution of his voting interests in the association as a result thereof.



- 4.03 The Association (with prior written consent of Developer for so long as Developer owns any portion of the Development), shall have the right at any time and from time to time to merge, consolidate, or otherwise transfer all of the rights and obligations of the Association to any other association which has been formed for the benefit of the Owners of any of the Lots within the Property or any real properties situated adjacent to or in close proximity with the Development.

ARTICLE V  
COVENANT FOR ASSESSMENTS

- 5.01 Each Owner of a Lot within the Property, by acceptance of a deed to such Lot, agrees to pay the association: (i) annual assessments or charges levied each year by the association, (ii) special assessments for capital improvements, such as assessments to be established and collected as hereinafter provided, and (iii) monthly assessments for common area maintenance as further described in 5.03, and (iv) individual assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's failure to comply with the terms of these Protective Covenants. The annual, special, individual assessments, together with interest, late charges, cost, and reasonable attorney's fees, shall also be a charge on each lot and shall be 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 attorney's 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. Assessments shall not apply to the Developer or any lot owned by the Developer.
- 5.02 The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners and residents of the Development, for the improvement and maintenance of the Common Area within the Development and the payment of any and all costs and expenses incurred from time to time by the Association, including, without limitation, any "Common Expenses" as defined in the Bylaws of the Association.
- 5.03 Common Area Maintenance Expenses assessable by the Association on a monthly basis are to include lawn services, lawn chemical services, exterior repairs, cleaning, window washing, driveway washing, gutter cleaning, landscape repairs and all other reasonable items that may be included by the Association. Such monthly assessment shall not apply to Lot 40 of the Subdivision due to its unique character and nature.
- 5.04 Any expenses incurred by the Committee or the Association in enforcing any of the provisions of these protective Covenants against a specific Owner shall be deemed an individual assessment against the owner and the respective Lot owned by the Owner. Such individual assessment shall be levied by the Association and shall be specified the Owner, which notice shall also specify the due date for the payment of same. The Association is solely responsible for and shall assume all maintenance responsibilities with respect to all Common Area within the Property.
- 5.05 The Annual assessment for the Property shall commence on June 1 of each year, and shall be paid in advance. The annual assessment shall be established by the Association in accordance with its rules, regulations, and Bylaws. Lots owned by the Developer shall not be subject to assessment by the Association, be it annual, special or individual.

- 5.06 In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment, applicable to that year only 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 Area, provided that any such assessment must have the assent and approval of (a) at least two thirds (67%) of the total votes in the Association, whether voted in person or by proxy, at a meeting duly called for this purpose and (b) for so long as Developer owns any portion of the Development, the approval of the Developer.
- 5.07 Written notice of any meeting called for the purpose of taking any action authorized under Section 5.06 above shall be sent to all Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence, either in person or by proxy, of the holders of at least 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 proceeding meeting.
- 5.08 With the exception of the developer, both annual and special assessments for all Lots within the Property shall be fixed at a uniform rate; provided, however, that the Board of Directors of the Association shall have the right, in their sole and absolute discretion, to levy, assess and collect different amounts as the annual an/or special assessment payable by each "Residential Lot", as hereinafter defined, within the Development bases on the zoning classifications of such Residential Lot. As used herein, the term "Residential Lot" or "Residential Lots" shall mean and refer to any real property within the Development which has been or will be developed for single family residential purposes, including without limitation, attached or detached residential dwellings, townhouses, condominiums, cooperatives, duplexes, garden homes, patio homes, zero-lot-line homes, cluster homes, or any other types of single family dwellings. As used herein and in the Articles of Incorporation and Bylaws of the Association, the term "Residential Lots", whether used in the singular or plural tense, shall include all Lots within the Property. Annual and special assessments shall commence as to each Lot on the day on which such Lot is conveyed to any Owner (other than Developer) 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.
- 5.09 The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer 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.
- 5.10 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 18% per annum or the highest rate of 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. The late charge

shall be no less than 5% of the outstanding deficiency, arrearage or unpaid balance. 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 by law or in equity, the Association, acting through the 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 judgment to enforce all such charges and obligations for assessments and other amounts due to the Association, which amounts shall include the late charge and interest specified above as well as all attorneys' fees, court costs and all expenses paid or incurred by the Association in connection therewith; and/or
- (b) The Association may enforce the lien created pursuant to Section 5.01 above as herein provided. The lien created pursuant to Section 5.01 above shall secure 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 defaulting owner, which demand shall state the date and the 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 a lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Director of the Association or any officer 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 foreclosure 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 amounts due from such owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner other than Developer may waive or otherwise be exempt from the liability to pay the assessments provided herein.

- 5.11 In addition to the rights and remedies set forth above, if any owner or his contractor, family members, guests, or invitees shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the Committee, 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 are available at the law or in

equity. In any such proceedings, Developer, the Association or the Committee, 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 5.10 above. The failure of Developer, the Association or the Committee 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 the past or future violations Of said covenants and restrictions.

ARTICLE VI  
EASEMENTS

- 6.01 Developer does hereby establish and reserve for itself, the Association, the Committee, and their respective successors and assigns, a permanent and perpetual non-exclusive easement over, across, through and upon each Lot for the purpose of inspecting each Lot and any dwelling constructed thereon in order to determine the compliance with the provisions of these Protective Covenants and to otherwise perform any of their duties or undertake any of the action authorized or permitted to be taken by any of them pursuant of these Protective Covenants.
- 6.02 Developer does hereby establish and reserve for itself, its successor and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under those portions of any Lot upon which the Developer has reserved an easement, as reflected on the recorded Subdivision Plat for such Lot, which easements may be used for the purpose of installing, erecting, maintaining and using above and below ground utility and cable television lines, poles, wires, cables, conduits, storm sewers, sanitary sewers, conveniences, appurtenances, and other utilities.
- 6.03 Developer does hereby establish and reserve for itself, it successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under all portion of the Common Area for the purpose of installing, erecting, maintaining, and using thereon above and below ground utility and cable television lines, pipes, poles, poles, wires, cables, conduits, storm sewers, conveniences, and other utilities.

ARTICLE VII  
LAKE LOTS

- 7.01 Developer does not contemplate that portions of the Development may include lakes and water areas ("Lake"). Developer has not committed to the construction of a lake and shall have no obligation to construct any lake but reserves the right to do so. The use of the lake and water areas shall be subject to rules and regulations which may be adopted and amended from time to time by the Association. Such restrictions may prohibit or limit the type of boating and other recreational activities in or upon such lake areas and may require that any improvements on or adjacent to such lake areas be approved by the Committee.
- 7.02 THE OWNER OF ANY LOT OR DWELLING ABUTTING ANY LAKE OR WATER AREAS WITHIN THE DEVELOPMENT, FOR HIMSELF, ANY OCCUPANT OF THE SAME AND THEIR RESPECTIVE INVITEES, HEIRS, EXECUTORS, PERSONAL

REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY THE "RELEASING PARTIES"), BY ACCEPTANCE OF A DEED TO SUCH LOT, DO HEREBY WAIVE ALL CLAIMS AGAINST AND RELEASE DEVELOPER, THE ASSOCIATION AND THE COMMITTEE, THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, SUCCESSORS, AND ASSINGS, FROM AND AGAINST ANY AND ALL LIABILITY OF ANY NATURE ARISING OUT OF OR ON ACCOUNT OF ANY LOSS, DAMAGE OR INJURY TO PERSONAL PROPERTY, INCLUDING DEATH AS A RESULT OF ANY ENTRY ONTO THE LAKES OR WATER AREAS BY ANY OF THE RELEASING PARTIES, THE RISE AND FALL OF THE WATER LEVEL OF ANY LAKE OR ANY WATER AREA INCLUDING, WITHOUT LIMITATION, THE FLOW OF WATER ONTO AND OUT OF LAKES WHICH COULD RESULT IN OR CAUSE DAMAGE BY DAMAGE, BY FLOODING, SOIL EROSION OR OTHERWISE, TO THE LAND OF ANY OWNER, THE IMPROVEMENTS ON ANY LOT OR ANY PERSONAL PROPERTY SITUATED ON ANY PORTION OF ANY LOT OR WHICH WOULD RESULT IN OR CAUSE ANY IMPROVEMENTS SITUATED ON ANY PORTION OF ANY LOT OR WHICH WOULD RESULT IN OR CAUSE ANY IMPROVEMENTS SITUATED OR ADJACENT TO THE LAKES OR WATER AREAS TO BE UNUSEABLE DUE TO LOW WATER LEVELS. FUTERMORE THE RELEASING PARTIES DO HEREBY ACKNOWLEDGE AND AGREE THAT (I) NEITHER DEVELOPER, THE ASSOCIATION, OR THE COMMITTEE NOR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTAIVES, SUCCESSORS, AND ASSIGNS, SHALL PROVIDE ANY LIFE GUARD OR ANY OTHER SUPERVISORY PERSONNEL OR ASSISTANCE IN THE CONDUCT OF ANY ACTIVITY ON OR ABOUT ANY OF THE LAKES WITHIN THE DEVELOPMENT, (II) THE USE OF THE LAKES AND WATER AREAS WITHIN THE DEVELOPMENT BY ANY OF THE RELEASING PARTIES SHALL BE AT THE SOLE RISK AND EXPENSE OF THE PERSON OR ENITY USING THE LAKES OR WATERWAYS AND (III) NEITHER DEVELOPER, THE ASSOCIATION, OR THE COMMITTEE NOR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, SHALL BE OBLIGATED TO TAKE ANY ACTION TO MAINTAIN A SPECIFIC WATER LEVEL FOR ANY OF THE LAKES OR WATERWAYS WITHING THE DEVELOPMENT.

- 7.03 No products that are listed on any current stipulated hazardous or toxic materials list of the Environmental Protection Agency, or the Alabama Department of Environmental Management or any other Governmental Agency shall be stored or used on any Lot, except that gasoline and other petroleum products, pesticides, and fertilizers may be stored and used on a Lot for the purpose of normal and routine maintenance of grounds and the normal routine construction, repair, maintenance, and operation of Dwelling and other Improvements located on a Lot, including construction materials which are stored and/or used during construction.
- 7.04 Any person by his use of the lake pursuant to the easement granter hereunder or otherwise, shall be deemed to have constructively agreed that the Developer and/or the Association shall have no duty of care to keep the lake safe for entry and use by such persons, or to give any warning of hazardous conditions, use of structures, or activities on or about the lake and the Developer and the Association and their respective agents, employees, officers and directors and their respective

successors and assigns shall have no liability for any injury to persons or property caused by any act or omission of Developer or the Association or any other person relating to or arising out of the use of the lake by any person.

ARTICLE VIII  
MISCELLANEOUS

- 8.01 Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, to add and submit any additional property "Additional Property" situated adjacent to or close proximity within the Property to the terms and provisions of these Protective Covenants. Additional Property may be submitted to the provisions of these Protective Covenants by an instrument executed solely by Developer and filed for record in the Probate Office of Lauderdale County, Alabama, which instrument shall be deemed an amendment to these Protective Covenants which need not to be consented to or approved by any Owner or his mortgage and which may contain different terms, conditions, restrictions, and provisions from those set forth herein. From and after the date on which an amendment to these Protective Covenants is recorded in the Probate Office of Lauderdale County, Alabama submitting any Additional Property to the terms and provisions hereof, (a) all references herein to owner shall include Owners of all Lots within the Property and the Owners of all Lots within such Additional Property, (b) all references herein to the Property shall include the Additional Property and (c) the number of votes in the Association shall be increased by the number of Lots within the Additional Property so that there shall continue to be one (1) vote in the Association per Lot within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of these Protective Covenants or to otherwise impose any covenants, conditions or restrictions set forth herein upon any other real property owned by Developer situated adjacent to or in close proximity within the Property.
- 8.02 The terms and provisions of these Protective Covenants shall be binding upon each Owner and their respective heirs, executors, administrators, personal representatives, successors, and assigns of each Owner and shall ensure to the benefit of Developer, the Committee, the Association, and all of the Owners of any of the Lots within the Property. These Protective Covenants shall be deemed covenants running with the land and any Lot shall be held, owned, sold, transferred, conveyed, hypothecated, leased, occupied, built upon and otherwise used, improved and maintained subject to all of the terms and provisions of these Protective Covenants.
- 8.03 It is understood and agreed that the foregoing covenants and restrictions shall attach to and run with the land for a period of fifty (50) years from the date hereof, at which time these covenants and restrictions shall be automatically extended for a successive periods of twenty (20) years, unless, by a vote of at least sixty seven percent (67%) of all votes in the Association, it is agreed to change the same in whole or part.
- 8.04 Subject to the provisions of Sections 9.01 and 9.09 hereof, these covenants and restrictions may be amended or altered (a) solely by Developer during such periods of time as the Developer owns any Lots within the Property, so long as such amendment does not materially and adversely affect or alter any Owner's right to use his Lot or (b) by the (i) vote of two thirds (67%) of all votes in

the Association and (ii) written agreement of the Developer so long as Developer owns any Lots within the Property.

- 8.05 All personal pronouns used herein, whether used masculine, feminine or neuter gender, shall include all genders. The use of the singular tense shall include the plural and vice versa.
- 8.06 Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.
- 8.07 Notwithstanding anything provided herein the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to any 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 these Protective Covenants which Developer is transferring to such third party.
- 8.08 Whenever in these Protective Covenants, Developer, the Association, or the Committee has the right to approve, consent to or require any action to be taken, such approval, consent or required action shall, except otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the Association, or the Committee, as the case may be.
- 8.09 Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, without any obligation or requirement to obtain the consent or approval of any Owners or any of their mortgages, to (a) add any additional real property to the Development to the extent the same may be developed for Residential Lots. (b) alter, change or extend any roadways within the Development or alter any street grades of any roads within the Development, without liability to the Owners for any claims for damages resulting from such alterations or changes, and (c) change, modify or adopt different covenants and restrictions which would affect the Residential Lots within other portions of the Development which covenants and restrictions may be different from those set forth in these Protective Covenants. Developer may undertake any of the actions set forth in this Section 8.09, including, without limitation, executing and recording amendments to these Protective Covenants with respect to any of the matters described in items (a) through (c) above without the consent or approval of any Owner or his mortgage. The Protective Covenants shall be applicable only to the Property, and shall not extend to or be binding upon any other real property owned by Developer or any portion of the Development unless expressly subjected to the terms and provisions of these Protective Covenants by an instrument duly executed by Developer and recorded in the office of the Judge of Probate of Lauderdale County, Alabama.
- 8.10 Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Boards. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed

directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically or exclusively reserved to the Board or the duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

- 8.11 The Association shall and does hereby indemnify, defend, and agree to hold each and every officer, agent, representative, and member of the Board of the Association, including the Developer, harmless from and against any and all expenses, including court cost and reasonable attorney's fees, suffered or paid or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative, or member of the Board of the Association. The officers, agents, representatives and members of the Board of Association shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives, and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend, and agree to forever hold each such officer, agent, representative and member of the Board harmless from any or all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this section and the costs of such insurance shall constitute a Common Expense.
- 8.12 No lot, property, house, home or structure shall be used at any time as a rental property, rental house, apartment house, flat, tenement, boarding house or rooming house, without the express written consent of the Association. Further, without limiting the generality of the foregoing, no owner of any lot or property subject to these covenants, conditions and restrictions may, at any time, lease or rent such property to other individuals, without the express written consent of the Association. Such approval shall not be unreasonably withheld by the Association.



IN WITNESS WHEREOF, the Developer, and the Owners of all other Lots, subject to the Original  
Covenants, have executed this instrument on the 18<sup>th</sup> day of March, 2010.

**Blackberry Village Developers, L.L.C.**  
an Alabama Limited Liability Company

By: Eugene R. Sak  
Eugene R. Sak, Managing Member

**THIS INSTRUMENT PREPARED BY:**

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