



Doc ID: 024557800046 Type: REST
 Filed/Cert: 10/27/2021 02:01:00 PM
 Fee Amt: \$138.25 Page 1 of 46
 Madison County,AL
 FRANK BARGER Probate Judge

File **2021-00089789**

Declaration of Covenants and Restrictions Of **MONTEAGLE COVE**

Entity Change	DHA
954-019	
Date	11/22/2021
Time	15:54
211122	57 Pg
Alabama	
Sec. Of State	
File	\$50.00
County	\$.00
Total	\$50.00
06/024	

ATTN: ATTN STEPHANIE ATKINS
 DAVIDSON HOMES INC
 336 JAMES RECORD RD
 HUNTSVILLE, AL 35824

**Declaration of Covenants and Restrictions
of Monteagle Cove**

THIS DECLARATION, made this 26 day of October 2021, by Davidson Homes, LLC, an Alabama Limited Liability (hereinafter "Developer" or "Declarant").

WITNESSETH:

WHEREAS BC MONTEAGLE COVE, LLC, an Alabama limited liability company, is the Owner of the real property located in **Madison** County, Alabama, and more particularly described in Article II of this Declaration and joins in this Declaration to consent to same and ratify the application of the Declaration to said real property; and,

WHEREAS, Developer has constructed or may construct upon said property certain fences, entrance structures, landscape lighting and beds, and other common area structures and/or features; and,

WHEREAS, Developer desires to provide for the preservation of the values of the development and for the maintenance of said fences, entrance structures, landscape lighting and beds, and other common area structures and/or features and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and,

WHEREAS, Developer 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; and

WHEREAS, Developer has deemed it desirable, to create an entity to which will be delegated and assigned the powers of maintaining and administering the common area structures and/or features, of administering and enforcing the covenants and restrictions, and of collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Developer has incorporated, or will incorporate shortly following the execution hereof, under the laws of the State of Alabama, as a non-profit corporation, **MONTEAGLE COVE HOMEOWNER'S ASSOCIATION, INC.**, for the purpose of exercising the aforesaid functions;

NOW THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as hereafter may be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, easements, charges and liens (herein sometimes referred to as "covenants and restrictions") 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 insure to the benefit of each and every occupant of all or any portion thereof.

ARTICLE I DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a) "Articles of Incorporation" shall mean the Articles of Incorporation of Monteagle Cove Homeowner's Association, Inc., as such document may be amended from time to time.
- b) "Association" shall mean and refer to **MONTEAGLE COVE HOMEOWNER'S ASSOCIATION, INC.**, 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) "Assessments" shall include annual assessments, special assessments, membership fees and any other charges assessed against any Lot or Owner by the Association.
- e) "Board" or "Board of Directors" shall mean and refer to 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.
- f) "Bylaws" or "By-Laws" shall refer to the Bylaws of Monteagle Cove Homeowner's Association, Inc., as such document may be amended from time to time. A copy of said Bylaws is attached hereto and incorporated herein as Exhibit "A".
- g) "Certificate of Formation" shall refer to the Certificate of Formation of Monteagle Cove Homeowners Association, Inc. as filed with the Secretary of State of Alabama. A copy of said Certificate of Formation is attached hereto and incorporated herein as Exhibit "B".
- h) "Certificate of Occupancy" shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Lot.
- i) "Common Areas" and/or "Common Properties" 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 Properties shall include, but is not limited to: 1) those areas of land shown on any recorded subdivision plat of The Properties which are designated as Common Areas; and 2) any easement rights or interests reserved by or granted to the Association, all of which are intended to be devoted to the common use and enjoyment of the Owners of the Properties. 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 up on the execution and recording of a deed, or quit claim deed, from the Declarant to the Association.

- j) "Community" and/or "The Properties" shall mean and refer to that certain real property, and additions thereto, that are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- k) "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 must be consistent with the Community-Wide Standard originally established by Declarant.
- l) "Declarant" and/or "Developer" shall mean and refer to DAVIDSON HOMES, 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 of all or any portion of the remaining undeveloped or unsold portions of the real property described in Article II, 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 Article II, 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.

- m) "Declaration" and/or "Covenants" shall mean the Declaration of Covenants and Restrictions of Monteagle Cove, as such document may be amended.
- n) "Dwelling Lot" shall mean a lot intended for improvement with a dwelling.
- o) "Dwelling" shall mean any building located on a dwelling lot and intended for the shelter and housing of a single family.
- p) "Dwelling Accessory Building" shall mean a subordinate building or a portion of a Dwelling, the use of which is incidental to the dwelling and customary in connection with that use.
- q) "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.
- r) "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.
- s) "Lot" shall mean and refer to any tract or parcel of land which is designated by a number upon any recorded subdivision plat of The Properties which will be owned in fee simple by an Owner.
- t) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.
- u) "Lot Line" shall mean any boundary of a Lot as shown on a subdivision plat duly recorded in the Public Records of Madison County, Alabama.
- v) "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.
- w) "Member" shall mean and refer to all those Owners who are members of the "Association" as provided in Article IV hereof.
- x) "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.
- y) "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.

- z) "Owner" shall mean and refer to the record Owner, including Declarant, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, or one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- aa) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.
- bb) "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).
- cc) "Single Family" shall mean one or more persons each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related, together with his or her domestic servants, maintaining a common household.
- dd) "Structure" shall mean anything erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground. Any fence, sign or other advertising device is deemed to be a structure.

- ee) "Architectural Control Committee" shall mean the committee provided for in Article III, Section 2 (b) hereof, and may be abbreviated as "ARC" herein.
- ff) "Vehicles" shall mean and include, without limitation, boats, boat trailers, motor homes, mobile homes, horse trailers, motorcycles, all terrain or utility vehicles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND ADDITIONS THERETO**

Section 1. Existing Property. 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, all of which real property shall hereinafter be referred to as the "Existing Property," is more particularly described as follows, all of which real property shall hereinafter be referred to as the "Existing Property":

Lots 1 through 34, and all Common Areas, according to the Final Plat of MONTEAGLE COVE SUBDIVISION Phase I, as shown by map or plat thereof on file and of record in Instrument Number 2021-00063476 in the Office of the Judge of Probate of Madison County, Alabama.

Section 2. Additions to Existing Property. The Developer and/or Declarant, its successors and assigns, shall have the right to bring within the plan of this Declaration additional properties in future stages or phases of the development, to include, but not be limited to, property adjoining, as described as Existing Property in Article II, Section 1 hereinabove. The additions authorized under this and the succeeding subsection shall be made by filing for record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the plan of the covenants and restrictions of this Declaration to such additional property. Such Supplemental Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties. The Developer may make and the Association shall accept such additions pursuant to this subsection.

- a) Other Additions. The Association shall be required to accept any additional property the Developer desires to add it to the plan of this Declaration and said additional property shall be subject to the jurisdiction of the Association immediately upon the filing for record a Supplemental Declaration of Covenants and Restrictions.

Section 3. Development of Properties. The Declarant, its successors and assigns, shall have the right, but not the obligation, for so long as it owns any portion of the Community, or until such earlier date as the Declarant elects in its sole discretion to relinquish such right, to make improvements and changes to all Common Property and to all Lots owned by Declarant, including without limitation: (i) installation and maintenance of any improvements in or to the Common Property, (ii) changes in the location of the boundaries of any Lot owned by Declarant or of the Common Property, (iii) installation of any water, sewer and any other utility systems and facilities within the Common Property, or (iv) an other change or improvement to an portion of the Common Property or to the Lots owned by Declarant.

Section 4. Mutuality of Benefit and Obligation. The provisions of this Declaration 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 USE AND ARCHITECTURAL RESTRICTIONS

Section 1. This Article, beginning at Section 2, sets out certain use and architectural restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in this Declaration regarding the amendment of this Declaration. Any such modifications to 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 on all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association entitled to vote thereon, and so long as the Declarant has an option unilaterally to subject additional property to this Declaration, the consent of the Declarant.

Section 2. General Provisions. The Properties shall be subject to the following use restrictions:

- a) Land Use. Except as may be designated or allowed for commercial use by the Developer and/or by subdivision regulations for a Planned Development, the Properties shall be used for private residential purposes only, provided, however, that nothing herein contained shall prohibit the development and use of:
 - 1. Common Properties shown on recorded plats, or plats to be recorded.
 - 2. Areas shown on a recorded plat, or plats to be recorded, which are subject to utility easements, including miscellaneous structures to house machinery and equipment used to furnish such utilities.
 - 3. Dedicated street rights-of-way.
 - 4. Property designated for commercial use.

- b) **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 may not be specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.
- c) **Nuisances.** No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. 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.
- d) **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 Declaration, By-Laws, use restrictions, and rules and regulations of the Association.
- e) **Grades.** Within any slope control area established by the Developer or drainage easement on any recorded subdivision plat, no structure, planting, fence, or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or earth control problems, or change the direction of flow of drainage channels, or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot or other parcel and all improvements in

them shall be maintained continuously by the Owner, except for those improvements for which a public-authority or utility company is responsible. The finished floor shall meet the minimum floor elevations for each Lot as established by the recorded plat of the subdivision made a basis hereof.

- f) No Commercial Activities. All Lots shall be used for single-family residential purposes exclusively. No commercial activity nor business activity of any kind shall be conducted on, in, or upon any Lot or in any Living Unit, without the written consent of the Board, but nothing herein shall prohibit the carrying on of promotional activities by the Developer or other parties authorized in writing by the Developer. Leasing of a Residence shall not be considered a business or commercial activity. This provision shall not preclude a home-based business, as long as no clients or customers enter upon the Lot or Living Unit for the purpose of conducting business.

- g) 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, as determined by the Board; provided, however, that 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 persistently barking dogs) or constitute a nuisance, or inconvenience to the Association members or occupants or the Owner of any property located adjacent to The Properties may be removed by the Board. Any one lot shall possess no more than three (3) pets total at one time. No pets shall be kept, bred, or maintained for any commercial purposes. Household pets shall at all times, whenever they are outside of the boundaries of any Lot, be on a leash or otherwise confined in a manner acceptable to the Board. All Owners are responsible for his/her pets, including the prompt clean-up of their pet's waste. This applies to any necessary clean-up at the Owner's property, a neighbor's property and all Common Areas. 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 Properties. Animal control authorities shall be permitted to enter the Properties to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

- h) Parking of Vehicles. No junk vehicles, unsightly vehicles or vehicles in disrepair (as determined by the Board), boats and trailers, motor homes, buses, mobile homes or horse trailers, shall be permitted to be parked or to be stored on the Properties at any time. **No vehicle may be left upon any portion of the Properties, except in a garage, or driveway.** The following vehicles shall be allowed to be parked or stored on the Properties as long as they are parked in the garage: trailers designed for

hauling, pop-up campers and/or all terrain or utility vehicles. There shall be no commercial vehicles of any kind, including but not limited to any vehicle with any company markings/logos at all is not permitted. No vehicles shall be allowed to park in the public street right of way, except that visitors may park in the street right of way as long as they do not park for a period in excess of twenty-four (24) hours.

- i) Outside Clotheslines and Poles. No outside clotheslines or poles for attaching wires or lines for the purpose of hanging clothes or laundry thereupon shall be erected, installed or constructed on The Properties.
- j) Storage Tanks. No tanks, receptacles or containers of any nature for the storage of fuel, water or other substances shall be placed, erected, installed, or kept on The Properties, except for containers of five (5) gallons or less used for storing fuel for lawn maintenance equipment and portable liquid propane tanks used to fuel outdoor kitchens or outdoor grills.
- k) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, storage shed or other outbuildings, or portable storage units, including units sometimes referred to as PODS, shall be allowed, constructed, or used on The Properties at any time as a residence, either temporarily or permanently; provided, however, nothing herein contained shall restrict the Developer, or agents assigned by the Developer, from locating, constructing or moving a temporary real estate office or temporary construction field office on The Properties to be used during the period of construction and sale of the property within the project. The Developer, or builders who acquire Lots or acreage parcels from the Developer, may also erect and maintain model homes for sales purposes and may operate such or models therein for so long as the Developer, or builder, deems necessary for the purpose of constructing and selling property within the project.
- l) Signs. No signs, advertisements, billboards, or advertising structures of any kind may be displayed, erected or maintained on The Properties except one advertising board for the sale of each Lot. No signs advertising any Dwelling for rent or lease shall be allowed under any circumstances. The size, style, color, and design of the allowed advertising board shall be determined by the Board of Directors and may be used for the sole and exclusive purpose for advertising for sale the Lot or Dwelling to which it refers. However, the Developer and/or builder, designated in writing by the Developer, during the construction and sales period (which shall continue until the last Lot or parcel is sold), and during which the Developer, and/or builders designated in writing by the Developer, expressly reserve the right to place, erect and

maintain signs, billboards, or other structures for information, advertising, and sales purposes.

- m) Easements for Plants, Trees and Shrubs. Easements for the installation and maintenance of plants, trees and shrubs are reserved by and dedicated to the Developer, its successors and assigns, on the recorded plat(s). Within these easements, the Developer may (but shall not be required to) install and maintain plants, trees and shrubs for the common enjoyment of all of the Owners of Lots. The easement area of each Lot (including the grass lawn and any other plantings installed by the Owner, but excluding any plants, trees or shrubs installed by the Developer) shall be maintained continuously by the Owner of each Lot and each such Owner shall not disturb, damage or remove any such plants, trees and shrubs installed by the Developer nor install any other plants, trees or shrubs in the easement area which unreasonably interfere with those of the Developer or detract from the overall appearance of the Lot.

- n) 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 part.

- o) Care and Appearance of Premises. The Structures on and grounds of The Properties will be maintained in a neat and attractive manner prior to, during, and after completion of construction. Such maintenance shall include, but is not necessarily limited to, cutting grass, trimming trees and shrubbery, and removing weeds, as required by the Board of Directors. There shall be no visible planter boxes and/or hardscape in yards.

- p) 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 end to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of The Properties.

- q) Basketball Goals. No basketball goals may be erected or constructed on any lot or any Residence in the community without the approval of the Architectural Control Committee. All portable basketball goals shall only be visible when in use, and must be stored out of view from

all streets and adjoining property when not in use. When in use, all portable basketball goals shall be placed where the goal is not facing the street, so as to not restrict traffic flow and endanger the health and safety of the members of the community.

- r) Drilling and Quarrying. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring oil or natural gas shall be erected, maintained or permitted upon The Properties.
- s) Dumping of Rubbish. The Properties shall not be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. Such containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be placed on the curb or other designated area for collection only on the days designated for pickup.
- t) Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are dedicated on recorded plat(s). Such easements shall include the right of ingress and egress for construction and maintenance purposes. Within these easements, no Structure, planting or other material shall be placed or permitted to remain which may damage any facility installed in accordance with said easement, or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot or of the Common Properties and all improvements in them shall be maintained continuously by the Owner of the Lot or by the Association (in the case of Common Properties) except for those improvements for which a public authority or utility company is responsible.
- u) 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. No Owner shall have any right

to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any body of water located within the Community. Applicable governmental agencies, Declarant and the Association shall have the sole right to control the water level of all bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any creek, stream or the storm water retention/detention ponds within the Community.

Owners shall have no riparian or littoral rights with respect to the waters in any pond, creek or stream within the Community and shall not be permitted to withdraw water from any pond, creek or stream as may exist in the Community without the prior written consent of the Board of Directors.

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 storm water drainage and runoff requirements and regulations of all applicable Governmental Authorities, and (c) all other Governmental Regulations.

- v) Sewage Disposal. No individual sewage treatment or disposal system shall be permitted on The Properties unless such system is first approved by the appropriate governmental authorities.
- w) Water Supply. No individual water supply system shall be permitted on The Properties unless such system is first approved by the appropriate governmental authorities.
- x) Screening of Heating and Cooling Units. Screening of exterior heat and air conditioning compressors or air handlers is encouraged on all visible sides of the equipment, and more particularly on the front and side of the equipment. Homeowners are encouraged to screen their equipment with fencing or vegetation in compliance with the terms of this Declaration. Should an Owner choose to use fencing for this purpose, all fences for screening should be constructed of wood in a shadow box style with dog eared fence boards, four (4) feet from ground level to the top of the fence and must be stained within 60 days following installation in the color Tobacco, SW 3039, or an exact color match pre-approved by the Architectural Control Committee.

Section 2. Provisions Applicable to Existing Property Not Otherwise Designated for Commercial Use. Existing property, except as excluded, or otherwise designated for commercial use, shall be subject, in addition to the General Provisions set forth above, to the following restrictions:

- a) Land Use. None of said Lots may be improved, used or occupied other than for private, Single Family residential purposes (except that model homes used by the Developer or builder designated in writing by the Developer shall be permitted). No Structure shall be erected, placed or maintained on any of said Lots other than one (1) Single Family Dwelling together with usual and customary Dwelling Accessory buildings. No garage, or other Dwelling Accessory Building may be erected prior to construction of the Dwelling itself.
- b) Review by Architectural Control Committee. No building, fence, wall or other Structure shall be commenced, constructed, erected or maintained upon any of said Lots nor shall any exterior additions to or change or alteration to any existing structure therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee composed of at least one (1) initial member appointed by the Developer, which power of appointment shall be and remain in the Developer until such time as Dwellings have been constructed on all of said Lots and each Lot of any subsequent additions to said development. Thereafter, such power of appointment shall be vested in the Board of Directors of the Association. Once the Developer vests the power of appointment of the Architectural Control Committee in the Board of Directors of the Association, the Committee shall thereafter be composed of three (3) Members, who shall be selected by the Board of Directors of the Association according to the procedure as established by the Association. The initial Architectural Control Committee shall be composed of **Louis Paratore, Dustin McNutt, and Michelle Shappie**. They shall have full and complete discretionary authority to act on behalf of and speak for the Committee until such time as both of them resigns and their successors are appointed or until such time as the Committee is turned over to the Association. Neither the initial members of the committee nor any other members of the Committee, who might hereafter be appointed or might hereafter be designated, shall be entitled to any compensation for services performed pursuant to this provision.

No exterior construction, addition erection, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except as is installed by the Declarant, or as is approved by the ARC, or is approved in accordance with this Section. 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 submitting in writing to and approved by the ARC. The following items shall be

submitted to the Architectural Control Committee for new home construction: house plans, site plans, landscaping plans and all exterior color and material specifications. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Neither the Developer, the Association, the Architectural Control Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Control Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications.

Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer/Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, and agents or any of them to recover any such damages and hereby agrees, releases, remises, and covenants not to sue for any and 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.

- (c) Architectural Restrictions. The following architectural restrictions shall apply to all construction of buildings, alterations, additions or improvements thereto, and exterior decorating thereof, and shall guide the decisions of and be taken into account by the Developer and by the Architectural Control Committee.
- i. All buildings, structures and other improvements shall be constructed in full compliance with all applicable ordinances, rules and regulation of the local jurisdiction and/or governmental authority and of an architectural style as is pre-approved by the Architectural Control Committee. The exterior of all buildings shall be of a building material pre-approved by the Architectural Control Committee. Vinyl eaves, soffits, and gables, as well as vinyl windows, are allowed, as approved by the Architectural Control Committee.
 - ii. The total heated floor area of the main Dwelling, exclusive of open porches, garages and unheated storage areas, shall not be less than **1,200** square feet.
 - iii. Each Dwelling shall have a garage with functioning doors which must be attached to the Dwelling unless otherwise approved by the Architectural Control Committee. Carports, detached garages, and metal or aluminum framed vehicle covers are not permitted. **Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.** Accessory structures and buildings of any kind must be approved by the Architectural Control Committee, must conform to the specifications in Section vi below, and must be the constructed in same style and construction as the main Dwelling and must use the same construction materials as used in the main Dwelling.
 - iv. In-ground swimming pools must be located to the rear of the main dwelling and shall be no nearer than five (5) feet to any Lot line. All swimming pools must be

approved by the Architectural Control Committee. Except as may be permitted by the Board or its designee, above ground swimming pools shall not be erected.

- v. No block foundation wall may be exposed. If a building is fenced with brick, the foundation wall shall be faced to grade with brick. If a building is fenced with wood or stucco, the foundation walls shall be fenced to grade with stucco, stone, or brick.
- vi. One (1) Accessory Structure or building may be erected, placed or set on a Lot if such structure is:
 - a. No larger than 10' x 12' in size;
 - b. Located upon the backyard and placed directly behind the primary Dwelling of such Lot in an effort to reduce its visibility.
 - c. Enclosed on all sides by a wooden and stained shadow box fence six (6) feet in height (see Fence Restrictions Section 2.c.viii)
 - d. Of the same architecture, character and materials of the Dwelling located on such Lot;
 - e. No metal roofs will be allowed; and
 - f. Color, style and location of the structure must be approved by the Architectural Control Committee. No barn style, plastic buildings or sheds will be allowed.
- vii. All roofs on dwelling and accessory structures shall be shingles of a dark tone and color, as approved by the Architectural Control Committee.
- viii. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the community, including any residence, without the prior written consent of the Architectural Control Committee. A plan showing where the fence is to be located on the Lot must be included when submitting for approval from the Architectural Control Committee. No chain-link, vinyl coated or wire fences of any kind are permitted at any time.

All fences must be constructed of wood in a shadow box style with dog eared fence boards and black gate hardware. All fences must be a standard

height of six (6) feet from the final ground level to the top of the fence. All fences must be stained the color Tobacco, SW 3039, or an exact color match pre-approved by the Architectural Control Committee. Stain must be applied within 60 days following installation. Fences must be located at the rear corners of the dwelling.

(d) Use and Occupancy Restrictions. The following use and occupancy restrictions shall apply to each Lot:

- i. The use, maintenance and operation of the Common Properties shall not be obstructed, damaged or unreasonably interfered with by any Owner.
- ii. No unlawful, noxious or offensive activities shall be carried on upon any Lot or elsewhere on The Properties, nor shall anything be done therein or thereon which shall constitute a nuisance.
- iii. No structure of a temporary character, trailer, tent, shack, garage, barn, storage shed or other outbuildings, or portable storage units, including units sometimes referred to as PODS, shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent and approval of the Architectural Control Committee;
- iv. Mail boxes of a type, style and color consistent with the character of The Properties, as determined by the Architectural Control Committee, shall be provided by the Owner of each Lot and shall be maintained by the Owner at all times. The Developer reserves the right to require detailed specifications for all mailboxes, but, in any event, any mailbox to be installed on The Property must be approved by the Architectural Control Committee.
- v. Articles of personal property belonging to any Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall only be stored or kept in the residence of the Lot and out of sight from the street right of way.
- vi. Parking in the adjacent street to any Lot shall be permitted only for guests and/or visitors of Owners;

however, parking in the street by guests and/or visitors shall be limited to a continuous period of not more than twenty-four (24) hours, unless approved by the Board. Additionally, the Developer and/or Board may permit the use of certain designated open spaces for the parking of Vehicles on special occasions.

- vii. Sales of personal property by any Owner on the Lot, "yard sales", "garage sales", "patio sales" and similar sales to the general public are prohibited, unless the same are approved by the Board, in writing.
- viii. The pursuit of hobbies or other inherently dangerous activities, including without limitation, the assembly and disassembly of Vehicles or other mechanical devices of any type or size, and other such activities shall not be pursued or undertaken on any part of any Lot or upon the Common Properties and are strictly prohibited.
- ix. Construction of the main structure must begin within 12 months of the initial purchase of the lot from Developer and must be completed by the new Owner within 24 months of the date of the initial purchase from the Developer. Construction shall be considered to have begun on the date a building permit is issued by the applicable Building Department of the local jurisdiction and/or government authority and shall be considered complete on the date a Certificate of Occupancy is issued by the applicable Building Department. In the event either the commencement or completion deadlines are not met by the new Owner, the Owner must pay the association additional monthly assessments in the amount of \$250.00 per month until such deadline is met. This penalty shall not apply to Developer, or to any other entity in which the members of Developer have an ownership interest. Such assessments shall become a lien against the lot, as provided in Article VI. No Dwelling shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other damage, no Dwelling or Dwelling Accessory Building shall be permitted to remain in a damaged condition longer than three (3) months. During construction, the lot shall be maintained free of

trash, scrap construction materials, and other debris, except customary unused and stored construction materials, which may be allowed to remain on the lot, and all grass, shrubs, and trees on said lot shall be trimmed to provide a neat appearance, even during construction, if applicable.

- x. Every Dwelling shall front or present a good frontage on the street on which it is located. Dwellings located on a corner lot shall front or present a good frontage on both streets. Each dwelling shall be set back as provided in the recorded plat of the subdivision made a basis of these restrictions.
- xi. No fence, wall, hedge, or shrub planting shall be permitted to obstruct sight lines at elevations between three and six feet above the streets and roadways in such a fashion as to create a danger to vehicular traffic on any of said lots which is a corner Lot.
- xii. The Owner of each of said Lots shall be responsible for the maintenance of area located between the boundary of each Lot and the concrete curb(s) on which said Lot borders.
- xiii. Satellite receivers and/or dishes, which are installed on the back of the Dwelling and are not visible from the street right of way shall be allowed. Unless first approved by the Architectural Control Committee, no other outside radio or television antenna or satellite receiver or dish shall be erected, installed or permitted on any Lot. Only the standard and customary size antennas, and receivers or satellite dishes are allowed to be installed. At the time of the execution of these restrictions, the standard size for antennas and satellite dishes is not larger than 18" in diameter. In the event that the size of a standard antenna or satellite dish exceeds this size at any time in the future, the Architectural Control Committee shall be notified and will approve the installation of the antenna and/or dish upon being provided with the appropriate proof that the standard and customary size has changed, as long as the same is not visible from the street and as long as the appearance of the said antenna and/or satellite receiver or dish is appropriate with the intent of these restrictions as determined by the Architectural Control

Committee, in its sole discretion. No free standing antennas whatsoever shall be placed on any Lot. 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.

- xiv. The use of firearms on The Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, bows and arrows, crossbows, and firearms of any type.
- xv. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, 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.
- xvi. Except as may be permitted by the Architectural Control Committee or its designee, no window air-conditioning units may be installed.
- xvii. Except for approved lighting as originally installed on a Residence, exterior lighting visible from the street shall not be permitted, except for (a) landscape lighting, (b) seasonal decorative lights at Christmas; or (c) front house illumination of model homes. All holiday lighting and outside holiday decorations shall be limited to thirty (30) days before December 25th of each year and shall be removed each year by January 31.
- xviii. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculptures, fountains, flags, personal yard knick-knacks, tchotchkes and similar items must be approved by the Architectural Control Committee or its designee. No limestone or other stone rip rap or other similar treatment for architectural features, bank or berm enhancement, drainage ditch lining or like features will be allowed. No crushed brick or lava stones will be allowed.

- xix. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are in an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee or its designee.
- xx. Except as may be permitted by the Architectural Control Committee or its designee, above ground swimming pools shall not be erected.
- xxi. Except as may be permitted by the Architectural Control Committee or its designee, driveways shall be constructed with concrete. **Any driveway extensions or concrete additions must be pre-approved by the Architectural Control Committee.**
- xxii. The portion of all interior window coverings and window treatments visible from the exterior of any Residence shall be white or off-white, unless otherwise prior approved by the Architectural Control Committee or its designee. No foil, mirrored, or other reflective materials shall be installed on any windows or used for sun screens, blinds, shades, or other purposes. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets, and paper or plastic bags are not appropriate window treatments.
- xxiii. The Owner of each lot shall be required to plant, maintain and/or replace one (1) 3" caliber deciduous canopy tree, as approved by the Architectural Control Committee, per lot, planted in the front yard. Examples of such trees include but are not limited to: ash, maple, oak, tulip, poplar, willow oak and red oak. Specifically excluded are pine trees.
- xxiv. **Variances.** The Architectural Control Committee, 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 Architectural Control Committee shall be in writing and, upon approval of the same by the Architectural Control Committee, shall be evidence by a written document executed by

either its chairman or vice-chairman. No exception granted by the Architectural Control Committee shall constitute a waiver of the restriction for the Community 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.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity owning a fee simple or undivided fee interest in any Lot (or Living Unit) which is subject by the Covenants to assessment by the Association, shall be a Member of the Association, provided that any such person or entity holding such interest merely as security for the performance of any obligation shall not be a Member, and provided further that there shall be only one (1) vote per lot (or Living Unit) irrespective of the number of persons or entities owning an undivided fee interest in a particular Lot (or Living Unit), except the Developer or Declarant, which shall have the votes as set forth in Article IV Section 2. 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 which are exempt from assessments, if any, as provided herein 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. Board of Directors. The Board of Directors shall have the rights and duties set forth in the Certificate of Formation and the By-Laws. Declarant hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board of Directors and any office or officers of the Association until all lots in the Community, and all phases are sold, or until such earlier date as Declarant elects, in Declarant's sole discretion to relinquish such right. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vest in Declarant such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 2. The initial Board of Directors of the Association shall be appointed by the Declarant and shall remain until all lots in the Community, and all phases are sold and delivered or until the Declarant deems appropriate to appoint new Board members, whichever occurs first.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall

be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot. An Owner's right to vote may be suspended as provided in this Declaration

Class B. Class B member shall be the Developer. The Class B member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership by Section 1. Class B membership for the Developer will continue for any Lots in any subsequent Additions to the Existing Property made subject to this Declaration pursuant to the provisions of Article II, Section 2(a).

ARTICLE V PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Title to the Common Properties. The Developer 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. The Developer, in its sole discretion, may retain the legal title to the Common Properties until such time as he has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to manage and operate the same but, notwithstanding any provision herein, the Association will be responsible for the maintenance of any Common Properties once completed, even if prior to the conveyance of the Common Properties to the Association. This includes but is not limited to pond and/or dry pond maintenance, including the mowing, weed-eating, and/or general upkeep required to maintain such area. Further, the Developer shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. As long as any property is utilized as Common Property, then the Association shall incur all expenses of maintenances, payment of property taxes, and the procurement of property, casualty, and liability insurance for the same. The Developer hereby covenants, for himself, his successors and assigns, that he shall convey the Common Properties to the Association, free and clear of all liens and encumbrances, except for the right of the Developer set forth in Section 3(f) of this Article V, except for existing utility and drainage easements, except for the right reserved by the Developer to place utilities over, under and across said Common Properties to serve other areas being developed by the Developer, and except for the provision of Section 4 hereunder relating to the construction of common improvements and/or Structures in the Common Properties.

Section 2. 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 Annual Assessment or Specific Assessments, as determined by the Board in accordance with this Declaration.

Section 3. Members' Easements of Enjoyment and Extent of Members Easements. Subject to the provisions of this Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer (prior to the conveyance of the Common Properties to the Association) and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said Common Properties. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such Common Properties, to charge reasonable fees for the maintenance and upkeep of said Common the Common Properties to the Association) and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said Common Properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such Common Properties, to charge reasonable fees for the maintenance and upkeep of said Common Properties in a sum not greater than the actual costs of said maintenance and upkeep until the mortgage debt is satisfied, whereupon the possession of such Common Properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and,
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and,

- (c) The right of the Association, as provided in this Declaration, its Articles and By-Laws, and in accordance with Code of Alabama, Section 35-2-11, as amended, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, to the extent that access to the Lot is not denied, and to further assess reasonable fines, penalties, or other sanctions for any violation of this Declaration or of the published rules and regulations adopted by the Board of Directors of the Association, as approved by the Members as provided for herein, after the Member is afforded the opportunity to be heard and represented by counsel before the Board of Directors giving that Member due process prior to collecting and enforcing said fine, penalty, or other sanction; and,

- (d) The right of the Association to charge reasonable admission or other fees for the use of any portion of the Common Properties, including, without limitation, swimming pools, to limit the number of guests to 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; and,

The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, Governmental Agency, utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded in the Office of the Judge of Probate of Madison County, Alabama, agreeing to such dedication, transfer, purpose of condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. This provision shall include, but is not limited to, circumstances where the Developer no longer has ownership or the Association has dissolved.; and

- (e) The right of the Developer to use portions of The Properties as a sales and informational center until the last Lot is sold.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall extend to the members of the Owner's family and guests; provided, however, that 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 4. 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 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 5. Construction of Improvements in Common Properties. Notwithstanding anything herein to the contrary, Developer may, in Developer's sole and exclusive discretion, construct certain improvements, such as irrigation or landscape light systems, in certain Common Properties, prior to the conveyance of title for all Common Properties as provided for in Section 2 hereinabove. The construction of said improvements, if any, will ultimately be the responsibility of Association to both construct and maintain. In Developer's sole discretion, the Common Properties upon which said improvements might be constructed may be conveyed to Association

prior to the conditions referred to in Section 2 hereinabove, and Association will execute any and all documentation required and/or necessary to finance the construction of said improvements, if any, constructed in said Common Properties. In Developer's sole discretion, the funds required for this construction, if any, may be either borrowed from a bank or other lending institution on such terms and conditions as agreed upon by and between Developer and the Board of Association or borrowed from Developer under terms and conditions as agreed upon by and between Developer and the Board of the Association. The loan, if improvements are constructed, shall be repaid by Association from funds derived from Assessments as defined in Article I, Section 1 (b).

Section 6. 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 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. 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 VI
COVENANT FOR ASSESSMENTS AND MEMBERSHIP FEES

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of Lots, 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. Types of Assessments, Creation of the Lien, and Personal Obligation of Assessments. Each Owner of any Lot, excluding the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges; (2) Special Assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided in Section 4; (3) membership fees upon transfer of title; (4) Delinquency Assessments as provided in Section 2 (d) (ix) ;(5) 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 VI, Section 5; and (6) fines or sanctions as may be imposed in accordance with the terms of the Declaration and By-Laws. The Annual and Special Assessments, Specific Assessments, membership fees, Delinquency Assessments and fines or sanctions together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due.

Each 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 to the extent expressly assumed; 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.

Section 3. Computation of Annual Assessments. Annual Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants, and shall be allocated among all Lots in the Community. The Board shall determine and adopt annually an annual budget covering the estimated expenses of the Association and all Common Expenses for the Community for the upcoming year; such budget may include a capital contribution or reserve fund if the Board deems it necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his or her pro-rata share of the same. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots for the following years shall be delivered by the Association to each owner.

If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses for the Association and all Common Expenses, the Board may assess Special Assessments as provided in Section 4 below. If the actual amount of annual Assessments collected in any one (1) year exceeds the actual costs incurred for such year, the excess shall be retained by the Association for subsequent years' expenses.

Annual 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. Special Assessments. In addition to other Assessments authorized herein, the Board of the Association may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against any lot payable by each Owner, in accordance with the provisions provided herein.

Section 5. 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 6. Membership Fees. An association membership fee in the amount of **\$250.00**, or any other amount as designed by the Board, shall be due on the date of transfer of title from the Developer to the Owner and shall be collected at closing, as referred to in Section 8 hereinabove. This fee shall not apply to a transfer of title from Developer to Davidson Homes, LLC or to any other entity in which the members of the Developer have an ownership interest. Each time title of a lot is transferred, said membership fee shall also be payable by each subsequent Owner immediately upon the transfer of title as a "membership fee" for that subsequent Owner and shall be collected at closing. If for any reason this membership fee is not collected at closing, this fee will still be due and payable to the Association by the new Owner or subsequent Owner following the transfer of title.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement, or by the Developer, whichever comes first (the “commencement date”).

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of January of said year, or in the case of monthly installments, on the first day of each month.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any Special Assessment under Section 4 or Specific Assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Assessments shall begin to accrue on each Lot on the date title is first transferred from the Developer to a new Owner and the initial membership fee shall be collected at closing, as referred to in Section 6. If for any reason this membership fee is not collected at closing, this fee will still be due and payable to the Association by the new Owner or subsequent Owner following the transfer of title. This membership fee shall not apply to Developer, or to any other entity in which the members of Developer have an ownership interest.

Section 8. Effect of Non-Payment of the Assessment: The Personal Obligation of the Owner: The Lien: Remedies of Association. Any assessments which are not paid in full by the commencement date specified by the Board of Directors, shall be delinquent. Any assessment delinquent after 30 days shall incur a late charge of five and no/100 (\$5.00) dollars **per day**, or in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the principal amount due, interest on the principal amount due, all late charges from the date first due and payable, all costs of collection, reasonable attorney’s fees actually incurred, and any other amounts provided for 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 to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of 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 Owners. 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 Community Property, or abandonment of the Residence. No diminution or abatement of assessment or set-off shall be

claimed or allowed by reason an any alleged failure of the Association or Board to take 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 an 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. Finning Procedure for Violations. The Board shall not seek collection of a fine (a late charge shall not constitute a fine) unless the following procedure is followed:

- (a) Notice. Written notice shall be served upon the violator specifying:
 - (i) The nature of the violation;
 - (ii) That the violator may, within 10 days from the date of the notice, request a hearing regarding the fine imposed;
 - (iii) The name, address, telephone number and email address of the person to contact to challenge the fine;
 - (iv) That any statements, evidence and witnesses may be produced by the violator at the hearing; and,
 - (v) That all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the notice.

- (b) Hearing. If a hearing is requested, it shall be held before the Board in executive session, either in person or through virtual meeting software, and the violator shall be given reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

If a tenant of a Member/Owner violates any provision of this Declaration or any of the rules and regulations adopted by the Board of Directors, in addition to exercising its authority, power and rights against said Member, the Board of Directors may exercise the same against the tenant in accordance with Code of Alabama, Section 35-20-11 (b), as amended.

Section 9. Lien for Assessments. All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, fines, and reasonable attorney's fees actually incurred, as provided for 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, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a Mortgage, as provided in Section 10.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to any mortgage foreclosure

sale or decree of mortgage foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all landscape easements dedicated on recorded plat(s), (b) all Common Properties, and (c) all lots owned by Developer. Notwithstanding any provisions herein, no land or improvements devoted to Dwelling use shall be exempt from said assessments, charges or liens, except Lots devoted to Dwelling use still owned by Developer.

Section 12. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: 1) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific Assessments collected by the Association in an fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or 2) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Properties of any of the improvements maintained by the Association shall be given in connection with such loan.

Section 13. Third Party Management Company. The Board may, in its sole discretion, retain a third-party management company to handle the daily affairs of the Association. All notices of membership meetings, notices to Members of every kind or character as required by the Covenants, the By-laws of the Association, and the laws of the State of Alabama, and all invoices for any and all fees, dues, and assessments payable to Association shall be sent by this third-party management company. The compilation, organization, and maintenance of full and complete financial records of the Association shall be kept by said management company and shall be made available to any Member at a reasonable time and place upon the payment of reasonable costs associated with the production of said records for said Member. Statements regarding the payment of dues, fees, and assessments are to be provided to any party having a right to said records by said management company upon the payment of reasonable costs associated with the providing of said statements. Said Management Company shall prepare and submit the annual budgets of the Association to its Members, in accordance with these Covenants, the By-laws of the Association, and the laws of the State of Alabama. At the time of the filing of these Covenants, the following management company shall serve the Association, until further notice to the Members:

Elite Housing Management

125 Electronics Blvd. Suite P, Huntsville, AL 35824
(256) 808-8719

Return Address:

MONTEAGLE COVE HOA
336 James Record Road, Huntsville, AL 35824

DUES ARE PAYABLE REGARDLESS OF WHETHER OR NOT AN OWNER RECEIVES AN INVOICE FROM THE BOARD, THE ASSOCIATION OR ITS THIRD PARTY MANAGEMENT COMPANY. INVOICES ARE A COURTESY REMINDER AND NOT A CONDITION PRECEDENT TO PAYMENT.

**ARTICLE VII
DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to the Association or to another Person, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records for Madison County, Alabama.

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 under the operation and effect of these Covenants.

The Declarant and its employees, agents and designees shall also have right and easement over and upon all the Common Property for the purpose of making, constructing and installing such improvements to the Common Property as it deems appropriate in its sole discretion.

Notwithstanding anything provided to the contrary in this Declaration, the Certificate of Formation, the By-Laws or in any other document or instrument relating to the Property, the 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 until all lots and phases in the Community are sold. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that the Declarant shall have the authority to appoint and remove members of the Board and Officers of the Association in accordance with this Declaration and By-Laws. At such time as Declarant no longer owns any Lot in the subdivision or at such earlier date the Declarant elects, in Declarant's sole discretion, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board. The Declarant shall deliver all books, accounts and records of the Association, if any, which Declarant has in its possession.

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 regards 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 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.

No person shall record a declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records of Madison County, Alabama.

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 so long as the Declarant has an option unilaterally to subject additional property to this Declaration. 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 GENERAL PROVISIONS

Section 1. Enforcement. Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use and architectural 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 with 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 the Declaration, the By-Laws, the rules and regulations, use and architectural restrictions 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 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, Declarant 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 remedies provided 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 the Declaration, the By-Laws, the rules and regulations or the use and architectural restrictions, or design guidelines. Except in the case of an 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 herein for the collection of assessments.

Section 3. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of three-quarters (3/4) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least thirty (30) days in advance of any action taken by either regular mail, postage prepaid or by posting a notice on the front door of the Dwelling. 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. Notices. Unless otherwise specified in the Declaration or By-Laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, electronically, 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. A Member may receive communications at the Member's current and correct e-mail address, if the Member so chooses, and designates the same to the Secretary in writing; or

(b) if to the Association, the Board of Directors, an Officer of the Association, 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. The initial address of the principal office of the association is: 336 James Record Road, Huntsville, AL 35824.

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. Rights Granted to Mortgagee. Any right, special status, authority, exemption, option, privilege, discretion or power of appointment herein granted to Developer or its successor and assigns, or consent herein required by Developer or its successor and assigns, shall be deemed hereby also granted to any Mortgagee of Developer who has accepted any of The Property as collateral for a loan for the development of The Property, provided, however, that such Mortgagee shall have acquired title to any part or all of The Properties pursuant to foreclosure or any proceeding, deed or conveyance in lieu of foreclosure. Otherwise, a Mortgagee shall NOT be considered an Owner and shall have no rights as an Owner.

Section 6. Indemnification. The Association shall indemnify every officer, Director, Architectural Review Committee member, and other committee members, as well as former officers, directors, Architectural Review Committee members, and other committee members, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by an officer or Director in connection with any action, suit, or other proceeding which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association) and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer of Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment of any court shall in no wise affect any other provision contained herein which shall remain in full force and effect.

Section 8. Amendment. This Declaration may be amended unilaterally at any time, and from time to time, by Declarant 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, 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.

Additionally, this Declaration may be amended during the first twenty-five (25) years after its recording by an instrument signed by the then Owners of not less than seventy-five percent (75%) of the Lots. Any such amendment must be recorded in the Public Records of Madison County, Alabama. Prior to the sale of the last Lot, no such amendment of the terms and conditions of this Declaration shall be effective unless the Developer joins in the signing of the instrument amending this Declaration and consents to such amendment.

Section 9. Deviations. The Board or its designee may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the rules and regulations and use and architectural restrictions.

Section 10. Architectural Control Committee. Unless relinquished earlier, the Declarant shall have complete control of the Architectural Control Committee for as long as it shall own property in the Community, as expanded, plus an additional six (6) month period.

Section 11. Condemnation. Whenever all or any part of the Common Property shall be taken (or conveyed by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any, in lieu of and under threat of condemnation) 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 this Declaration applicable to the damage or destruction of Common Property improvements shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

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 (to include Owner's name and mailing address), 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.

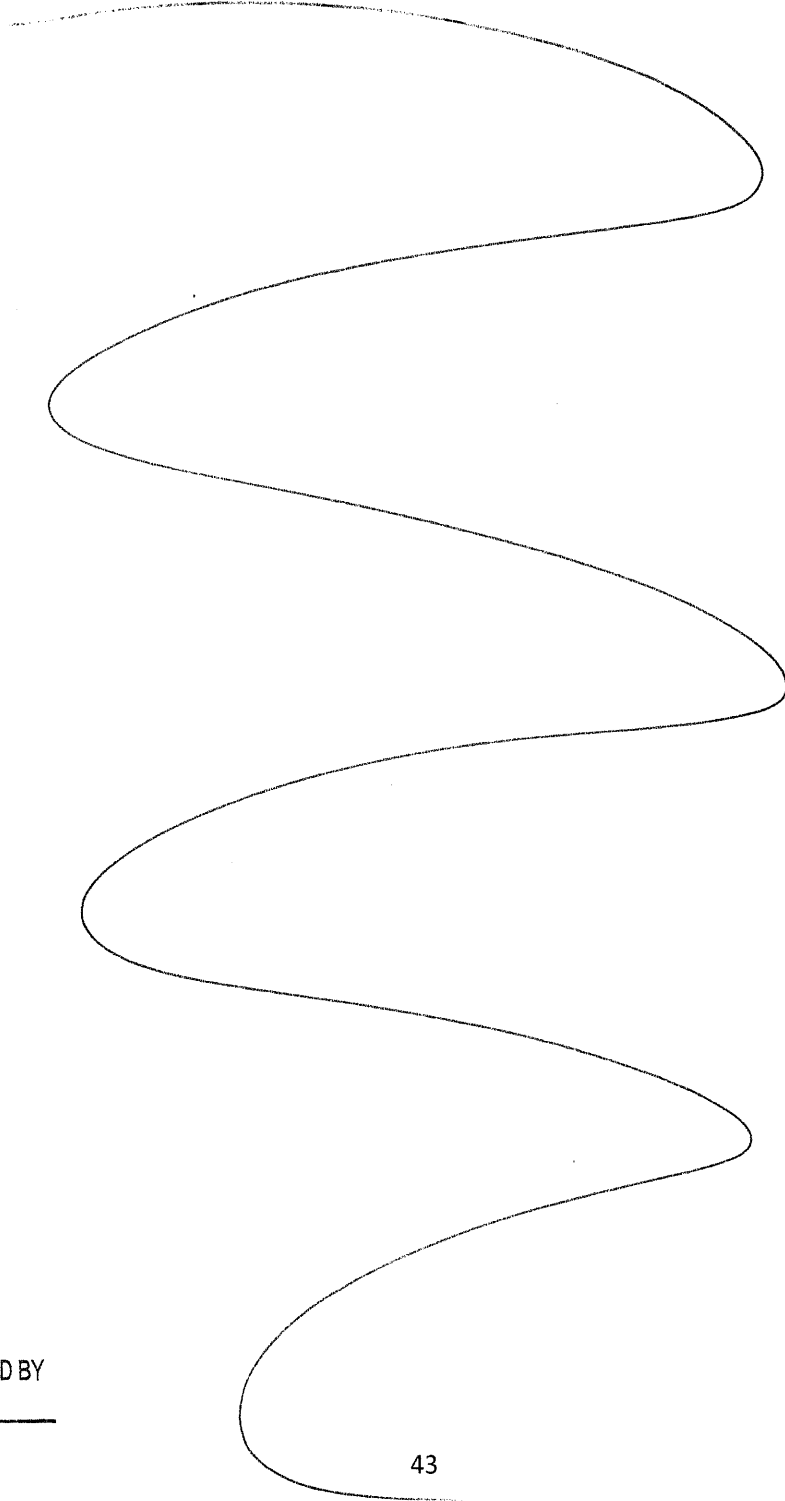
Section 14. Agreements. Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized 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 15. 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 16. Conflicts. If there are conflicts or inconsistencies between the provisions of Alabama law, the Certificate of Formation, the Declaration of Covenants and Restrictions and the By-laws, the provisions of Alabama law, the Declaration of Covenants and Restrictions, the Certificate of Formation and the By-laws (in that order) shall prevail.

Section 17. 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.

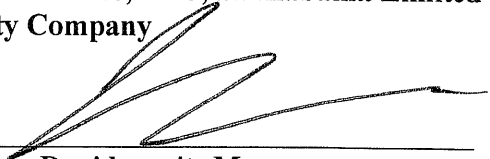
SIGNATURES ON FOLLOWING PAGE(S).



THIS INSTRUMENT PREPARED BY
Emily R. Siniard
HUNTSVILLE, ALABAMA

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized Member on this 26 day of October, 2021

Davidson Homes, LLC, an Alabama Limited Liability Company

By: 
Adam Davidson, its Manager

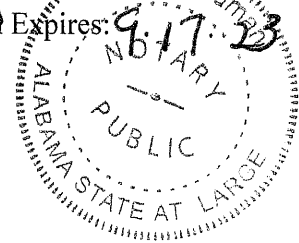
STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **Adam Davidson**, whose name as **Manager of Davidson Homes, LLC** an Alabama Limited Liability Company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such **Manager** and with full authority, executed the same voluntarily for and as the act of said companies.

GIVEN under my hand and official seal this the 26 day of October 2021.


NOTARY PUBLIC

My Commission Expires: 9-17-23



BC MONTEAGLE COVE, LLC, an
Alabama limited liability company

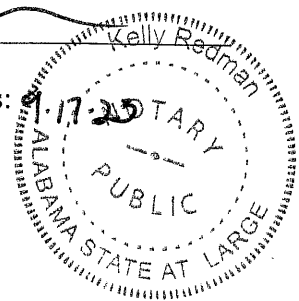
By: [Signature]
Its: member

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Adam Davidson, whose name as Manager of Davidson Homes LLC an Alabama Limited Liability Company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said companies.

GIVEN under my hand and official seal this the 26 day of October 2021.

[Signature]
NOTARY PUBLIC
My Commission Expires: 9-17-20



Filed/Cert: 10/27/2021 02:01:00 PM
Fee Amt: \$138.25 Page 46 of 46
Madison County, AL
FRANK BARGER Probate Judge

EXHIBIT "A"

[Insert copy of By-Laws]

**BY-LAWS
Of
MONTEAGLE COVE HOMEOWNER'S ASSOCIATION, INC.**

Alabama
Sec. Of State
Entity Change
954-019 DHA
Date 11/22/2021
Time 15:54
211122 57 Pg
File \$50.00
County \$.00
Total \$50.00
06/024

ARTICLE I. PURPOSE AND POWERS

This corporation shall have the purposes as stated in the Articles of Incorporation and such powers as are now or may be granted under the laws of the State of Alabama or as stated hereinafter, if not inconsistent with said laws.

ARTICLE II. OFFICES

2.01 The principal place of business of this corporation shall be in **Madison** County, Alabama. The corporation may further maintain other offices either within or without the State of Alabama, as its business requires. The initial registered office of the corporation is 336 James Record Road, Huntsville, Alabama 35824. Such office or some other principal office will be continuously maintained in the State of Alabama for the duration of this corporation. The Board of Directors may from time to time change the address of its registered office by duly adopted resolution and, by filing the appropriate statement with the State as required.

ARTICLE III. MEMBERSHIP AND MEETINGS

3.01 Every person or entity owning a fee simple or undivided fee interest in any Lot (or Living Unit) which is subject by the Covenants to assessment by the Association, shall be a Member of the Association, provided that any such person or entity holding such interest merely as security for the performance of any obligation shall not be a Member, and provided further that there shall be only one (1) vote per lot (or Living Unit) irrespective of the number of persons or entities owning an undivided fee interest in a particular Lot (or Living Unit), except the Developer or Declarant, which shall have the votes as set forth in the Covenants.

3.02 Membership in the Association shall pass with the title to each parcel as an appurtenance thereto.

3.03 Meetings of the Members, annual or special, will be held at the registered office of the corporation or at any other place specified by the Board of Directors; provided, however, that at the discretion of the Board of Directors, "virtual meetings" may be held, utilizing virtual meeting service providers, such as "Zoom" or such other virtual meeting service provider, as specified by the Board of Directors.

3.04 The Developer or Declarant shall call the first annual Members meeting no later than ninety (90) days following the sale and delivery of all lots in all phases of the Community unless the Declarant, in its sole discretion, deems otherwise. Thereafter, annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year.

3.05 Written or printed notice stating the place, day, and hour of any special meeting of the Members will be delivered to each Member no less thirty (30) days before the date of the meeting, either by personal delivery, posting on the front door of the dwelling, or by first class mail by or at the election of the President, the Secretary/Treasurer, or Directors calling the meeting. If mailed, such notice will be deemed to be delivered when deposited in the United States mail addressed to the Member at his address appearing on the records of the corporation, with postage prepaid. Such notice shall state the business to be transacted at, and the purpose of, such meeting. If any meeting, special or annual, is to be held virtually, the notice of such meeting will provide Members with information on how to access and/or attend said virtual meeting.

3.06 A special meeting may be called by either: The President, by a majority of the Board of Directors, or upon a petition signed by Owners holding at least fifty (50%) percent of the total association vote. Upon the meeting being called, notice will be provided under 4.09 by the Board.

3.07 Attendance of a Member at any meeting of the Members will constitute a Waiver of Notice of such meeting, except where such Member attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

3.08 Sixty (60%) percent of the votes of all Members entitled to vote shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements hereinabove, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the prior meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The act of two-thirds (2/3) of the Directors present at a meeting at which a quorum is present will be the act of the Members, unless a greater number is required under the provisions of these By-Laws or the laws of the State of Alabama.

ARTICLE IV. BOARD OF DIRECTORS

4.01 The Board of Directors is that group of persons vested with the management of the business of the affairs of this corporation subject to the law, the Articles of Incorporation, and these By-Laws.

4.02 The Board of Directors of this corporation will constitute a single class.

4.03 Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur:

- (a) the date on which the Declarant no longer owns any portion of the Community.
- (b) the surrender by Declarant in writing of the authority to appoint and remove Directors and Officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove Directors and Officers of the

Association. The Directors selected by the Declarant need not be Owners or residents in the Community. The names of the initial Directors selected by the Declarant are set forth in the Certificate of Formation of the Association.

4.04 The number of Directors of this corporation will be not less than three (3) at any time. The initial Directors need not be members of the Association.

4.05 The Directors constituting the initial Board of Directors as named in the Certificate of Formation will hold office until they either resign or are removed from the Board of Directors under the provisions of these By-Laws. No later than ninety (90) days after termination of the Declarant's right to appoint Directors and officers as described in 4.03, the Association shall call a special meeting to be held at which Owners shall elect three (3) Directors. The term of two (2) Directors shall expire two (2) years after the first annual meeting following termination of the Declarant's right to appoint Directors and one (1) Director shall expire one (1) year after such annual meeting. At each annual meeting of the membership thereafter, Directors shall be elected to succeed those Directors whose terms are expiring. All eligible members of the Association shall vote on all Directors to be elected, and the candidate(s) receiving the most votes shall be elected.

A Director may be removed from his position when such action will serve the best interests of the corporation upon a majority vote of the Directors. Such removal will be without prejudice to any contract rights of the Director so removed.

4.06 Resignation of Directors will become effective immediately or upon the date specified therein and vacancies will be deemed to exist on such effective date. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of any increase in the number of directors will be filled by appointment by a majority vote of the remaining Directors. The new Director appointed to fill the vacancy will serve the remaining term of the Director he or she is replacing.

4.07 Meetings of the Board of Directors, annual or special, will be held at the registered office of the corporation or at any other place specified by the Board of Directors.

4.08 Annual meetings of the Board of Directors will be held each year, immediately followed by the annual meeting of the Members and as outlined in 3.04. Annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year.

4.09 Written or printed notice stating the place, day, and hour of any special meeting of the Board of Directors will be delivered to each Director no less than two (2) nor more than five (5) days before the date of the meeting, either personally or by first class mail, by or at the election of the President, the Secretary/Treasurer, or Directors calling the meeting. If mailed such notice will be deemed to be delivered when deposited in the United States mail addressed to the Director as his address appears on the records of the corporation, with postage prepaid. Such notice need not state the business to be transacted at, nor the purpose of, such meeting. Said meetings may be conducted by conference telephone call or as otherwise stated by the Board of Directors.

4.10 Attendance of a Director at any meeting of the Board of Directors will constitute a Waiver of Notice of such meeting, except where such Director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

4.11 A majority of the whole Board of Directors will constitute a quorum. The act of a majority of the Directors present at a meeting at which a quorum is present will be the act of the Board of Directors, unless a greater number is required under the provisions of these By-Laws.

ARTICLE V. OFFICERS

5.01 The officers of the Association will consist of the following personnel: President, Vice-President, and Secretary/Treasurer, and any number of Assistant Officers, as determined necessary or desirable by the Board of Directors. The duties of Secretary/Treasurer may be divided into two separate offices, Secretary and Treasurer, if determined by the Board of Directors to be necessary or desirable.

5.02 Each of the officers of this corporation will be elected and appointed annually by the Board of Directors. Each officer will remain in office until a successor to such office has been elected and qualified. Such election will take place at the annual meeting of the Board of Directors.

5.03 The President will be the chief executive officer of the corporation and will, subject to the control of the Board of Directors, supervise and control the affairs of the corporation. The President will perform all duties incident to such office and such other duties as may be provided in these By-Laws and as may be prescribed from time to time by the Board of Directors.

5.04 The Vice-President will perform all duties and exercise all powers of the President when the President is absent or is otherwise unable to act. The Vice-President will perform such other duties as may be prescribed from time to time by the Board of Directors. There may be any number of Vice-Presidents as determined by the Board of Directors, and the duties of each shall be determined by the Board.

5.05 The Secretary/Treasurer shall keep the minutes of all meetings of the Board of Directors, will be of the corporate records, will give all notices as are required by law or by these By-Laws, will perform all duties incident to the office of Secretary as are required by law, by the Articles of Incorporation, or by the By-Laws, or which may be assigned from time to time by the Board of Directors, will have charge and custody of all funds of the corporation, will deposit the funds as required by the Board of Directors, will keep and maintain business transactions, will render reports and accountings to the Directors as required by the Board of Directors or by law, and will perform in general all duties incident to the office of Treasurer as may be required by law, by the Articles of Incorporation, or by these By-Laws, or which may be assigned from time to time by the Board of Directors. This office may be divided into two (2) separate offices, Secretary and Treasurer, with the duties of each to be divided based upon the customary duties of each office, but which are presently being performed by the Secretary/Treasurer.

5.06 Any officer elected or appointed to office may be removed by the Board of Directors whenever in their judgment the best interest of the corporation will be served. However, such removal will be without prejudice to any contract rights of the officer so removed. Removal shall require a majority vote of the Directors in office.

ARTICLE VI. INFORMAL ACTION

6.01 Whenever any notice is required to be given under the provisions of the law, the Articles of Incorporation of this corporation, or the By-Laws, a waiver of such notice in writing signed by the person or persons entitled to notice, whether before or after the time stated in such waiver, will be deemed equivalent to the giving of such notice. Such waiver need not specify the nature of the business to be transacted.

6.02 Any action required by law or under the Articles of Incorporation of this corporation or these By-Laws, or any action which otherwise may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the persons entitled to vote with respect to the subject matter of such consent and filed by the Secretary of the corporation.

ARTICLE VII. COMMITTEES

7.01 The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint certain functionary committees designed to transact certain ministerial business of the corporation or to advise the Board of Directors. Such committees will be chaired by an officer or director as designated by the Board, and said chairman will proceed to select the remaining members of the committee up to the number set by the Board or terminate such membership or appoint successors in such chairman's discretion. The Board may terminate any such committee by resolution duly adopted by a majority of the Directors in office.

ARTICLE VIII. OPERATIONS

8.01 The fiscal year of the corporation will be the calendar year.

8.02 Except as otherwise provided by law, checks, drafts, promissory notes, orders for the payment of money, and other evidences of indebtedness of this corporation will be signed by the President and Secretary/Treasurer. Contracts, leases, or other instruments executed in the name of and on behalf of the corporation will be signed by the Secretary/Treasurer and will have attached copies of the resolutions of the Board of Directors certified by the Secretary/Treasurer authorizing their execution.

8.03 The corporation will keep correct and complete books and records of account and will also keep minutes of the proceedings of its Board of Directors and functionary committees. The corporation will keep at its principal place of business the original or a copy of its By-Laws, including amendments to date certified by the Secretary of the corporation.

8.04 All books and records of the corporation may be inspected for any proper purpose by any member of the Board at any reasonable time on written demand under oath stating such purpose.

8.05 This corporation will not have or issue shares of stock. No dividend will be paid, and no part of the income of this corporation will be distributed to the Directors or officers. No Director shall receive compensation from the Association for acting as such unless approved by the Majority of the Owners.

8.06 The corporation will make no loans to any of its Directors or officers.

8.07 No Member or incorporator of this corporation may have any vested right, interest, or privilege of, in, or to the assets, functions, affairs, or franchises of the corporation, or any right, interest, or privilege which may be transferable or inheritable, or which will continue if his membership ceases, or while he is not in good standing. Upon dissolution, assets of this corporation remaining after the payment or discharge of all liabilities of the corporation, the return, transfer, or conveyance of assets held on conditions requiring the same, and the transfer or conveyance of assets received and held subject to limitations permitting their use only for charitable, religious, educational, or similar purposes, shall be distributed as set forth in the Articles of Incorporation.

8.08 The Directors of this corporation may authorize secured transactions or other dispositions of corporate assets.

8.09 If there are conflicts or inconsistencies between the provisions of Alabama law, the Certificate of Formation, the Declaration of Covenants and Restrictions and these By-Laws, the provisions of Alabama law, the Declaration of Covenants and Restrictions, the Certificate of Formation and the By-Laws (in that order) shall prevail.

ARTICLE IX. AMENDMENTS

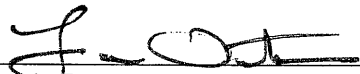
9.01 The power to alter, amend, or repeal the Articles of Incorporation of this corporation is vested in the Board of Directors. Such action must be taken pursuant to a resolution approved by a majority of the Directors in office.

9.02 The power to alter, amend, or repeal these By-Laws or to adopt new By-Laws, insofar as is allowed by law, is vested in the Board of Directors pursuant to a resolution approved by a majority of the Directors in office.

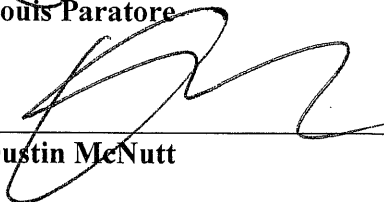
[Signatures on following page]

These By-Laws were adopted by the Board of Directors by resolution and vote of three (3) to zero (0) on the 16 day of October, 2021.

Directors approving:



Louis Paratore



Dustin McNutt



Michelle Shappie

EXHIBIT "B"

[Insert copy of Certificate of Formation]

**CERTIFICATE OF FORMATION
OF
MONTEAGLE COVE HOMEOWNER'S ASSOCIATION, INC.**

This Certificate of Formation (being also referred to herein as and being the same as Articles of Incorporation) is/are signed and acknowledged by the incorporator for the purpose of forming a non-profit corporation under the provisions of the "Alabama Non-Profit Corporation Law", Section 10A-3-1.01, et seq, Code of Alabama, as amended, and under the provisions of the "Alabama Homeowner's Association Act", Section 35-20-1, et seq, Code of Alabama, as amended, and I do hereby sign, verify and file the following certificate of Articles of Incorporation. Capitalized terms not defined herein shall have the meanings ascribed to them in that certain DECLARATION OF PROTECTIVE COVENANTS FOR MONTEAGLE COVE SUBDIVISION filed, or to be filed, in the Public Records of Madison County, Alabama (the "Declaration").

ARTICLE I - NAME

1.01 The name of this corporation shall be: **MONTEAGLE COVE HOMEOWNER'S ASSOCIATION, INC.** (hereinafter the "Corporation"), which shall be a nonprofit corporation.

ARTICLE II – PURPOSE AND POWERS

The Corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purposes for which this corporation are organized are:

2.01 To be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of such association, and to exercise all rights and powers of such association, as specified therein, in the BYLAWS OF MONTEAGLE COVE HOMEOWNER'S ASSOCIATION, INC. (hereinafter the "By-laws), and as provided by law; and

2.02 To promote the health, safety and welfare of residents within: Lots 1 through 34 and all Common Areas, according to the Final Plat of **MONTEAGLE COVE SUBDIVISION** Phase I, as recorded as Instrument Number 2021-00063476, in the Office of the Judge of Probate of Madison County, Alabama, and such additions thereto as may hereafter be brought within the jurisdiction of this corporation by annexation as provided in the Declaration, and for this purpose to:

a. exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein by reference as though fully set forth herein;

b. fix, levy, collect and enforce payment by any lawful means, including, but not limited to, all actions and remedies at law and in equity, all charges, dues, assessments, fees, penalties, fines, or other sanctions, pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conducting of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

c. acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

d. borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

e. dedicate, sell or transfer all or any part of the Common Areas, if applicable, to any public agency, authority, or utility any easements, leases, licenses, concessions, and for such purposes and subject to such conditions as may be agreed to by the Members;

f. participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Areas pursuant to the terms of the Declaration;

g. exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Laws of the State of Alabama and/or the Alabama Homeowners' Association Act as they may now or hereafter have or exercise;

h. have no authority to issue capital stock;

i. transact any and all lawful business for which corporations may be incorporated under the provisions of the "Alabama Non-Profit Corporation Law", as amended, and the "Alabama Homeowners' Association Act," as amended;

j. establish methods of efficient communications with the Member of the Association unless a different method is required under Code of Alabama, Section 10A-3-1 et seq;

k. establish rules and regulations for the conduct of meeting of the Board and of the Members of the Association;

l. to compile, organize, and maintain full and complete financial records of the Association, which shall be available to any Member at any reasonable time and place upon reasonable written notice and the payment of associated costs;

m. to establish rules and regulations for the use, maintenance, repair, replacement, or modification of any common areas, if any, including penalties, fines, or other sanctions for violations;

n. to establish the method of billing and/or notifying each Member regarding the payment of dues, assessments, and other related costs upon the payment of reasonable associated costs;

o. to prepare and submit the annual budgets of the Association to each Member;

p. to perform any other act a nonprofit corporation is required to perform under Alabama law; and

q. to hire and discharge managing agents and other employees, agents, and independent contractors.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 2 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article 2.

2.03 Said Corporation is organized to receive and maintain real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for nonprofit purposes for which this Association was formed. Without limiting the foregoing, the Corporation is to further provide for the maintenance, preservation and control of all landscape easements, areas of common responsibility, public ways and other common areas, elements and facilities within the abovementioned subdivision, and in other subdivided properties now or hereafter annexed and subjected to the same Declaration upon said subdivision.

2.04 No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any director or officer of the Corporation or any other private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation effecting one or more of its purposes, and no director or officer of the Corporation, or any private individual shall be entitled to share in the distribution of the corporation. No substantial part of the activities of the Corporation shall be the carrying on for propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, and/or intervene in, any political campaign on behalf of any candidate for public office.

2.05 The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to tax on undistributed income imposed by the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

2.06 The Corporation shall not engage in any act of self-dealing as defined by the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

2.07 The Corporation shall not retain any excess business holdings as defined by the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws. However, this paragraph is subject to the paragraph contained in the Declaration regarding surpluses in the sums collected within any year. The Association shall not be obligated to spend in any calendar year all the sums collected in such year, nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the annual charge in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors of the Association in its absolute discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purpose.

2.08 The Corporation shall not make any investments in such a manner as to subject it to tax under Section 4944 of the internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

2.09 The Corporation shall not make any taxable expenditures as defined by Section 4945(d) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

2.10 Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(C)(3) of the Internal Revenue Code and regulations issued pursuant thereto as they now exist or they may hereafter be amended.

2.11 Upon dissolution of the Association, the assets, both real and personal of the Association, after the payment of the debts of the Association, if any, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were dedicated while owned by the Association. If said assets are refused or not accepted by a public agency or utility, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of Association properties shall be effective to divest or diminish any right or title of any member vested in him under the Declaration unless made in accordance with the provisions of such Declaration. No such disposition shall be effective during the period when the "Developer" or "Declarant," as such term is defined in the Covenants, remains the owner of land known as Common Areas or land to be dedicated at some point in the future as a Common Area, as such term is defined in the Declaration or recorded plat of the subdivision, unless approved by the "Developer" or "Declarant."

ARTICLE III - MEMBERS

3.01 **QUALIFICATION.** The Members of the Association shall consist of all of the Lot Owners of record in the Community. Membership is appurtenant to, and inseparable from, ownership of a Lot.

3.02. **CHANGE IN MEMBERSHIP.** Change in membership in the Association shall be established by the recording in the public records of Madison County, Alabama, of a deed or instrument establishing a record title to a Lot, and delivery to the Association of such instrument. The new Lot Owner designated by such instrument shall thereupon become a Member of the Association, and the membership of the prior Lot Owner shall thereby be terminated.

3.03 **TRANSFER OF MEMBERSHIP.** The share of a Member in the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such Member's Lot.

3.04 **MEETINGS.** The By-Laws shall provide for an annual meeting of the Members and may provide for regular or special meetings other than the annual meeting.

3.05 **VOTING.** The Owner of each Lot shall be entitled to the number of votes specified and outlined in the Declaration under Article IV, Section 2. The manner of exercising voting rights shall be determined by the By-Laws.

ARTICLE IV – DIRECTORS

4.01 **NUMBER.** The property, business and affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors determined by the By-Laws, but which shall consist of not less than three (3) Directors. Except as may otherwise be provided in the By-Laws, each Director shall be either a person designated by the Declarant or a person entitled to cast a vote in the Association. Subsequently, the board may be increased or decreased as set forth in the By-Laws.

4.02 **ELECTION.** Directors may be designated or elected and removed, and vacancies on the Board of Directors shall be filled as provided in the By-Laws.

4.03. **AUTHORITY.** All of the duties and power of the Association existing under the Declaration, this Certificate and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors, ore employees, subject only to approval by Lot Owners when such approval is specifically required by the Act, the Declaration, this Certificate or the By-Laws.

4.04. INITIAL DIRECTORS. The names and addresses of the three (3) members of the initial Board of Directors, who shall hold office until the election or appointment of their successors are as follows:

Louis Paratore	336 James Record Road Huntsville, AL 35824
Dustin McNutt	336 James Record Road Huntsville, AL 35824
Michelle Shappie	336 James record Road Huntsville, AL 35824

ARTICLE V – OFFICERS

The affairs of the Association shall be administered by the officers designated in accordance with the By-Laws. The names and address of the officers who shall serve until the election or appointment of their successors are as follows:

Louis Paratore	President	336 James Record Road Huntsville, AL 35824
Dustin McNutt	Vice President	336 James Record Road Huntsville, AL 35824
Michelle Shappie	Secretary/Treasurer	336 James record Road Huntsville, AL 35824

ARTICLE VI – TERM

The period of duration of this corporation shall be perpetual.

ARTICLE VII – PRINCIPAL OFFICE ADDRESS AND MAILING ADDRESS

The location and mailing address of the principal office of the corporation is 336 James Record Road, Huntsville, Alabama 35824.

ARTICLE VI – REGISTERED OFFICE AND AGENT

The initial registered office of the Association is 336 James Record Road, Huntsville, Alabama 35824, and the name of the initial registered agent of the corporation at such address is Adam Davidson.

ARTICLE VII – DISSOLUTION

The Corporation may be dissolved only as provided in the Declaration, By-Laws, and by the laws of the State of Alabama.

ARTICLE VIII

If there are conflicts or inconsistencies between the provisions of Alabama law, this Certificate of Formation, the Declaration of Covenants and Restrictions and the By-Laws, the provisions of Alabama law, the Declaration of Covenants and Restrictions, the Certificate of Formation and the By-Laws (in that order) shall prevail.

ARTICLE IX – LIABILITY OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

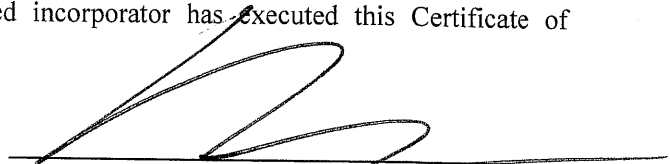
To the fullest extent that Alabama law, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, officers and committee members, no director, officer or committee member of the Association shall be personally liable to the Association or its Members for monetary damages for breach of duty of care or other duty as a director, officer or committee member. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director, officer or committee member of the Association for or with respect to any acts or omissions of such director, officer or committee member occurring prior to such amendments or repeal. The Association shall indemnify any director, former director, officer, former officer, committee member or former committee member of the Association against liability to the fullest extent permitted under Alabama law.

ARTICLE IX - INCORPORATORS

The name and address of the incorporator of the corporation is:

Adam Davidson
Davidson Homes, LLC
336 James Record Road
Huntsville, Alabama 35824

IN WITNESS WHEREOF, the undersigned incorporator has executed this Certificate of Formation.


Adam Davidson

This instrument was prepared by:
McMichael & Gray, PC
Emily R. Siniard, Attorney at Law
400 Franklin Street
Huntsville, AL 35801
(256) 562-4574

Alabama
Sec. Of State

Entity Change
954-019 DHA
Date 11/22/2021
Time 15:54
211122 57 Pg

File \$50.00
County \$.00

Total \$50.00
06/024