

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
MOUNTAIN PRESERVE  
SUBDIVISION**

**Prepared by:**

**Samuel H. Givhan, Esquire  
WILMER & LEE, P.A.  
100 Washington Street  
Huntsville, Alabama 35801  
Telephone Number: (256) 533-0202**

**SPECIAL NOTE TO CLOSING ATTORNEYS**

PLEASE NOTE THE FOLLOWING PROVISIONS RELATING TO HOMEOWNER ASSOCIATION DUES AND COLLECTION OF TRANSFER FEES: (1) PURSUANT TO ARTICLE IV, SECTION 8, ON PAGE 7 OF THE DECLARATION, PRORATED GENERAL ASSESSMENTS ARE TO BE COLLECTED AT CLOSING, UNLESS THE EXCEPTION FOR A TRANSFER TO A BUILDER APPLIES; AND (2) TRANSFER FEES ARE DUE TO THE ASSOCIATION UPON EACH CONVEYANCE OF PROPERTY AFTER THE INITIAL CONVEYANCE FROM A BUILDER TO A THIRD PARTY (OTHER THAN A MORTGAGE, FORECLOSURE DEED OR DEED IN LIEU OF FORECLOSURE) PURSUANT TO ARTICLE IV, SECTION 12, PAGE 8.

**DECLARATION**  
**OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR**  
**MOUNTAIN PRESERVE SUBDIVISION**

**THIS DECLARATION** is made on the date hereinafter set forth by Enfinger Development, LLC, an Alabama limited liability company, (hereinafter sometimes called "Declarant").

**BACKGROUND  
STATEMENT**

Declarant is the owner of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

The Declarant has heretofore caused the Association, as defined below, to be formed as an Alabama nonprofit corporation for the purpose of making the Assessments, as defined below, and otherwise taking all action which the Association is authorized to take.

**ARTICLE I**  
**Definitions**

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

**ARTICLE II**  
**Property Subject to This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

**Section 2. Other Property.** Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article X.

**Section 3. Mutuality of Benefit and Obligation.** The provisions of these Covenants are made (a) for the mutual and reciprocal benefit of each Lot and Common Area within the Community and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Community, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**ARTICLE III**  
**Association Membership and Voting Rights**

**Section 1. Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership. Those Owners of property, if any, which are exempt from assessments as provided in Article IV, Section 11, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

**Section 2. Voting.** The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 1; provided, however, there shall be only one vote per Lot. Notwithstanding the above, the Owner of two contiguous Lots, as shown on the final subdivision plat recorded in the Public Records, on which one residential dwelling is constructed which crosses the boundary line separating Lots, shall have only one vote for such Lots. All Class "A" votes shall be cast as provided below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all or a Majority of the members of the Board of Directors, as determined in the By-Laws, during the Class "B" Control Period which shall continue until the first to occur of the following:

- (i) when Declarant no longer owns any land (including Common Area) in, or adjacent to, the Community and the unilateral right of the Class "B" Member has expired;
- (ii) twenty-five years from the date of execution of this Declaration; or
- (iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

(c) Post Control Period Rights. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to veto actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

- (i) once all Lots have obtained certificates of occupancy and no more land remains available for annexation;
- (ii) ten years after expiration of the Class "B" Control Period; or
- (iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.



The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article X, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

Any Owner of a Residence not occupied by the Owner may, in the lease or other written instrument, assign the Owner's voting right appurtenant to that Residence to the Occupant, provided that a copy of such instrument is furnished to the Secretary within the time period prescribed by the Secretary. In the event of such assignment, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote.

An Owner's right to vote may be suspended as provided in Article XII, Section 2, of this Declaration.

#### **ARTICLE IV Assessments**

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Type of Assessments.** Each Owner of any Residence, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 5; and (c) Specific assessments against any particular Residence and/or Lot which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Lots in the Community.

**Section 3. Creation of Lien and Personal Obligation for Assessments.** All assessments, together with late charges, interest at a rate equal to the lesser of fifteen (15%) percent or the maximum lawful rate, costs, and reasonable attorney's fees actually incurred shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Lot at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of

each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

**Section 4. Budget.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve.

The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each Lot Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof) and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Lot which is more than one hundred twenty (120%) percent of the General Assessment for the immediately preceding fiscal year (except as set forth in Section 8). In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

**Section 5. Special Assessments.** In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed the amount of the current General Assessment in any one (1) fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 6. Lien for Assessments.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

DUES ARE PAYABLE REGARDLESS OF WHETHER OR NOT AN OWNER RECEIVES AN INVOICE FROM THE ASSOCIATION. INVOICES ARE A COURTESY REMINDER AND NOT A CONDITION PRECEDENT TO PAYMENT.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid in full by the date specified by the Board, (“due date”), shall be delinquent. Any assessment delinquent shall incur a one-time late charge of one hundred and no/100 (\$100.00) dollars, or such other amount as the Board may from time to time determine. If the Owner’s payment of dues (along with the initial late fee and any attorneys’ fees) is not received by the Association within 60 days from the due date, in addition to the initial late fee, the Owner shall be charged monthly for the collection fee which is then being charged by the Association until all amounts are paid in full, including the late fee and collection fees. The amount of such collection fee may be changed from time to time by the Association without notice to any Owner. The initial amount of the collection fee shall be fifty and no/100 (\$50.00) dollars. Such collection fee shall be due and payable immediately and shall be for the purpose of helping to pay the extra cost to the Association for handing and collecting delinquent payments. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all collection fees (which may also be referred to from time to time as “late charges”) from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to

pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

**Section 8. Date of Commencement of Assessments.** The General Assessments and Service Assessments, if any, provided for herein in this Article shall commence as to each Lot subject to this Declaration on the first day of the month following the date of conveyance of the Lot by Declarant to an Owner. An Assessment shall be adjusted according to the number of months remaining in the fiscal year during which the Lot became subject to assessment. At no time shall any Lot owned by the Declarant be subject to the payment of any assessments due hereunder until title to the subject Lot has been sold and conveyed to a third party. Furthermore, in the event that a Lot is sold to a Builder for the purpose of resale, the Lot will not be subject to General Assessments until such time as it is sold as a Residence or until one year has passed from the date of the conveyance by Declarant to Builder. In the event that a Lot is sold to a Builder for his personal home, or if he moves into the home, the General Assessment and any Service Assessments will commence upon the issuance of a Certificate of Occupancy or upon his moving in the home, whichever occurs earlier.

THE INITIAL GENERAL ASSESSMENT FOR THE ASSOCIATION IS SIX HUNDRED DOLLARS (\$600.00) PER YEAR BEGINNING ON JANUARY 1, 2023. THE DUE DATE FOR GENERAL ASSESSMENTS SHALL BE **JANUARY 1** OF EACH YEAR, except for prorated payments which SHALL BE DUE AT THE TIME OF CLOSING, EXCEPT AS PROVIDED OTHERWISE.

**Section 9. Loans from Declarant.** The Declarant may, but shall in no way be required, loan money to the Association and/or advance funds to pay for insurance premiums, taxes, maintenance, and other expenses of the Association. The Association shall account for such loans/advances on an annual basis. At that time, the Association's officers shall execute a note in favor of Declarant with interest to accrue at Wachovia Bank's Prime Rate. The principal and interest shall be payable over up to a ten-year period commencing once three hundred (300) Lots are obligated to pay dues to the Association.

**Section 10. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Lots for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be specifically assessed equitably among all Lots according to the benefit received.

**Section 11. Exempt Property.** The following property shall be exempt from General Assessments and special and specific assessments:

(a) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, public parks, conservation areas, roads, rights-of-way, streets and easements; and

(b) all property owned by non-profit organizations and restricted for use as private schools churches or conservation areas; provided, however, the availability of the exemption for such non- profit organizations is contingent upon prior approval by the Board.

**Section 12. Transfer Fees.**

(a) Resales Subject to the remaining terms and provisions of this Section 12, at the closing of each subsequent conveyance of any Lot by an Owner (other than the Declarant or any affiliates thereof or an Approved Builder) to a third party purchaser (other than the Declarant or any affiliates thereof) each and every third party purchaser of a Lot shall contribute and pay to the Association the sum of **one quarter of one percent (.25%) of the gross sales price** which contribution shall be utilized by the Association for any costs and expenses (including loan repayments) relating to the maintenance of any recreational facilities such as clubhouses, Community roads, swimming pools, tennis courts and similar amenities within the Community and other capital expenditures of the Association, and shall not be considered as a prepayment of any General or Service Assessments.

(b) Exemptions Notwithstanding anything provided in this Declaration to the contrary, the transfer fees specified in Section 12(a) and in Section 12 (b) above shall not be applicable to (i) any Lot purchased by the Association; or (ii) the Declarant in the exercise of any of the repurchase rights and options granted to the Declarant herein; or (iii) any Mortgagee who accepts a mortgage, foreclosure deed, a decree foreclosing a Lot, or a deed in lieu of foreclosure from an Owner.

**ARTICLE V**

**Maintenance: Conveyance of Common Property  
by Declarant to Association**

**Section 1. Association's Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property. In the event the Association ceases to exist, or

otherwise fails to perform as specified herein, each Owner shall be liable for their pro rata share of said maintenance based upon the ratio of Lots they own divided by all Lots in the Community. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: Community hiking and biking trails; Community dock areas; grass and other landscaping along dedicated rights-of-way; sedimentation ponds; Community entrance features; and lakes and dams.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into leases, easements and covenants and to share costs agreements regarding such property (and any other property) where the Board has determined that this would benefit Owners.

The foregoing maintenance costs shall be assessed as a part of the General Assessment or specific assessments, as determined by the Board in accordance with this Declaration.

**Section 2. Owner's Maintenance Responsibility.** Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements.

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply

with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard and shall conform to any applicable municipal ordinances and regulations.

### **Section 3. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. This shall not apply to fences constructed along a Lot boundary by a single owner unless the adjoining owner has made use of the fence to enclose all or a portion of his own property.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. Provided, however, that any painting or staining of a fence shall not be considered a maintenance item. The painting or staining (after the initial required stain/paint is applied) of a fence shall be the sole expense of the party wishing to stain or repaint).

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of a disagreement between the Owners of any Lots on either side of a party structure with respect to their respective rights and obligations as to such party structure, then such dispute shall be submitted to arbitration with the Architectural Review Committee (the "ARC") (or any designee thereof) whose decision shall be final, conclusive and binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other with respect to the maintenance, repair and replacement of any common fence.

**Section 4. Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association. Declarant shall have the right, without limitation, to include Lakes and Dams in the property that may be conveyed by Declarant and which shall be accepted by the Association. As long as any property is utilized as Common Property, then the Association shall incur all expenses of maintenance, payment of property taxes and the procurement of property and casualty and liability insurance for the same. Declarant may withdraw any real property delineated as Common Property until such time as it is deeded to the Association. Common Property may be deeded at the discretion of the Class "B" Member. Any Common Property not withdrawn by the Developer will be conveyed to the Association after the termination of the Class "B" Membership provided that all loans to the Association from Declarant have been repaid. All conveyances shall be "AS-IS, WHERE IS" without any representations or warranties.

**Section 5. Additional Improvements.** Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake that may be conveyed.

**Section 6. Agreements.** Subject to the conditions, restrictions and other provisions of these Covenants, all agreements, actions and determinations lawfully authorized by the Board with respect to the Property shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Community. 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 hereunder as may be determined by the Board. 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 Community, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. During the term of any such management agreement entered into by the Association with a third party, such manager may exercise all of the duties of the Association hereunder, excepting any such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by these Covenants, 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 for such legal and accounting services as are necessary or desirable in connection with the operation of the Community, or the enforcement of these Covenants, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.



**Section 7. Management by Declarant or its Affiliates.** In addition to the rights and authority granted to the Association in Section 6 of this Article, Declarant or one of its affiliates or members, may, but shall not be obligated to, be employed as the manager of the Association and the Community for so long as Declarant owns any Lot in the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, to relinquish such right, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Community. Each Owner, by acceptance of a deed to or other conveyance of a Lot shall be deemed to ratify the provisions of this Section 7 and specifically be deemed to have approved any management agreement entered into by the Association or Declarant.

**Section 8. Governmental Interests.** For so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may designate sites within the Community for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

**Section 9. Dedication of Common Area.** The Association may dedicate portions of the Common Area to Madison County, Alabama, or to any other local, state, or federal governmental or quasi-governmental entity.

## **ARTICLE VI Use Restrictions and Rules**

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XIII, Section 4 and in Article XV, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) vote, may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community and to set the maximum and minimum speeds of vehicles on private streets within the Community and to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. The Board may also restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and,

so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant.

**Section 2. Residential Use.** All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. However, the Board may permit any Residence to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, and does not create a disturbance. The Board may issue rules regarding permitted business activities.

**Section 3. Signs.** The location, color, nature, size, design and construction of all signs and/or posters shall be approved in writing by the Architectural Review Committee prior to the installation thereof, including, but not limited to "For Sale" and "For Rent" signs or signs of any agent, broker, contractor, subcontractor or lender. No sign or poster may be maintained or permitted on any window or on the exterior of any improvements or on any unimproved portion of located within the Community without the express written consent of the ARC. All "For Sale" signs used for initial sales from a Builder will be a design provided to the Builders by Declarant. The Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Area in accordance with the architectural design standards adopted by the ARC.

**Section 4. Vehicles and Garages.** The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. Unless and except to the extent that the Occupants of a Residence shall have more vehicles than the number of parking areas serving their Residence, all vehicles shall be parked within such parking areas. Where the Residence contains a garage, "parking areas" shall refer to the number of garage parking spaces.

No motor homes, farm equipment, heavy machinery, boats, trailers, moving vans, recreational vehicles, towed vehicle, campers, semi-tractor trucks, buses, taxicabs, or other commercial vehicle of any nature or the like shall be permitted to be kept in the Community. Commercial vehicles shall be deemed to include cars, vans, SUVs and trucks in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding four square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No oversized/commercial vehicle ( a vehicle wider than and or longer than a standard parking space, 19 feet maximum, any vehicle that has more than two axles, or those vehicles greater than 6,000 pounds) may park in the Community. Any such items, other than boats, motor homes and campers, may be temporarily allowed in the Community for reasonable periods of time in order to allow for typical construction/repair activities, servicing for a Residence, and the moving of furniture and appliances. Any recreational vehicles must be stored in the garage.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

All single-family detached Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Other than an Owners standard means of transportation, e.g., car, truck, SUV, or van, no vehicle should be in view from the street (they should either be in a garage or in the rear yard behind fence). An Owner with more vehicles than parking spaces in a garage may park the extra vehicles (or the vehicles of guests, children, domestic employees, etc.) in their driveway. No parking whatsoever is permitted in the front yard.

NO FRONT ENTRY GARAGES ARE ALLOWED and no garage may directly face a street. Detached garages must be approved by the ARC and must architecturally match the home. Porticos are allowed, but must enhance the style of the home and must be approved by the ARC.

Provided that Board approval is obtained, towed vehicles, boats, trailers and campers may be permitted in the rear yard of a Residence, provided that it is located on a concrete paved area and such vehicle is screened so as to not be visible from ground level by an ARC approved fence.

**Section 5. Leasing.** Residences may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The Association shall be provided with a copy of each lease within 10 days of its execution. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. Upon the leasing of any Residence by an Owner to a tenant, the Owner shall contribute and pay to the Association an assessment in the amount of \$500.00 or such greater amount as may required by the Board. This assessment shall be utilized by the Association for the general budget.

**Section 6. Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

**Section 7. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Community, including the right to assess fines for violations of such rules and regulations.

**Section 8. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

**Section 9. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

## Section 10. Architectural Standards.

(a) **Approval of Improvements.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Architectural Review Committee (“ARC”) established by the Declarant. The following items, without limitation, will be submitted to the Architectural Review Committee for new home construction: house plans, site plans, landscaping plans, and exterior color and material schedule.

(b) **Selection of Members.** Prior to the termination of the Class “B” membership (the “Turnover Date”), the Declarant shall have the sole and exclusive right to appoint and remove, with or without cause, at any time and from time to time, all members of the Architectural Review Board, the number of members of which shall be determined solely by the Declarant. Following the occurrence of the Turnover Date, the Board shall have the sole and exclusive right to appoint and remove, with or without cause, at any time and from time to time, five members of the Architectural Review Committee.

(c) **Delegation of Authority.** All individuals serving on the Architectural Review Committee shall be deemed to be agents and representatives of the Association (only, however, to the extent of addressing the matters for which the ARC was established) and may, but shall not be required to be, members of the Association or Owners. The Architectural Review Committee shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of business of the Architectural Review Committee, including, without limitation, the right, to the extent the Architectural Review Committee consists of more than one (1) member, to designate one (1) individual on the Architectural Review Committee to act on behalf of the entire Architectural Review Committee in all matters in which the Architectural Review Committee is granted the right to act under the terms and provisions of this Declaration.

(d) **Professionals.** The Architectural Review Committee may from time to time hire or engage architects, engineers, land planners, attorneys and other professionals to provide services with respect to or for the benefit of the Architectural Review Committee, including designating any such professionals as members of the Architectural Review Committee. Any such professionals may be paid reasonable compensation for all services rendered to, on behalf of or for the Architectural Review Committee. Any such compensation payable to such professionals shall be paid first from any design review fees paid by applicants to the Declarant and the deficit, if any, shall constitute common expenses.

(e) **Additional Rules and Regulations.** The Architectural Review Committee may, from

time to time and at any time, adopt additional rules, regulations, and requirements relating to the design review and approval process and the construction of any Improvements to any Lot within the Community, including, without limitation, regulations for architects and builders, adoption of specific forms which must be completed and submitted to the Architectural Design Committee and the requirement that specific information be provided as part of the design review process, requirements establishing that each Builder deposit security deposits with the Architectural Review Committee and any other matters as may be determined from time to time to the Architectural Review Committee, which rules, regulations and requirements shall constitute part of the Rules and Regulations.

(f) **Modifications.** Once a plan is approved, any modification to that plan must also be reviewed and approved in writing by the Architectural Review Committee. No construction of any Lot shall be commenced and no Lot shall be modified except in accordance with a plan approved in writing by the Architectural Review Committee. Any modifications to plans previously approved by the Architectural Review Committee, any additions to be made during construction and any alterations or changes to any existing Improvements on a Lot are subject to review and written approval by the Architectural Review Board, specifically including, but not limited to, the following:

- (i) painting of the exterior of a Residence (including doors, windows, and trim) other than with originally approved materials and colors;
- (ii) replacement of roof or other parts of the Residence other than with duplicates of the original material approved by the Architectural Review Committee and any other alteration of a Building;
- (iii) installation of satellite dishes or receivers or other devices which are visible from outside the Lot;
- (iv) construction of fountains, swimming pools, whirlpools or other exterior pools or water features;
- (v) construction of privacy walls, fences and gates, as well as limitations thereon and the types of materials to be used;
- (vi) addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; and
- (vii) significant new landscaping and any removal or substantial pruning of existing trees or plants.

The listing of a category does not imply that such construction is permitted; the Declarant and the Rules and Regulations may, for example, prohibit all solar panels, antennas, satellite dishes or receivers or require that, to the greatest extent practicable, the same not be visible from

any right of way in the Community.

(g) **Exceptions.** Interior construction and modifications not affecting the external structure or appearance of any Building are not subject to review. However, floor plans are required as part of the review process to assist in the overall comprehension of the design, and minimum interior ceiling heights may be required, as may be provided in the Architectural Review Committee.

(h) **Application.** The plans to be submitted to the Architectural Review Committee for approval shall be submitted on such forms which the Architectural Review Committee may require and shall include (i) the construction plans and specifications, including all materials and colors, (ii) elevations of all proposed Improvements, (iii) proposed clearing, grading and landscaping plans, and (iv) all other items required by the Architectural Review Committee.

(i) **Basis for Decision.** Applications shall be approved or denied based upon compliance with the Rules and Regulation and/or the guidelines and provisions of the Architectural Review Committee and overall quality of design. The Architectural Review Committee may also consider other factors, including purely aesthetic considerations, which, in the sole opinion of the Architectural Review Committee, will affect the desirability or suitability of the proposed Dwelling. The Architectural Review Committee shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the applicant shall be obligated to comply and must be incorporated into the plans and specifications submitted by such applicant. Approval of plans and specifications by the Architectural Review Committee for Improvements or other matters with respect to one particular Lot shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve similar plans and specifications for any other Lot. The Architectural Review Committee shall be deemed to have approved plans and specifications only if and to the extent their approval is set forth in writing. Verbal or oral approvals are not binding on the Architectural Review Committee. The Architectural Review Committee, with the consent of Declarant (prior to Turnover Date), may grant variances from the Declaration based on existing topographical or landscape conditions, existing trees, or architectural merit. Any such variances must be in writing.

(j) **Expense of Review.** Each Owner (or any contract purchaser of a Lot) who submits any plans to the Architectural Review Committee for approval shall pay to the Declarant a design review fee for the review of such plans and specifications for any Improvements to be made to such Owner's ( or contract purchaser's) Lot. The design review fee shall be calculated as ten cents (10¢) per heated and cooled square foot of the Residence as set forth in the plans. If such fees do not cover the cost of the review, the Association shall fund the deficit. The Architectural Review Committee may employ personnel or contract with individuals or companies as necessary to assist in the review process.

(k) **Time Period.** In the event that the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and

specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XIII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

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

(m) **Elevation Limitations.** Unless specifically exempted by the ARC, no Residence may be constructed on the same street within 750 feet of a Residence or 250 feet if not on the same street, or an approved planned Residence, with the same front elevation.

**Section 11. Antennas.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Lot. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the



street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. The erection of small satellite dish may be permitted, however, the size and location must be approved by the Architectural Review Committee.

**Section 12. Tree Removal.** No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; c) trees needing to be removed for safety reasons (as determined by the City of Huntsville); or (d) trees in the immediate location of building approved by the Architectural Review Committee.

**Section 13. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee or the Board. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 14. Site Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**Section 15. Clotheslines, Garbage Cans, Woodpiles, Etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except when done during the normal construction of a residence or by Declarant. During Construction all trash must be contained on the Lot in a roll-off container located within 100 feet of the home under construction. Each construction site must be maintained in a safe, clean and orderly condition and shall include a portable toilet until such facilities are available in the home for construction workers.

**Section 16. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant or its designee. Declarant,

however, hereby expressly reserves the right to replat any Lot owned by Declarant during the time in which declarant may annex property. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. After the Turnover Date, the Board shall be vested with the right to approve any subdivision or change in boundaries. Absent proper Declarant/Association approval, the resubdivision of two Lots into one lot shall not eliminate the obligation to pay Assessments for each original Lot, but only one transfer fee shall be required upon each sale of the newly created Lot.

**Section 17. Guns.** The use of firearms in the Community is prohibited. The term “firearms” includes “B-B” guns, pellet guns, and firearms of all types.

**Section 18. Fencing.** All fencing must be approved by the ARC. No fence shall exceed six (6) feet in height. Fencing on interior Lots that are not adjacent to any Common Property may be wood arched shadow box style stained a natural color (color to be provided by the Declarant prior to finalizing restrictions). All fencing must be stained the same color. Fencing material may also be black wrought iron or cast aluminum or brick. Lots adjacent to Common Property must be wrought iron or cast aluminum, however, brick or stone may be used as a foundation, no more than 24 inches high. Any fence will be compatible with in the home and have architectural interest. Except for approved privacy fences erected around patios, there shall be no solid fences erected in the back yards of residences of Lake Lot Owners, nor any other structure closer than forty (40) feet to the back lot line. The intent of this regulation as related to Lake Lot Owners is to present an aesthetically pleasing, “non-walled off” appearance from, to, and in the vicinity of Lakes. With approval of the ARC, a four (4) feet high wrought iron fence or cast aluminum fence may be erected.

**Section 19. Lakes.** This Section, Article XII, Sections 5 and 7 of this Declaration, and rules, use restrictions and design guidelines issued by the Board or its designee shall govern the use of such lakes as may exist in the Community or such lakes as are made available for the use of all Owners and Occupants in the Community and activities related thereto. Fishing shall be permitted so long as a license is obtained from the appropriate governmental authority. Swimming, ice skating and water skiing shall not be permitted, except as specifically approved by the Board. Unless approved by the Board or its designee, no Owner may construct a dock. Retaining walls and similar structures shall not be installed without the prior written approval of the Board or its designee. Except as may be approved by the Board or its designee, boats shall not be permitted on the lakes.

**Section 20. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

**Section 21. Air-Conditioning Units.** Except as may be permitted by the Board or its designee, no window air conditioning units may be installed.

**Section 22. Lighting.** Except for approved lighting as originally installed on a Residence, exterior lighting visible from the street shall not be permitted, except for (a) two (2) decorative post lights; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights at Christmas (limited to 30 days before and after December 25 of each year); or (d) front house illumination of model homes. Ground level landscape lighting may be permitted as approved by the Architectural Review. No floodlights will be permitted in either a side or a front yard of a Residence.

**Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the ARC or its designee.

**Section 24. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Board or its designee.

**Section 25. Above-Ground Swimming Pools.** Except as may be permitted by the Board or its designee, above ground swimming pools shall not be erected.

**Section 26. Driveways.** Except as may be permitted by the Board or its designee, driveways shall be constructed with concrete. All driveway aprons shall be stamped concrete or brick.

**Section 27. Exteriors.** Except as may be permitted by the Board or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. No Residence exterior shall be constructed of untreated wood. All such wood exteriors must be painted or specifically approved by the Architectural Review Committee.

**Section 28. Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any dwelling. No foil, mirrored or other reflective materials shall be installed on any windows or used for sun screens, blinds, shades or other purposes.

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any dwelling. Windows are required to be simulated divided light windows. Blind/plantation shutter colors must be white, off-white, neutral or an approved natural color. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are

not appropriate window treatments. The portion of all window coverings visible from the exterior of any Residence shall be white or off-white or neutral, unless otherwise approved by the ARC.

**Section 29. Intentionally Omitted.**

**Section 30. Intentionally Omitted.**

**Section 31. Mailboxes.** Only approved mailboxes can be installed in the community. Each mailbox must be the designated model of the Board. Each mailbox shall have a black finish.

**Section 32. Landscaping.** The purpose of this restriction is to promote landscape development of single family residential lots that will preserve and appreciate the value of the development by promoting a high quality, cohesive level of landscaping. These requirements may be altered or amended at the discretion of the Architectural Review Committee.

1. Guideline for Landscaping Planning:

(a) Existing vegetation and trees should be preserved whenever possible to provide screening and lend an established feeling to the Community.

(b) Shrubs should be well distributed, but not necessarily evenly spaced. Shrubs may be used for screening and to minimize the visual impact of driveways and parking areas.

(c) Sod shall be installed in the front yard side yard and in no less than 15 feet of the rear yard.

(d) Earth berms may be used to create a sense of enclosure and to screen driveways, especially if planted with shrubbery.

(e) Unified mulched planting beds edged in materials such as brick, steel or wood are preferred as they look neat longer and their shape is preserved.

(f) Exterior building material colors should be considered when selecting flowering trees and shrubs so that colors will not compete with or negate each other.

2. General Landscape Requirements:

A landscape plan shall be included as part of the lot development package submittal. This plan will include the entire lot and indicate the following:

(a) General information, including date, north arrow, and scale of one inch to no more than fifty feet; all property lines, locations of all easements and rights-of-way; name and telephone numbers of Builder and Owner.

(b) Construction information, including the locations of buildings, driveways, walks, walls, fences, and terraces.

(c) Locations, caliper, species (common name), and intended treatment (move, remove, or save) of existing trees six inches or greater at breast height.

(d) A schedule of all new and existing required plants proposed for landscaping, including size (caliper and height, container size, etc.) common names (genus, species, and variety) of trees, shrubs, and ground cover, and type and amount of turf grasses.

### 3. Tree and Shrub Requirements:

(a) The front yard of each lot shall be planted with at least three large trees (i, ii, iii) and two small tree (iv, v), to include no more than one evergreen. Shrubbery required in the front yard shall be a minimum of twenty (2) three gallon shrubs and thirty (30) one gallon shrubs, at least half of each type of which shall be species evergreen in this climate. Shrubs shall be planted in a bed of mulch or ground cover other than turf grass.

(b) The rear yard shall be planted with at least one large tree (4.i, ii, iii), and one small tree(4.iv,v).

(c) All proposed trees shall conform to be the minimum size standard listed below, based on American Standards for Nursery Stock, ANSI Z60.1, published by the American Association of Nurserymen and approved by the American National Standards Institute, as follows below.

### 4. Suggested Large Trees:

(a) Type 1, Shade trees, 2.5" caliper, 12" height range - Sugar Maple, Red Maple, Tulip Poplar, Sycamore, Red Oak, White Oak, and Willow Oak.

(b) Type 2, Shade trees, 1.5" caliper, 6' to 8' height range - Weeping Willow, Bradford Pear, Golden Rain Tree, Southern Magnolia, Zelkova, River Birch and European Birch.

(c) Type 5, Coniferous Evergreens, 5' to 6' height range - Pine species, Hemlock and Spruce.

### Suggested Smaller Trees:

(d) Type 3, Small upright trees, 1" caliper, 6' to 7' height range - Redbud, Crabapple, Crepe Myrtle, Cherry Laurel, and Flowering Plum.

(e) Type 4, Small spreading trees, 5' to 6' height range - Flowering Dogwood, Star Magnolia, Flowering Cherry, and Japanese Maple.

5. Other Landscaping Provisions

(a) If existing trees meet requirements of this covenant in all respects, required trees of the covenant may be omitted. Each existing tree meeting requirements may count, at the option of the owner, for one of the trees in its required class, provided it:

Is not one of the following species: Box elder, silver maple, catalpa, cottonwood, camphor, mimosa, chinaberry, princess tree, or Siberian elm.

Has a live crown and is free from serious root, trunk, and crown injury.

Is indicated on the landscaping plan as a tree "to be saved."

Is situated so that it can be incorporated into the landscape with minimal grade, cut, or fill under the drip line of the tree.

(b) Ground cover may include shrubs and low-growing plants such as Liriope, English ivy, Periwinkle, and similar material. Ground cover may also include non-living organic material such as bark and pine straw.

(c) All trees greater than six inches in diameter at breast heights shall be preserved, unless removal of them is part of an approved plan.

(d) The lot shall be completely landscaped. However, planned natural areas will be allowed provided that the lawn and the natural area form a cohesive whole. The front yard, side yards and at least 15' from the rear of the Dwelling toward the rear Lot line of each Lot must be sodded, with fescue being encouraged and each Lot shall have an automatic sprinkler system installed to cover the entire yard.

(e) Driveways shall coordinate with topography and existing vegetation to preserve all trees greater than six inches in diameter at breast height.

(f) Each lot Owner must submit a landscaping plan and must completely install such plan within ninety days of occupying the Residence. Additionally, each lot Owner must maintain his lawn in as good or better condition than his original landscaping plan. It is not the intention of the architectural control committee to monitor every planting in Mountain Preserve, but if a lawn, at the sole discretion of the architectural control committee, has deteriorated and/or was never installed properly, then the lot Owner will be required to bring his lot into compliance with the guidelines.

**Section 33. Screening of Heating and Cooling Units.** All exterior heat and air conditioning compressors or air handlers must be screened from view. This can be accomplished with either vegetation, brick and/or stone or may be behind a fence, as approved by the Architectural Review Committee. If vegetation is used it must create a walled off effect. The

screening is encouraged on all sides of the equipment but is required on the front and side of the equipment.

**Section 34. Storage Tanks.** Any storage tank must be approved by the architectural control committee and, if approved, must be buried, or, if they are less than fifty-gallon capacity, may, with the architectural control committee's approval, be installed above ground, if properly screened.

**Section 35. Home Size, Number of Buildings, etc.**

(a) **Size.** No home shall be constructed in excess of two stories. Basements are permitted and shall not count toward the levels of the home permitted by this section. No home shall consist of fewer than 1600 square feet of heated/cooled living area. Greater requirements may be set forth below.

(b) **Corner Lots.** No Dwelling located on corners may face any street at a ninety degree angle unless waived by the ARC.

(c) **Number of Buildings on Lot.** On a single family Lot, no structure will be constructed other than one (1) detached, single family Dwelling and one (1) accessory building, which may include a detached private garage or pool house, provided such Dwelling or accessory building does not overcrowd the Lot and is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building, Said building may not be rented or leased except as part of the entire premises including the main Dwelling.

(d) **Completion of Improvements.** The construction of any dwelling and other structures constructed upon any Lot must be completed within 24 months after the construction of same shall have commenced.

**Section 36. Basketball Goals.** No basketball goals may be erected, placed or constructed on the front of any Lot-(being defined as all portions of the Lot between the street (including side streets) and the rear most corner of the Dwelling). Only Board approved basketball goals may be erected or constructed on the rear portion of any Lot. No basketball goal may be erected over a garage or attached to a Dwelling.

**Section 37. Exterior Requirements.** All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior in the following proportions, except as may otherwise be limited in this Declaration. "Hardi-plank" or its equivalent shall be required on all siding on the first and second floors of all dwellings and permitted accessory buildings, except that vinyl cornice is permitted in the soffit and gable areas.

Provided, that these requirements can be modified if, in the sole discretion of the Architectural Review Committee, the style and exterior of the dwelling shall be deemed to

architecturally enhance the community. Visible unpainted red or yellow "sewer brick" will not be allowed.

**Section 38. Roof Pitch and Shingles.** All dwellings shall have a roof pitch of 8/12 or greater on the main roof. Porches and accent gables may be smaller if deemed necessary by the architectural style of the home. Roofs of Dwellings constructed on all Lots shall be architectural grade shingles.

**Section 39. Foundations.** While slab foundations are permitted, all foundations must be a minimum of **12 inches** above grade with a minimum of one step from the finished floor to ground level in the front of the dwelling. All foundations must be brick or stone with no exposed concrete or masonry block.

**Section 40. Specific Subdivision Restrictions on Minimum Square Footage.**

The following subdivisions shall have, at a minimum, the square footage set forth by each respective subdivision. Square footage shall be determined by the area of the Dwelling that is heated and cooled.

**High Park Subdivision:** Two thousand five hundred (2500).

**Hickory Cove Subdivision:** Two thousand (2000).

**Crystal Creek Subdivision:** One thousand six hundred (1600).

**Section 41. Decks, Playground Equipment, etc.** The type, design and location of decks and storm shelters constructed with the initial construction of a residence must be approved by the Architectural Review Committee. Decks, playground equipment and storm shelters erected after the initial construction of a residence is completed, must be in accordance with the Exterior Guidelines and may not be erected, placed, allowed or maintained on any lot without the prior written consent of the ARC or its designee. Any storm shelter must be buried underground.

**Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances and exceptions with respect to the provisions of this Declaration with respect to any Lot. Any request for a variance or exception submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written document executed by either the chairman or vice chairman of the ARC. **No exception granted by the ARC shall constitute a waiver of the restriction in any manner unless the exception is explicitly made on a Community wide basis or made, by resolution, to affect one or more particular subdivision(s) within the Community.**

**Section 42. Involvement of Board.** The Board may, but shall not be required, to take any formal action to abate any nuisances or to take any action with regard to a violation of the restrictions, particularly when the violations are minor or involve pets. Nothing in this provision



shall prohibit an Owner from either taking action or filing suit against another Owner in order to protect his/her/its rights under this Declaration.

**ARTICLE VII**  
**Prohibition of Timesharing**

Timesharing shall be prohibited in the Community. The term "timesharing" shall include, without limitation, timeshare estate, timeshare use, and timeshare interval programs.

**ARTICLE VIII**  
**Insurance and Casualty Losses**

**Section 1. Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars or a greater amount if directed by Declarant during time specified in Article X. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All insurance policies shall be reviewed annually by one or more qualified persons.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, the Declarant, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

**Section 2. Property Insured By Association: Damage and Destruction.** Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least sixty-six (66%) percent of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available;

provided, however such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

**Section 3. Property Insured By Owners: Damage and Destruction.** By virtue of taking title to property within the Community, each Owner covenants and agrees with all other Owners and with the Association that in the event that the Association does not carry insurance on the Owner's property, each individual Owner shall carry liability and casualty insurance or cause such insurance to be carried by another entity, such as a condominium association or homeowners association. Each individual Owner further covenants and agrees that in the event of a partial loss of damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

**Section 4. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

## **ARTICLE IX Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VIII,

Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## **ARTICLE X**

### **Annexation of Additional Property**

**Section 1. Unilateral Annexation by Declarant.** As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until twenty-five (25) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof, (sometimes the "Additional Property") and as it may be amended from time to time, to the provisions of this Declaration and the jurisdiction of the Association by filing for record a Supplementary Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

The rights reserved unto Declarant to subject additional land to the Declaration will not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 2. Exhibit "C": Real Property Amendment.** Subject to the consent of the owner or owners thereof and, so long as the Declarant has the right to subject additional real property as described in Exhibit "C" (as it may be amended from time to time as herein provided) to this Declaration as provided above, with the consent of the Declarant, upon the affirmative vote of at least a majority of the Board of the Association, in person or by proxy, at a meeting duly called for such purpose, the Association may amend Exhibit "C" real property to include such additional real property as may meet the above described requirements by filing for record a Supplementary Declaration with respect to the property being annexed included by amendment to Exhibit "C" Real Property. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation amendment shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

**Section 3. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of the properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Community. Such amendment shall not require the consent of any Person other than the Owner of the Property to be withdrawn, if not the Declarant. If the property is Common Area, the

Association shall consent to such withdrawal.

## **ARTICLE XI**

### **Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and the By-Laws notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot number, therefore becoming an “eligible holder”), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

**Section 2. Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (A decision, including contracts, by the Board or provisions of any Supplementary Declaration regarding assessments for Parcels or

other similar areas shall not be subject to this provision where such decision or Supplementary Declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section 3. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 4. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 5. Amendment by Board.** Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendments to this Article to be recorded to reflect such changes.

**Section 6. Veterans Administration Approval.** Intentionally Omitted.

**Section 7. Applicability of Article XI.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

**Section 8. Failure of Mortgagee to Respond.** Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written

response from the Mortgagee within thirty (30) days of the date of the Association's request.

**ARTICLE XII**  
**Easements**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

**Section 2. Easements for Use and Enjoyment of Common Property.** Subject to Section 8 of this Article, every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

(a) the right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property, including, without limitation, swimming pools, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefor, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, Occupants, and invitees;

(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;

(c) the right of the Board to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying

all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community (Any provision in this

Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall extend to the members of his family and guests. Landowner shall be deemed to have made a delegation of all such rights (except for the right of ingress and egress to the Owner's property) to the Occupants of any leased Residence.

Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article X hereof, the consent of Declarant, the Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert tennis courts into a basketball court or vice versa.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall not give any Owner the right of ingress or egress across any Lot to obtain access to such Common Property.

**Section 3. Reserved Easements for the Provision of Services to the Community.**

There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights-of-way, drainage facilities, floodway easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water,

sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement,



maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall have full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 4. Reservation of General Access Easement.** Declarant does hereby establish and reserve for itself, the ARC, and the Association, their respective agents, employees, representative, invitees, successors and assigns, a permanent and perpetual nonexclusive easement 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 these Covenants, and (b) the performance of the respective duties of Declarant, the ARC, and the Association hereunder, including, without limitation taking any action required or permitted to be taken by Declarant, the ARC or the Association pursuant to any of the terms or provisions of these Covenants; provided, however, that upon completion and occupancy of any Lot, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot directly affected thereby.

**Section 5. Intentionally Omitted.**

**Section 6. Intentionally Omitted.**

**Section 7. Reservation of Easements With Respect to Common Areas.**

(a) Easement Upon Common Areas. Declarant does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing, installing, repairing and replacing any Improvements to the Community or to the Common Areas, and (ii) doing all other things reasonably necessary and proper in connection therewith;

provided, however, that nothing in this sentence shall obligate Declarant to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Declarant continues to own any portion of the Property, Declarant hereby establishes and reserves for itself and its successor and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Declarant deems appropriate; provided, however, that Declarant should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) Changes in Common Areas. Declarant does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, any Lots, or other portions of the Community or of the Development owned by Declarant. Declarant further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Development, the Community, or any Improvements thereto to be utilized as Common Areas, as Declarant, in its sole discretion, may determine.

**Section 8. Reservation of Maintenance Easement.** Subject to the terms and provisions of Article V, Section 2, Declarant does hereby establish and reserve for the Association, and each of their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Community; provided, however, that such easement shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions.

**Section 9. Landscaping by Owners on Easement Areas.** The Declarant, the Association, any Governmental Authority, any utility company, and each of their respective successors and assigns, shall not be liable to any Owner, Occupant or any other party for and on account of damage to any landscaping or plantings placed on any easement area or road right-of-way within the Community by any Owner, Occupant or any other party.

**Section 10. Easement for Special Events.** Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, as well as activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

**Section 11. Surface Water and Stormwater Management System.** The Association

shall have the right to maintain and cause all Owners to maintain proper drainage within the Community in accordance with the stormwater drainage plan approved by the applicable Governmental Authorities having jurisdiction over the Community, as the same may be amended from time to time. In the exercise of this right, the Association shall have a blanket easement, less and except the footprint of the Dwelling erected on any Lot, and right on, over, across, under and through all portions of the Community to maintain and to correct drainage of surface water; provided, however, that each Owner shall be solely responsible for providing and maintaining adequate soil erosion measures and drainage facilities on such Owner's Lot and neither the Association nor the Declarant shall, by virtue of the reservation of the foregoing easement, be under any obligation to provide or connect any stormwater or surface drainage improvements or facilities on any Lot. The foregoing easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with Governmental Regulations; provided, however, that neither the Declarant nor the Association shall be obligated to undertake any of the foregoing actions. Notwithstanding the foregoing, each Owner shall provide and maintain on his or her Lot adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff from and coming onto such Owner's Lot or resulting from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also insure that his or her Lot and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all stormwater drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other Governmental Regulations. **Each Owner, by acceptance of a deed to his or her Lot, shall and does hereby indemnify, defend and agree to hold the Declarant, the Architectural Review Committee, the Association, and their respective agents, employees, officers, directors, shareholders, members, managers and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees, and any and all other amounts suffered, paid or incurred by any of them in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of breach by such Owner (or any breach by such Owner's Occupants, contractors, subcontractors, guests, agents, employees, or invitees) of any of the terms and provisions of this Section.**

### **ARTICLE XIII General Provisions**

**Section 1. Enforcement.** Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions and with the design guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to his or her property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules and regulations, use restrictions, or design guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Furthermore, the Board shall be entitled to recover costs and reasonable

attorney's fees from the Owner and/or Occupant upon being the substantially successful party in any litigation resulting from an Owner and/or Occupant failing to comply with this Declaration in any material respect. Failure by the Board or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Term.** The terms, covenants, conditions and restrictions set forth in these Covenants shall run with and bind all of the Community, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time these Covenants shall be automatically renewed and extended for successive and continuous periods ten (10) years each, unless, at any time after twenty (20) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots within the Property agreeing to terminate or modify these Covenants has been recorded in the Probate Office of Madison County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article XII hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

Notwithstanding anything herein to the contrary, these covenants and restrictions must remain in force and effect so long as Common Property is owned by the Association.

**Section 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the

Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to the property of any Owner without the consent of the affected Owner or Occupant.

Furthermore, so long as Declarant owns any land within the Community or has the unilateral right to annex land into the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, **Declarant may amend these Covenants by a written instrument** filed and recorded in the Probate Office of Madison County, Alabama, **without obtaining the approval of any Owner or Mortgagee**; provided, however, (a) in the event any amendment proposed by Declarant materially and adversely alters or changes any Owner's rights to the use and enjoyment of his or her Lot or materially or adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by the affected Owner, or, alternatively, by fifty percent (50%) of all of the Owners (including Declarant who shall have the voting rights attributable to any Lots owned by Declarant), or (b) in the event any such proposed amendment by Declarant would materially and adversely affect the title of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. Any amendment made pursuant to this Section shall be certified by Declarant and shall be effective upon recording of the same in the Probate Office of Madison County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section and further agrees that, if requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of these Covenants or any other instruments relating to the Community or the Association if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provision of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lot within the Community.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a two-thirds (2/3) vote of the total Association vote entitled to vote thereon or three-fourths (3/4) of the Board and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant. In the event of a conflict between the Board and the Association, the Board's decision controls. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or By-Laws.

Notwithstanding anything contained herein to the contrary, any amendment which affects the maintenance of the Common Property must be approved by the City of Huntsville, Alabama.

**Section 5. Partition.** The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within the Community, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant.

**Section 6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 7. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this

Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 8. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 9. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 10. Indemnification.** The Association shall indemnify every officer, director, ARC member and other committee member, as well as former officers, directors, ARC members and other committee members, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer, director, ARC member or other committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARC member or other committee member.

The officers, directors, ARC members or other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARC members or other committee member shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that they may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director, ARC member or other committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, ARC member or other committee member, or former officer, director, ARC member or other committee member, may be entitled under the Articles, By- Laws, contract, or otherwise. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 11. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article X terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C", as it may be amended from time to time, to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parades of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Homes and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 12. Books and Records.** This Declaration, the By-Laws, the Articles of Incorporation, copies of rules and regulations, use restrictions, design guidelines, membership register, and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed

representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents.

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 13. Audit.** An audit of the accounts of the Association may be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

**Section 14. Notice of Sale.** It is the express obligation of an Owner who sells his or her Lot, to give notice to the Association, in writing, of the name of the purchaser of the Lot and such other information as the Board may reasonably require.

**Section 15. Estoppel Certificate.** Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five (\$25.00) Dollars for the issuance of each such certificate.

**Section 16. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 17. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or



rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 18. Deviations.** The Board or its designee or the Declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the rules and regulations, the use restrictions, and the design guidelines.

**Section 19. Counsel.** The drafter of this Declaration, the Articles and the By-Laws, prepared said instruments on behalf of the Declarant and not for the benefit of future Owners.

#### **ARTICLE XIV Specific Rights of Declarant**

**Section 1. Right of Declarant to Modify Restrictions to Land Owned by Declarant.** With respect to any land owned by Declarant, Declarant may, by deed, contract or other instruments filed for the record in the manner specified by law, modify the provisions of these Covenants as the same apply to any such Lot, including but not limited to, the withdrawal of any such Lot from the operation and effect of these Covenants.

**Section 2. Development of Property.** Subject to the approval of any Governmental Authority with appropriate jurisdiction, Declarant shall have the right, but not the obligation, for so long as Declarant owns any portion of the Community, or until such earlier date as Declarant elects in its sole discretion to relinquish such right, to make improvements and changes to all Common Areas and to all Lots owned by Declarant, including without limitation (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lot owned by Declarant or of the Common Areas, (iii) installation of any water, sewer and any other utility systems and facilities within the Common Areas, or (iv) any other change or Improvement to any portion of the Common Areas or to the Lots owned by Declarant.

**Section 3. Subdivision Plat.** Declarant reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Community, including without limitation, the locations and dimensions of all Lots, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, setback line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Community indicated thereon as if such subdivision plat were specifically incorporated into these Covenants. Notwithstanding anything provided to the contrary in these Covenants, Declarant may at any time or from time to time divide and re-divide, combine and re-subdivide any Lots and/or land owned by Declarant and change any easement description or relocate any roads affected thereby, subject to approval of any Governmental Authority having jurisdiction thereof.

**Section 4. Board.** The Board of Directors shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Declarant hereby retains and shall have the right to appoint or remove, with or without cause, except as otherwise set out in the By-Laws, in Declarant's sole discretion.

**Section 5. Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THESE COVENANTS, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE COMMUNITY, DECLARANT HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN THE ORIGINAL BYLAWS. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Declarant shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 5 and the provisions of the original By-Laws. Upon termination of the Class "B" membership, or at such earlier date as Declarant elects, in Declarant's sole discretion, the Class "B" appointed board members shall resign and their positions shall be filled by the remaining Board members until the next annual meeting at which time the Owners shall elect new Board members to fill the positions of those Class "B" appointed board members who have resigned. The new Board shall undertake the responsibilities of the former Board and Declarant shall deliver all books, accounts and records of the Association, if any, which Declarant has in its possession.

**Section 6. Standards for Review.** Whenever in this Declaration, the Declarant, the Architectural Review Committee, or the Association have the right to approve, consent to, or require any action to be taken pursuant to the terms or provisions hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of the Declarant, the Architectural Review Committee, or the Association, as the case may be.

**Section 7. Builder Approval.** Subject to the remaining terms and provisions of this Section, only Builders who are authorized or allowed to build, renovate, improve or refurbish Dwellings within the Community. Approved Builders must comply with all construction regulations of the Architectural Review Committee, including, specifically, building in accordance with the plans and specifications approved by the Architectural Review Committee and compliance with all the terms and provisions of the Declaration. Approved Builders must post a deposit for compliance and damages, the amount of which shall be determined from time to time by the Architectural Review Committee. To the extent any Approved Builder fails to comply with all of the requirements of the Architectural Review Committee or the Declaration, such failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in the Community and removal from the Approved Builder list. The Declarant is not responsible for any claims relating to the construction of the any Improvements; such claims are solely the responsibility of the individual builder. No home may be constructed in the

Community unless a Builder is responsible for the supervision of the construction. The intent of this provision prohibits individual Owners from constructing their own Residence without the assistance of a licensed builder.

### **Section 8. Repurchase Option.**

(a) Repurchase Option/ Payment of Resale Proceeds. In the event (i) any Owner desires to sell, transfer, or convey his, her, or its Lot to any third party prior to the completion of a Dwelling thereon; or (ii) any Owner fails to commence construction or complete construction on such Owner's Lot within the time period set forth below, then, in either such event, the Declarant does hereby reserve the right, at its option (but without any obligation), to either (1) repurchase such Lot (the "Repurchase Option") in accordance with the terms and provisions set forth below or (2) elect to participate in any sales proceeds received by such Owner from the transfer, sale or conveyance of such Owner's Lot in accordance with the terms and provisions of Section 7(d) below.

(b) Time Limits for Commencement and Completion of Construction. Unless otherwise agreed to in writing by the Declarant, each Owner shall:

(i) Within twelve (12) months from the date on which such Owner purchases a Lot from Declarant (as evidenced by the date on the deed to such Lot from the Declarant to such Owner) submit to the Architectural Review Committee the plans and specifications required by the Architectural Review Committee;

(ii) Within eighteen (18) months from the date on which such Owner purchases a Lot from the Declarant, commence construction of a Dwelling on such Lot in accordance with the plans and specifications therefore which have been approved by the Architectural Review Committee;

(iii) Following commencement of construction, each Owner agrees to diligently pursue such construction to completion; and

(iv) Substantial completion of the Dwelling must occur on or before twelve (12) months following the date on which the Architectural Review Committee has approved the plans and specifications for such Dwelling.

As used herein, the term "commence construction" shall mean the commencement by such Owner of construction of the Dwelling on such Lot by substantially clearing, grading and excavating such Lot and otherwise commencing to make other improvements to such Lot such as, but not limited to, pouring of footings and foundations and commencement of framing work. If, at any time after an Owner has commenced construction, such Owner fails to make significant construction progress during any 30-day period, such failure shall be considered to be a failure to diligently pursue construction progress as required by the terms and provisions herein. Notwithstanding anything provided in this Section 7 to the contrary, all of the time periods

specified in this Section shall be extended for casualty, extreme material shortages, inclement weather conditions that are not normal or customary for the time of year during which construction of such Dwelling is being undertaken and any other significant matters beyond the reasonable control of the Owner or his or her builder; provided, however, that no extension shall be granted as a result of an inability to obtain financing or funding for the construction of such Dwelling.

(c) Exercise of Repurchase Option. In the event any Owner fails to commence, diligently pursue or complete construction of a Dwelling on his or her Lot in accordance with the requirements of Section 7 above, then the Declarant shall have the right, at any time after such expiration of any time periods set forth above, to provide written notice to such Owner exercising the Repurchase Option in accordance with the remaining terms and provisions of this paragraph. The consummation of the Repurchase Option by the Declarant shall occur no later than thirty (30) days after the Declarant has given written notice to such Owner of the Declarant's election to exercise the Repurchase Option. At the closing of the purchase and the sale of any Lot which is being repurchased by the Declarant by virtue of the terms and provisions of this paragraph, the Owner of such Lot subject to such Repurchase Option shall transfer and convey the Lot subject to such Repurchase Option to the Declarant by statutory warranty deed, free and clear of all liens, encumbrances and any other matters of title other than those matters of record in existence as of the date on which such Lot was originally conveyed by the Declarant to such Owner. Such Owner shall, at his or her sole cost and expense, be obligated to pay all sums and otherwise take all other action necessary or required to remove any and all liens, encumbrances and other title matters and exceptions encumbering such Owner's Lot other than any such liens, encumbrances and other title matters and exceptions in existence as of the date on which such Lot was originally acquired by such Owner from the Declarant. Contemporaneously with the delivery of the deed by such Owner to the Declarant, the Declarant shall pay to such Owner the Original Purchase Price, as defined below, paid by such Owner to the Declarant (or if such Owner has acquired his or her Lot from a previous Owner other than the Declarant, then the Declarant shall pay to such current Owner the Original Purchase Price paid to the Declarant by the first or original Owner of such Lot), in each case, without interest thereon. The Owner of such Lot subject to the Repurchase Option shall pay, prior to delivery of the Deed to the Declarant, any and all outstanding Assessments and any other charges due and owing under this Declaration. Real estate ad valorem taxes and any prepaid Assessments shall be prorated as of the date of delivery of such Deed.

(i) Sale of Lot Prior to Completion of Dwelling. In the event the Owner of any Lot desires to sell, transfer, or convey his or her Lot to any third party prior to Substantial Completion, as defined above, of a Dwelling thereon, then the Declarant shall have the right, at its option, to either (i) exercise the Repurchase Option and repurchase the Lot in accordance with the terms and provisions of Section 7(c) above; or (ii) elect, in writing, to waive its Repurchase Option, in which event the Declarant shall be entitled to receive twenty-five percent (25%) of the Net Profit, as herein defined, received by such Owner from the resale of such Lot, which amount will be due and payable in full upon the transfer and sale of any Lot by such Owner to any third party, which obligation shall be a personal obligation of the Seller of such Lot (the "Sales

Participation Option”). As used in this paragraph, the following terms shall have the following meanings:

(1) “Net Profit” means the gross resale price, as herein defined, for such Lot, less the Original Purchase Price, as herein defined, for such Lot;

(2) “Gross Resale Price” means the total amount paid to such Owner by a third party purchaser in connection with the resale of such Owner’s Lot, including compensation in any form paid to such Owner regardless of whether the same is reflected in the Gross Sale Price for such Lot, but without deduction for any costs of sale, prorations or other deductions from the Gross Resale Price received by Owner in any such resale; and

(3) “Original Purchase Price” means the gross amount originally paid by such Owner to the Declarant for such Lot (increased by the costs or fair market value, whichever is less, of any improvements made by the then current Owner to such Lot in accordance with plans approved by the Architectural Review Committee) but without deduction for any costs of sale, prorations or other adjustments to the Original Purchase Price paid by such Owner to Declarant for such Lot.

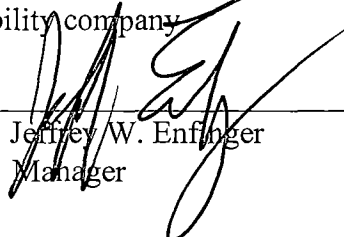
(d) Subordination of Mortgage The Repurchase Option retained and reserved by the Declarant under the provisions of Sections 7(a) and 7(c) shall be and are subject and subordinate to the rights of any Mortgagee under any Mortgage that was duly recorded in the Probate Office prior to the exercise of the Repurchase Option by the Declarant.

(e) Enforcement The Repurchase Option and the Sales Participation Option of the Declarant set forth herein may be enforced by the Declarant by an action for specific performance. In the event any Owner fails to timely and promptly perform all of such Owner’s obligations set forth in this Section 7 with respect to the exercise by the Declarant of the Repurchase Option or the Sales Participation Option, such owner shall also pay to the Declarant any and all costs and expenses incurred by the Declarant in enforcing the terms and provisions of this Section 7 including, without limitation, reasonable attorney’s fees and expenses and court costs. The Repurchase Option and Sales Participation Option shall be and are covenants running with the land which shall be binding on the Owner of each Lot and such Owner’s heirs, executors, successors and assigns.

*[Signatures follow on next page.]*

IN WITNESS WHEREOF, the undersigned, Enfinger Development, LLC, an Alabama limited liability company, has caused this instrument to be executed on this the 4 day of December, 2020.

ENFINGER DEVELOPMENT LLC, an Alabama limited liability company

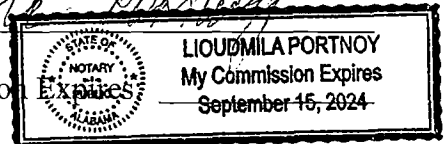
  
By: Jeffrey W. Enfinger  
Its: Manager

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Jeffrey W. Enfinger, whose name as Manager of Enfinger Development, LLC, an Alabama limited liability company, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 4 day of December, 2020.

  
Notary Public  
My Commission Expires



RATIFIED BY MORTGAGEE:

Bank Independent

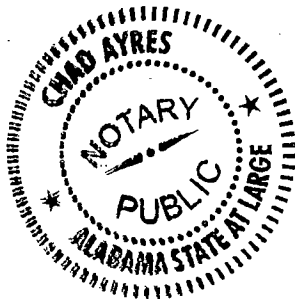
By: Will Elliott

Its: Vice President

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Will Elliott, whose name as Vice President of Bank Independent whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 7<sup>th</sup> day of December, 2020.



[Signature]

Notary Public

My Commission Expires: 05-03-2021

EXHIBIT "A"  
Definitions

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

(a) **"Articles of Incorporation"** shall mean the Articles of Incorporation of Mountain Preserve Owners Association, as such document may be amended.

(b) **"Association"** shall mean and refer to Mountain Preserve Owners Association, a nonprofit, nonstock, membership corporation incorporated under the laws of the State of Alabama, its successors and assigns.

(c) **"Association Expenses"** shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the By-Laws, and the Articles of Incorporation.

(d) **"Board of Directors"** or **"Board"** shall mean the governing body of the Association, and the Board shall have such duties as are provided in the Declaration, the By-Laws, the Articles of Incorporation, and the Alabama Nonprofit Corporation Act.

(e) **"Bylaws"** or **"By-Laws"** shall refer to the Bylaws of Mountain Preserve Owners Association, as such document may be amended from time to time. A copy of said Bylaws is attached hereto and incorporated herein as Exhibit "D."

(f) **"Certificate of Occupancy"** shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Lot.

(g) **"Common Areas"** and/or **"Common Property"** shall mean and refer to all real and personal property now or hereafter owned by the Association for the nonexclusive, common use and enjoyment of the Owners and Occupants. The Common Areas shall include (a) all signage, street lights, lighting, walkways, paths, bicycle and jogging paths or lanes, if any, improvements, landscaped or other areas of common use, (b) all storm drains and sewers, drainage and/or watershed protection areas located within the Community (other than such areas located solely within the boundary lines of any Lot), (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas on more than one Lot, (d) all easements and easement areas within the Community (other than such areas located solely within the boundary lines of any Lot), (e) any other areas or Improvements on or within the Community which are designated as Common Areas by Declarant or the Board from time to time, and (f) any and all easements and easement areas within the boundary lines of any Lot upon which community installed fence or berm is located and/or any such areas within Lot boundaries that are designated by plat as being a "Landscape Easement." The designation of any



land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment thereof or any other rights, licenses or benefits therein. The designation of any real estate on any recorded plat shall not be a dedication to the Association. Such dedication may only take place upon the execution and recording of a deed, or quit claim deed, from the Declarant to the Association.

(h) **“Community”** and or **“Property”** shall mean and refer to that certain real property and interests therein described in Exhibit “B”, attached hereto, and such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

(i) **“Community-Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(j) **“Declarant”** and or **“Developer”** shall mean and refer to ENFINGER DEVELOPMENT, LLC, an Alabama limited liability company, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit “B”, attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grantor of such conveyance, which grantor shall be the “Declarant” hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the property described in Exhibit “B” attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Declarant” hereunder at any one point in time.

(k) **“Declaration”** and or **“Covenants”** shall mean the Declaration of Covenants, Conditions, Restrictions and Easements for Mountain Preserve, as such document may be amended.

(l) **“General Assessments”** shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants.

(m) **“Governmental Authority”** shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Property.

(n) **“Improvements”** shall mean and refer to all dwellings, any building, structure, planting or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot or Common Area. Improvements shall include, by

way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural conditions of any Lot.

(o) **“Lot”** shall mean and refer to any portion of the Community which will be owned in fee simple by an Owner. Upon the recordation of any subdivision plat for the Community, each lot indicated thereon shall be deemed a Lot for purposes of these Covenants.

(p) **“Majority”** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(q) **“Member”** shall mean a Person that is a member of the Association as provided in the Declaration.

(r) **“Mortgage”** means any first mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(s) **“Mortgagee”** shall mean the holder of a Mortgage.

(t) **“Occupant”** shall mean any Person occupying all or any portion of a Residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(u) **“Owner”** shall mean and refer to the record owner, including Declarant, of fee simple title to any Lot, 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 (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

(v) **“Person”** means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(w) **“Residence”** shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. For example, each single family detached home shall constitute a Residence; each condominium unit in a condominium development shall constitute a Residence; each Apartment Unit in an Apartment Complex shall constitute a Residence; and each townhome or cluster home unit in an attached or semi-attached housing development shall constitute a Residence. The foregoing examples are set out by way of illustration and not in limitation of the

term "Residence." Residence shall include all portions of the land owned as well as any structure thereon, as described above. Except where it is clear that a different usage is intended, references to a Lot shall include the term "Residence." A Residence shall come into existence for the purpose of assessments on the earliest date of the happening of any of the following events: (1) when a Certificate of Occupancy is issued by the proper governing authority; or (2) in the case of a Lot in a subdivision, the expiration of one year from the date the subdivision is accepted for maintenance by the proper governing authority (unless made earlier or later by contract between Declarant and Owner).

(x) **"Residential Use"** shall mean and refer to the occupancy of any Lot for single-family residential housing purposes.

(y) **"Mountain Preserve"** shall mean "Mountain Preserve Subdivision"- shall mean all of the Property described in Exhibit "B" along with any and all future phases of property described in Exhibits "B" and "C" or as may be subjected to this Declaration by a Supplementary Declaration.

(z) **"Supplementary Declaration"** shall mean an amendment to the Declaration subjecting additional property to the Declaration.

(aa) **"Builder"** shall mean any Person who holds either a general contractor's license or a Homebuilder's license with the State of Alabama.

(bb) **"Approved Builder"** shall mean those Builders identified, from time to time, by the Declarant during the Class B Member Control Period, or the Board after such time, as being approved to purchase Lots and construct Dwellings for resale in the Community for so long as such persons remain on the approved builder list maintained by the Association and the ARC.

(cc) **"Dwelling"** shall mean a single family residential dwelling.

EXHIBIT "B"

A LOT OR PARCEL LOCATED IN THE NORTHEAST QUARTER OF SECTION 33, IN SECTION 34, AND IN THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 4 SOUTH, RANGE 2 EAST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, THENCE SOUTH 05 DEGREES 42 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 383.90 FEET TO THE POINT OF BEGINNING.

THENCE, FROM THE POINT OF BEGINNING, North 82 DEGREES 13 MINUTES 31 SECONDS East for a distance of 424.63 feet to a point; THENCE North 07 DEGREES 46 MINUTES 06 SECONDS West for a distance of 499.80 feet to a point; THENCE South 82 DEGREES 07 MINUTES 46 SECONDS West for a distance of 320.67 feet to a point; THENCE North 01 DEGREE 14 MINUTES 12 SECONDS West for a distance of 505.93 feet to a point; THENCE North 88 DEGREES 13 MINUTES 23 SECONDS East for a distance of 327.16 feet to a point; THENCE North 85 DEGREES 35 MINUTES 56 SECONDS East for a distance of 961.26 feet to a point; THENCE South 01 DEGREE 19 MINUTES 35 SECONDS East for a distance of 700.00 feet to a point; THENCE South 46 DEGREES 02 MINUTES 44 SECONDS East for a distance of 1793.56 feet to a point; THENCE South 00 DEGREES 08 MINUTES 44 SECONDS East for a distance of 1262.11 feet to a point; THENCE South 00 DEGREES 19 MINUTES 57 SECONDS East for a distance of 1252.56 feet to a point; THENCE South 86 DEGREES 23 MINUTES 28 SECONDS West for a distance of 608.64 feet to a point; THENCE North 13 DEGREES 26 MINUTES 21 SECONDS East for a distance of 15.94 feet to a point; THENCE North 10 DEGREES 18 MINUTES 55 SECONDS West for a distance of 38.67 feet to a point; THENCE North 13 DEGREES 49 MINUTES 21 SECONDS East for a distance of 98.08 feet to a point; THENCE North 49 DEGREES 16 MINUTES 20 SECONDS East for a distance of 33.29 feet to a point; THENCE North 07 DEGREES 22 MINUTES 56 SECONDS West for a distance of 9.49 feet to a point; THENCE North 26 DEGREES 44 MINUTES 09 SECONDS West for a distance of 34.16 feet to a point; THENCE North 16 DEGREES 31 MINUTES 00 SECONDS West for a distance of 61.46 feet to a point; THENCE North 02 DEGREES 59 MINUTES 27 SECONDS East for a distance of 32.10 feet to a point; THENCE South 86 DEGREES 23 MINUTES 28 SECONDS West for a distance of 701.75 feet to a point; THENCE North 00 DEGREES 57 MINUTES 39 SECONDS West for a distance of 934.70 feet to a point; THENCE North 88 DEGREES 30 MINUTES 28 SECONDS West for a distance of 577.52 feet to a point; THENCE North 24 DEGREES 04 MINUTES 09 SECONDS West for a distance of 144.20 feet to a point; THENCE North 25 DEGREES 17 MINUTES 17 SECONDS West for a distance of 467.02 feet to a point; THENCE North 25 DEGREES 41 MINUTES 43 SECONDS West for a distance of 72.27 feet to a point; THENCE North 25 DEGREES 41 MINUTES 43 SECONDS West for a distance of 68.78 feet to a point; THENCE North 25 DEGREES 12 MINUTES 28 SECONDS West for a distance of 522.96 feet to A POINT; THENCE ALONG A curve to the right HAVING A DELTA ANGLE OF 20 DEGREES 05 MINUTES 19 SECONDS AND a radius of 1255.35 feet, HAVING A CHORD BEARING OF North 16 DEGREES 32 MINUTES 42 SECONDS West for a distance of 437.89 feet to a point; thence North 06 DEGREES 45 MINUTES 19 SECONDS West a distance of 622.70 feet to the POINT OF BEGINNING;

CONTAINING 169.30 ACRES (7,374,795) MORE OR LESS.

**AND ALSO:**

A LOT OR PARCEL LOCATED IN THE NORTHEAST QUARTER OF SECTION 33 AND THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33, THENCE SOUTH 02 DEGREES 47 MINUTES 21 SECONDS WEST FOR A DISTANCE OF 986.33 FEET TO THE POINT OF BEGINNING,

THENCE, FROM THE POINT OF BEGINNING, South 06 DEGREES 48 MINUTES 28 SECONDS East for a distance of 30.65 feet to a point; THENCE North 87 DEGREES 23 MINUTES 27 SECONDS West for a distance of 30.72 feet to a point; THENCE North 89 DEGREES 09 MINUTES 57 SECONDS West for a distance of 173.05 feet to a point; THENCE South 10 DEGREES 21 MINUTES 48 SECONDS East for a distance of 319.91 feet to a point; THENCE North 68 DEGREES 58 MINUTES 06 SECONDS East for a distance of 183.71 feet to a point; THENCE South 21 DEGREES 06 MINUTES 19 SECONDS East for a distance of 117.29 feet to a point; THENCE South 24 DEGREES 38 MINUTES 03 SECONDS East for a distance of 105.40 feet to a point; THENCE South 24 DEGREES 51 MINUTES 26 SECONDS East for a distance of 104.99 feet to a point; THENCE South 68 DEGREES 34 MINUTES 11 SECONDS West for a distance of 180.56 feet to a point; THENCE South 24 DEGREES 00 MINUTES 47 SECONDS East for a distance of 105.10 feet to a point; THENCE North 68 DEGREES 29 MINUTES 35 SECONDS East for a distance of 182.26 feet to a point; THENCE South 24 DEGREES 57 MINUTES 01 SECOND East for a distance of 105.27 feet to a point; THENCE South 25 DEGREES 07 MINUTES 02 SECONDS East for a distance of 105.15 feet to a point; THENCE South 19 DEGREES 58 MINUTES 39 SECONDS East for a distance of 106.80 feet to a point; THENCE South 25 DEGREES 52 MINUTES 31 SECONDS East for a distance of 103.53 feet to a point; THENCE South 25 DEGREES 52 MINUTES 46 SECONDS East for a distance of 100.29 feet to a point; THENCE South 25 DEGREES 03 MINUTES 41 SECONDS East for a distance of 61.94 feet to a point; THENCE South 68 DEGREES 27 MINUTES 19 SECONDS West for a distance of 344.05 feet to a point; THENCE North 89 DEGREES 38 MINUTES 29 SECONDS West for a distance of 404.10 feet to a point; THENCE South 01 DEGREE 20 MINUTES 39 SECONDS West for a distance of 186.34 feet to a point; THENCE North 89 DEGREES 39 MINUTES 30 SECONDS West for a distance of 1081.33 feet to a point; THENCE North 00 DEGREES 15 MINUTES 47 SECONDS West for a distance of 631.23 feet to a point; THENCE North 89 DEGREES 27 MINUTES 34 SECONDS West for a distance of 58.38 feet to a point; THENCE North 89 DEGREES 27 MINUTES 34 SECONDS West for a distance of 1310.19 feet to a point; THENCE North 01 DEGREE 38 MINUTES 05 SECONDS East for a distance of 871.36 feet to a point; THENCE South 89 DEGREES 26 MINUTES 41 SECONDS East for a distance of 1273.70 feet to a point; THENCE North 01 DEGREE 03 MINUTES 43 SECONDS West for a distance of 30.00 feet to a point; thence South 88 DEGREES 53 MINUTES 50 SECONDS East a distance of 1439.29 feet to the POINT OF BEGINNING;

CONTAINING 77.96 ACRES (3,396,008) MORE OR LESS.

EXHIBIT "C"

All property described in the attached legal descriptions as well as all properties within a three mile radius of the properties described either in Exhibit "B" or the specific properties set out in this Exhibit "C." Said properties need not be contiguous.

EXHIBIT "D"

*[Attach Copy of Bylaws of Mountain Preserve Owners Association]*



**BYLAWS**  
**OF**  
**MOUNTAIN PRESERVE OWNERS ASSOCIATION**

**Prepared by:**

**Samuel H. Givhan**  
**WILMER & LEE, PA**  
**100 Washington Street**  
**Huntsville, Alabama 35801**  
**Telephone Number: (256) 533-0202**



**BYLAWS  
OF  
MOUNTAIN PRESERVE OWNERS ASSOCIATION**

**Article I  
Name, Membership, and Definitions**

**Section 1. Name.** The name of the Association shall be MOUNTAIN PRESERVE OWNERS ASSOCIATION (hereinafter sometimes referred to as the "Association").

**Section 2. Membership.** Provisions regarding membership in the Association are fully set forth in the Declaration of Protective Covenants for Mountain Preserve Owners Association, (this Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

**Section 3. Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration unless the context shall prohibit.

**Article II  
Association: Meetings, Voting, Proxies, Quorum**

**Section 1. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors, either in the Community or as convenient thereto as practical.

**Section 2. First Meeting and Annual Meetings.** An annual or special meeting shall be held after the Association's Directors are no longer appointed by the Declarant. Annual meetings shall be set thereafter by the Board so as to occur within sixty (60) days of the close of the Association's fiscal year. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday). Any Member may attend an annual meeting.

**Section 3. Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board or upon a petition signed by Owners holding at least fifty (50%) percent of the total Association vote entitled to vote thereon. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice. Any Member may attend a special meeting.

**Section 4. Notice of Meetings.** It shall be the duty of the Secretary to mail or to cause to be delivered to each Member a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Residence, he or she shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice so long as Article VI, Section 4 of the Bylaws is complied with. In addition to serving notice as provided above, or as an alternative thereto, the Board may serve notice of an annual or special meeting by publishing notice in a newspaper or newsletter circulated within the Community. The date of publication shall be the date that notice is served. Notices shall be served not less than ten (10) nor more than fifty (50) days before a meeting.

**Section 5. Waiver of Notice.** Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order.

**Section 6. Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, a Majority of the Association vote present at the meeting, in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 7. Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein. Voting may be held by either by referendum or at a meeting. Unless a vote on any question is required by law or is required by the Declaration or Bylaws to be taken at a meeting (in which case a meeting shall be called and proxies shall be sent to all Members entitled to vote on the issue(s) to be decided at the meeting), elections and other matters requiring a membership vote may be submitted on a ballot or ballots to the Members in referendum by mail or at polling places in the Community. Ballots shall be returned to the Secretary by the date specified on the ballot. The Board shall determine the method of voting, the form of all ballots, the wording of questions thereon and the deadline for return of ballots. It shall designate the number and location of polling places, if any. The Board may include on any ballot questions on which it seeks an advisory vote. Members may suggest questions for an advisory vote which shall be evaluated by the Board for consistency with the exercise of its duties and responsibilities. In any advisory vote, each such question on a ballot shall indicate that the vote is for advisory purposes only. Notice of referenda shall be given in the same manner as notice of meetings.

**Section 8. Proxies.** At all meetings of the Association, Members entitled to vote may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall

automatically cease upon conveyance by the Owner of his or her Residence, upon receipt of notice by the Secretary of the death or judicially declared incompetence of an Owner, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

**Section 9. Quorum.** The presence, in person or by proxy, of Members entitled to cast at least ten (10%) percent of the votes of Members entitled to vote on the issue(s) before the meeting shall constitute a quorum at all meetings of the Association. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, so long as any action taken thereafter is approved by at least a Majority of the votes required to constitute a quorum. The quorum for a referendum shall be twenty-five (25%) percent of the votes of Members entitled to vote thereon, except that there shall be no quorum requirement for advisory votes.

**Section 10. Assessments.** The rights of membership are subject to the payment of annual assessments and charges and other assessments as provided in the Declaration. The obligation of such assessments and charges is imposed against each Member of, and is a lien upon, the Member's Lot against which such assessment or charge is made, as provided by the Declaration. Assessments shall be determined by the Board of the Association and levied as set forth in the Declaration. Such assessments shall be used for the purposes set forth in Declaration and for such other purposes as may be set forth in the Articles.

**Section 11. Suspension of Membership Rights.** The membership rights of any Member including the right to vote, may be suspended by the Board of Directors (a) for any period during which any assessment or charge owed to the Association by such Member remains unpaid and, (b) for a period not to exceed thirty (30) days for any infraction of the Association or the Architectural Review Committee's published Rules and Regulations. Any such suspension shall not affect such Member's obligation to pay Assessments coming due during the period of suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association.

**Section 12. No transfer.** Membership in the Association shall not be transferable or assignable except in connection with the transfer of a Lot.

**Section 13. Limited Liability.** No Member of the Association shall be individually or personally liable to the creditors of the Association for any indebtedness or liabilities of the Association, and any all creditors of the Association shall look only to the assets of the Association for payment of any such indebtedness or liabilities.

**Section 14. Alternative Voting Procedures.** Notwithstanding any other provision of these Bylaws, to the extent permitted by the laws of Alabama, any vote to be taken of the members upon a stated proposal or for the election of Directors may be taken by mail, and the number of votes necessary for passage of the proposal or election as a Director shall be the same as if the vote were taken at a meeting.

**Article III**  
**Board of Directors**

**A. Composition and Selection.**

**Section 1. Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Lot may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Lot is delinquent. A "resident" shall be any natural person 19 years of age or older whose principal residence is within the Community. In the case of a Member which is not a natural person, any officer, director, partner, member, employee, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided that no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by or serving as a representative of the Class "B" or the Declarant.

**Section 2. Directors During Class "B" Control Period.** Subject to the provisions of this Article, the Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during the Class "B" Control Period. Directors appointed by or serving as a representative of the Class "B" Member or the Declarant shall not be subject to the qualifications for Directors set forth in Section 1.

**Section 3. Veto.** After the termination of the Declarant's right to appoint all Directors and officers, the Declarant shall have a veto power over all actions of the Board, as is more fully provided in this Section. This power shall expire as set forth in the Declaration. This veto power shall be exercisable only by Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The veto shall be as follows:

No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) Declarant shall have been given written notice of all meetings and proposed actions to be approved at meetings by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice shall comply with the provisions of these Bylaws regarding notice of regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at the meeting; and

(b) Declarant shall have been given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board or the Association. Declarant and its

representatives or agents shall make its concerns, thoughts, and suggestions known to the Members of the Association and/or the Board. As to such meeting, Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board of Directors and to be taken by the Board. The veto may be exercised by Declarant, its representatives, or agents within fourteen (14) days after notice in writing to Declarant of action taken by the Board of Directors. Any veto power shall not extend to the requiring of any action or counterclaim on behalf of the Board.

**Section 4. Number of Directors.** The initial Board of Directors shall consist of five (5) members and shall be appointed by the Class "B" Member. The Board Members shall be elected as provided in Section 6 of this Article. After the termination of the Class "B" Membership, the Board may increase or decrease the number of Directors by amending the Bylaws.

**Section 5. Nomination of Directors.** The Board may establish a nominating committee consisting of a chairperson, who shall be a member of the Board, and three or more Members or representatives of Members. If established, the nominating committee shall be appointed by the Board not less than 30 days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. A nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 6 below.

Nominations shall be also permitted from the floor at a meeting of the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Directors appointed by or serving as a representative of the Class "B" Member or the Declarant shall not be subject to these nomination requirements.

Elected Directors may be elected by referendum. Cumulative voting is not permitted. Those candidates receiving the largest number of votes shall be elected. In the case of a tie vote, the winner shall be determined by the flip of a coin.

All Owners of Residences eligible to vote shall have the right to vote on all Directors to be elected as provided in the Declaration. The election shall be by a plurality of the votes cast. There shall be no cumulative voting. Each Class "A" Member shall be entitled to cast his vote for each of as many nominees as there are vacancies to be filled at the time of the election.

The Declarant, in its sole discretion and without loss of any rights herein to the contrary, may permit Owners of Residences to elect a larger number of Directors earlier than is required herein.

**Section 6. Election and Term of Office.**

(a) The year following the completion of the construction of one hundred (100) homes within the community, the Class "A" Members shall elect one (1) of the five (5) directors, who

shall be an at-large director and shall serve a term of two (2) years. The remaining four (4) directors shall be appointed by the Class "B" Member.

(b) The year following the completion of the construction of two hundred (200) homes within the community, the Class "A" Members shall elect two (2) of the five (5) directors, who shall be an at-large directors and shall serve a term of two (2) years. The remaining three (3) directors shall be appointed by the Class "B" Member.

(c) The year following the completion of the construction of three hundred (300) homes within the community, the Class "A" Members shall elect three (3) of the five (5) directors, who shall be an at-large directors and shall serve a term of two (2) years. The remaining two (2) directors shall be appointed by the Class "B" Member.

(d) The year following the completion of the construction of all homes within the community, the directors appointed by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint directors to serve until the next annual meeting, at which time the Class "A" Members shall be entitled to elect directors to fill such positions. Each director shall be elected for a term of two (2) years.

(e) The Declarant, at its discretion, may unilaterally accelerate and/or amend the schedule outlined in Section 6(a)-(d) above.

**Section 7. Removal of Directors.** At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board may be removed, with or without cause, by Owners holding a Majority of the total Association vote entitled to vote thereon and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than three (3) calendar months may be removed by a Majority vote of the Directors at a meeting, a quorum being present. This Section shall not apply to Directors appointed by Declarant. Additionally, the Declarant may remove any board member and a new board member shall be elected in the next year's regular elections.

**Section 8. Vacancies.** Vacancies in the Board of Directors caused by any reason, excluding the removal of a Director by vote of the Members, shall be filled by a vote of the Majority of the remaining Directors at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

**B. Meetings.**

**Section 9. Organization Meetings.** The first meeting of the members of the Board of Directors following each referendum of the membership shall be held immediately thereafter at such time and place as shall be fixed by the Board.

**Section 10. Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a Majority of the Directors. Initially, the Board shall be required to meet once annually, but beginning in the year 2023, at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

**Section 11. Special Meetings.** Special meetings of the Board shall be held when requested by the President, Vice President or by any three (3) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a Person at the Director's home or office who would reasonably be expected to communicate such notice promptly to the Director; or (d) by electronic mail (e-mail) or other electronic transmission. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic transmission must be received at least forty-eight (48) hours before the time set for the meeting.

**Section 12. Waiver of Notice.** The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 13. Quorum of Board of Directors.** At all meetings of the Board, a Majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 14. Compensation.** Directors may not receive compensation from the Association for acting as such. Directors may be reimbursed for their actual out-of-pocket expenses necessarily incurred in connection with their services as Directors.

**Section 15. Open Meetings.** All meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

**Section 16. Executive Session.** The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a sensitive nature.

**Section 17. Action Without A Formal Meeting; Conference Call Meetings.** Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all of the Directors. A member or members of the Board may participate in a meeting of the Board by means of telephone conference, video conference, or other similar electronic communications equipment, by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at such meeting.

**C. Powers and Duties.**

**Section 18. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Certificate of Formation, or these Bylaws directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Residence Owner to the Association Expenses;

(b) making assessments to defray the Association Expenses and other assessments authorized by the Declaration, establishing the means and methods of collecting such assessments, and establishing the period of payment for assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association as determined by the Board, including maintenance or provision of services which are generally provided by a municipality, such as maintenance of street lights, and garbage pick-up;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;



(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(g) providing services to all areas that the Association is obligated to provide services for;

(h) paying the cost of all services, if any, rendered to the Association or its Members which are not chargeable to Owners of Residences;

(i) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;

(j) depositing Association funds into interest bearing accounts; and

(k) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements and other agreements with trusts, condominium associations, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

To the extent permitted by law, the Board shall have the power to delegate its functions to designees of the Board such as, without limitation, a management agent, committees established by the Board, and employees and independent contractors of the Association.

**Section 19. Management Agent.** The Board may employ for the Association a management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Declarant or an affiliate of the Declarant may be employed as management agent. The term of any management agreement shall not exceed three (3) years and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

**Section 20. Borrowing.** The Board shall have the power to borrow money for the purpose of construction, repair, or restoration of the Common Property and facilities without the approval of the Members of the Association; provided, however, the Board shall obtain membership approval in the same manner as for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities.

**Section 21. Enforcement.**

(a) **Notice.** Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation; (ii) the proposed

sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed, within 15 days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within 15 days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 15-day period. Such suspension shall not constitute a waiver of the right to sanction future violation of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the 15-day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one year from the date of any notice hereunder, either the Board or the covenants committee may impose a sanction without further notice to the violator.

**(b) Hearing.** If a hearing is requested within the allotted 15-day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or delegate who delivered such notice. The notice requirements shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

**(c) Appeal.** If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise the right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) days after the hearing date.

#### **Article IV Officers**

**Section 1. Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, and shall be elected by a majority of the members of the Board. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary.

**Section 2. Election, Term of Office, and Vacancies.** The officers of the Association shall be elected annually by the Board at the organizational meeting of the Board. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term. Officers shall serve until their successors have been elected.

**Section 3. Removal.** Any officer may be removed by two-thirds (2/3) vote of the Board whenever, in its judgment, the best interest of the Association will be served thereby.

**Section 4. President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Alabama Nonprofit Corporation Act.

**Section 5. Vice President.** The Vice President shall act in the president's absence and shall have all powers, duties, and responsibilities provided for the president when so acting.

**Section 6. Secretary.** The Secretary shall keep the minute of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Alabama law.

**Section 7. Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping or causing to be kept full and accurate financial records and books of account showing all receipts and disbursements, for preparing or causing to be prepared all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board.

**Section 8. Resignation.** Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **Article V Committees**

**Section 1. General.** In addition to the committees established in the Declaration, committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board. The Board in its sole discretion shall obtain liability insurance covering the members of each committee and the Association for the activities of such committees, if reasonably available.

**Section 2. Covenants Committee.** The Board may establish a Covenants Committee to advise the Board regarding violations of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. The Committee shall also advise the Board regarding sanctions to be imposed for such violations.

**Section 3. Architectural Review Committee.** The Board shall establish an Architectural Review Committee to carry out the functions provided for such committee in the Declaration. The Committee, in its sole discretion, may employ the services of experts for advice and may expend funds of the Association for the fees of such experts.

**Section 4. Citizens Advisory Committees.** The Board may establish Citizens Advisory Committees to advise the Board and other committees.

## **Article VI Miscellaneous**

**Section 1. Fiscal Year.** The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

**Section 2. Parliamentary Rules.** *Roberts Rules of Order*, (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Alabama law, the Certificate of Formation, the Declaration, these Bylaws, or a ruling made by the Person presiding over the proceeding.

**Section 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of Alabama law, the Certificate of Formation, the Declaration, and these Bylaws, then the provisions of Alabama law, the Declaration, the Certificate of Formation, and the Bylaws (in that order) shall prevail.

**Section 4. Notices.** Unless otherwise specified in the Declaration or Bylaws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid, as follows:

(a) if to a Member at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the last known address of the Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members.

If there are multiple Owners of a single piece of property, notice to one (1) shall be deemed notice to all. Multiple Owners may designate one (1) Owner as the Person entitled to receive notice of Association matters by so notifying the Association in writing.

**Section 5. Amendment.**

(a) **By Declarant.** Until termination of the Class “B” membership, Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendments shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. In addition, so long as the Declarant owns any property which is subject to the Declaration or which may be unilaterally subjected to the Declaration by Declarant, it may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) **By Board.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of the Board of Directors, and the written consent of the Declarant, so long as Declarant owns any property which is subject to the Declaration or which may be unilaterally subjected to the Declaration of the Declarant.

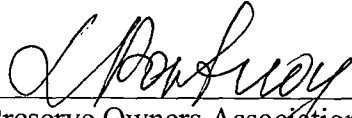
(c) **Validity and Effective Date.** Any amendment to these Bylaws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class “B” Member without the written consent of the Declarant, the Class “B” Member, or the assignee of such right or privilege.

## ARTICLE VII

Notwithstanding anything provided herein or in the Certificate of Formation or the Declaration, for so long as Declarant owns any Property within the Community or retains the right to unilaterally annex property into the Community, Declarant shall have the sole and exclusive right to (i) elect the Board of Directors (ii) remove and replace any member of the Board, (iii) amend these Bylaws or the Certificate of Formation of the Association and (iv) amend the Declaration. Declarant may, however, in its sole discretion, cede, transfer, or assign, some or all of such rights to the Board of Directors and/or Members at prior time upon written notice by Declarant to the Board of Directors. Any reference to Articles of Incorporation in the Declaration, the Bylaws or the Certificate of Formation shall be deemed to refer to the Certificate of Formation.

Adopted on this the 4th day of December 2020.

  
\_\_\_\_\_  
Mountain Preserve Owners Association, Secretary

U:\Sam\HOAS\Mountain Preserve\bylaws.doc

Filed/Cert: 12/08/2020 09:12:00 AM  
Fee Amt: \$208.25 Page 74 of 74  
Madison County, AL  
FRANK BARGER Probate Judge  
File **2020-00098177**