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Bill English - Probate Judge
Lee County, AL

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE PRESERVE SUBDIVISION**

**STATE OF ALABAMA
LEE COUNTY**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS, that:

WHEREAS, The Preserve L.L.C. (hereinafter referred to as the "Owner or Developer"), is the owner of certain Lots known as The Preserve Subdivision (hereinafter referred to as "Subdivision" or "Development") located in Auburn, Lee County, Alabama and shown by those certain Plats of The Preserve Subdivision as recorded in the following Plat Books and Pages in the Office of the Judge of Probate of Lee County, Alabama; Phase 1A-Plat Book 28 at Page 7; Phase 1B-Plat Book 28 at Page 85; Phase 1D-Plat Book 28 at Page 84; Phase 2A-Plat Book 27 at Page 198; Phase 2A-1st Addition-Plat Book 28 at Page 159; Phase 2A- Revision of Lots 232 and 237- Plat Book 28 at Page 158; Phase 2A- Corrective of Lot 243- Plat Book 28 at Page 24; Phase 4A-Plat Book 30 at Page 76.

WHEREAS, The Preserve, LLC did subject said property and each lot located in said Development to and did impose upon said lots mutual and beneficial restrictions, covenants, terms, conditions and limitations (herein for convenience sometimes referred to collectively as "Restrictions") for the benefit of all the Lots in said land, the future and current owners of said lots, and any other party as may be specified herein, by way of an original declaration of protective covenants recorded in the Lee County Judge of Probate Office in Book 2294 at Page 765. A First Amendment to the original declaration was recorded in the Lee County Judge of Probate Office in Book 2306 at Page 798. A Second Amendment to the original declaration was recorded in the Lee County Judge of Probate Office in Book 1283 at Page 217. A Third Amendment to the original declaration was recorded in the Lee County Judge of Probate Office in Book 1285 at Page 610.

WHEREAS, The Preserve, LLC reserved specific Development Rights until December 31, 2008 in Article IX, Section 9.1 of the original Restrictions. In accordance with said rights, Developer does hereby file this **Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Preserve Subdivision**. All prior restrictive covenants and amendments of record in the Lee County Judge of Probate shall become null and void and this instrument and any amendments subsequent thereto by the Developer shall control as to the ownership and construction of improvements upon all Lots purchased, both prior to and after the recording of this Document. All existing improvements (homes and structures) built on a Lot prior to the recording of this document shall be exempt from any new restrictions in this document to which the existing improvements are not in compliance. However, in the event of loss or damage to any existing

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improvements on a Lot, the replacement and repair of the existing improvements and all future improvements made to any Lot purchased prior to and after the recording of this document shall meet all the restrictions, covenants, terms, and conditions contained herein. The sole remedy for any disputes arising from these Restrictions by existing Lot owners, who were under the original restrictions, shall be determined by the Architectural Control Committee as defined in Article II.

WHEREAS, the Owner desires to subject said property and each lot located in said Subdivision and to impose upon said Lots mutual and beneficial restrictions, covenants, terms, conditions and limitations (herein for convenience sometimes referred to as "Restrictions") for the benefit of all Lots in the Subdivision and the future owners of said Lots.

NOW THEREFORE, Owner does hereby proclaim, publish and declare that all of said Lots are subject to, held and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied, and improved subject to the following restrictions which shall run with the land and shall be binding upon Owner, and upon all parties having or acquiring and right, title or interest in and to the real property or any part or parts thereof subject to such restrictions. The restrictions contained herein shall apply only to the Lots in The Preserve Subdivision and shall not apply to any other land developed or that may become owned by Owner, even though such land may be contiguous with the land described above and known as The Preserve Subdivision.

DEFINITIONS

For purposes of this Declaration, the following terms shall be defined as set forth herein below:

Dwelling- Any building constructed on a Lot to be used as a single family residence.

Lot-Any and all property designated as a Lot on the Plat and any Amendments thereto of The Preserve Subdivision as recorded in the Lee County Judge of Probate Office.

Common Expense- All expenses paid and approved by the Board that are for the general purpose of promoting the recreational, health, safety, welfare, common benefit, and enjoyment of the owners and occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Area, and any Improvements thereto, all as may be more specifically authorized from time to time by the Board of the Association.

Board- shall mean the Board of Directors of The Preserve Homeowners Association.

Common Area- Any Land not defined as a Lot that is used for the benefit of the Lot Owners including roadways, entrances to the neighborhood, and any other areas used by the Lot Owners in The Preserve Subdivision. Additional land will be set aside for homeowners use which will include

multiple wooded areas and possible water features. A minimum of 75 acres has been set aside for common areas, nature areas, or parks.

ARTICLE I MUTUALITY OF BENEFIT AND OBLIGATION

SECTION 1.1 The restrictions and agreements sets forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said Lots in favor of each and all the other Lots therein, to create reciprocal rights between the respective owners of said Lots; and to create a privity of contract and estate between the grantees of said Lots, their heirs, legal representatives, successors and assigns.

SECTION 1.2 General Declaration. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon the Owner and Occupants of the Property and any Lot, Dwelling, and Common Area thereof.

SECTION 1.3 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Development, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Developer, including without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Developer or of the Common Areas, (iii) installation and maintenance of any water, sewer, and any other utility systems and facilities within the Common Areas, and (iv) installation of security and trash and refuse facilities.

SECTION 1.4 Subdivision Plat. Developer 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 Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds, and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration.

Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time, or from time to time, divide and re-divide, combine and re-subdivide any Lots owned by Developer.

ARTICLE II ARCHITECTURAL CONTROL COMMITTEE AND REQUIREMENTS OF CONSTRUCTION

SECTION 2.1 Concept. It is intended that the Subdivision development will be a residential community of high esteem and of first class quality homes in a neighborhood environment.

SECTION 2.2 Architectural Control Committee. The Architectural Control Committee (herein referred to as the "ACC or Committee") shall be composed of not less than three (3) members at all times. Regardless of the number on the Committee, at least a majority of the membership of the Committee shall be composed of owners of Lots in the Subdivision, provided, however, that the Owner reserves the right to appoint the initial and successor members of the Committee, none of whom need be an owner of a Lot in the Subdivision, for so long as the Owner owns any Lots in the Subdivision or until the Owner specifically elects to terminate its control of the committee. The initial Committee shall consist of **Jerry Johnson, L. Harold Washington, and Andrew Lamar**. After terminating control of the Committee by the Developer, as aforesaid, the then record owner of a majority of the Lots shall have the power, through a duly recorded written instrument, to change the membership of the Committee or to withdraw from the Committee or to restore to it any of its powers and duties. Neither the members of the Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the Committee may designate one or more representatives to act for it.

The primary duty of the Committee shall be to examine and approve or disapprove all plans, including site plans, for construction of improvements on Lots within this subdivision in accordance with the provisions of these covenants. The Committee shall have the responsibility and final authority to remedy all disputes regarding these Restrictions brought by Lot Owners, who were under the original restrictions, regarding compliance with these Restrictions in accordance with any repairs, rebuilding, and or modifications to their Lot. The Committee shall have such other responsibilities, duties and authority as provided for, but the Committee shall not have any responsibility, duty or power not expressly provided for herein.

Decisions made by the ACC as outlined herein and as are necessary for the development of the subdivision in consistency with these Declarations of Covenants, Conditions and Restrictions, shall be made by any two of three members of the ACC as established herein.

SECTION 2.3 Plan Approval. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any Lot and the proposed location thereof on any Lot or Lots, the construction material, the roofs, any later changes or additions after initial approval thereof and any exterior remodeling, reconstruction, alterations or additions thereto on any Lot shall be subject to and shall require approval in writing of the Committee before any work is commenced. Construction may not be started before receipt of a Letter of Approval of the Committee, a copy of which must be signed by the Builder, or Lot owner, and returned to the Committee for retention.

SECTION 2.4 Review Documents. One set of prints of the drawings and specifications (hereinafter referred to as "plans") for each house or other structure proposed to be constructed on each Lot shall be submitted for review and approval or disapproval by the Committee. The plans submitted to the Committee shall be retained by the Committee. Said plans should be delivered to the general office of the Owner, or the Chairman of the Committee at least thirty (30) days prior to commencement of construction. Each such plan must include the following:

SECTION 2.4.1 All plans for structures shall be not less than 1/8 inch equals 1 foot scale.

SECTION 2.4.2 All plans must take into consideration the particular topographic and vegetative characteristics of the Lot or Lots involved.

SECTION 2.4.3 The foundation and floor plan(s) shall show the existing grade on each elevation in order that the extent of cut and/or fill areas may be easily and clearly determined.

SECTION 2.4.4 All plans must include a summary specifications list or proposed materials and samples of exterior materials which cannot be adequately described and of materials with which the Committee is unfamiliar.

After the plan for the structure is approved, the house or other structure must be staked out and such siting approved by the Committee before tree cutting or grading is done. No tree may be cut or removed other than that required for necessary staking until both the plan and siting are approved by the Committee.

SECTION 2.5 Design Criteria, Structure.

SECTION 2.5.1 It is the intent of this development to maintain itself with as many natural surfaces and textures as possible; however, the elevation and exterior appearance of the homes shall be designed with architectural features so that the exterior appearance of houses will be unique and create an attractive and desirable neighborhood. The following exterior materials are acceptable:

- (i) Brick in natural earth tones unless otherwise approved by ACC, synthetic stucco, stone and/or hardy plank are the preferred materials for covering the exterior of the houses. The ACC shall have final authorization as to any variations of the exterior and colors utilized in painting the hardy plank. Vinyl siding shall be allowed, however the ACC shall determine the amount and location of Vinyl siding permitted on each house plan submitted. Paint colors must be approved by the ACC.
- (ii) Shingles shall be architectural or look like architectural made out of wood shakes, or natural colored asphalt shingles or slate siding shall be the suggested roof materials as previously approved by the ACC. White roofing material is NOT acceptable.
- (iii) The roof pitch shall be a minimum of 10 on 12. Phase 4 will be allowed a 6 on 12 minimum roof pitch on the sides and rear elevations. All front elevations for Phase 4 shall be a 10 on 12 minimum roof pitch or the front elevation must have Gables constructed on a 10 on 12 minimum roof pitch to give the appearance of a front elevation of a 10 on 12 minimum roof pitch
- (iv) All windows shall be made of either wood or vinyl. No aluminum, metal, or silver finish windows or doors with glass fronts shall not be allowed on any Dwelling. Storm doors shall be allowed to cover doors with the approval of the ACC.

SECTION 2.5.2 All porches located on the front and sides of the primary dwelling, guest houses, and pool houses must be a minimum of six (6') feet wide.

SECTION 2.5.3 On Lots requiring a minimum of a 2400 square foot heated floor space, the openings of garages should not face the street. Exceptions may be made by the ACC for Lots located on the corner of the street or where site conditions make this impractical.

SECTION 2.5.4 Storage buildings shall be allowed only when architecturally consistent with the home and the aesthetics of the property. Their location, type, and materials to be utilized shall be approved by the ACC prior to construction.

SECTION 2.5.5 No window air conditioners shall be installed.

SECTION 2.5.6 Underground services to the individual homes for electrical distribution is the intent of this development and no overhead electrical wiring shall be permitted unless approved by the ACC.

SECTION 2.5.7 No outside radio and television antennas. Satellite dishes shall be no wider than three (3) feet and their site location shall be approved by the ACC. No satellite dish shall be allowed to be visible from either the street or the side of any property.

SECTION 2.5.8 Swimming pools will be permitted. However, fencing of swimming pool areas must be achieved within set-back lines and fence type and site location must be approved by the ACC.

SECTION 2.5.9 All fencing, as to their location and type, must be approved by the ACC prior to construction. Privacy fences shall be six (6) foot wooden fences with the framing facing the interior of the lot. Any privacy fences must be gated if located on or violating any easements. All fencing shall come off the rear corner of a home.

SECTION 2.5.10 Dust abatement and erosion control measures shall be provided by the contractor or owner in all stages of construction.

SECTION 2.5.11 Concrete, brick or stone curved walkways are required and must be approved by the ACC.

SECTION 2.5.12 All mailboxes shall be designed and located in accordance with the overall architectural scheme of the residence, and must meet requirements of the United States Postal Service. All mailboxes shall be standardized. The exact mailbox to be used in the Development shall be controlled by the Developer and utilized by all builders of all Lots in the subdivision. Only one mailbox shall be allowed on any Lot or Dwelling. All mailboxes will be the same type, design, color and location as may be established by the ACC. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by the ACC but no further inscriptions, paintings, ornaments or artistry shall be allowed.

SECTION 2.5.13 During the construction, all vehicles, including those delivering supplies, must enter the building site only on driveways and roading approved by the Committee and such vehicles must be parked on the Lot where the construction is under way so as to not unnecessarily damage trees.

SECTION 2.5.14 All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris shall not be dumped in any area of The Preserve Subdivision.

SECTION 2.5.15 During construction, builder must keep homes and garages clean and yards cut.

SECTION 2.5.16 All plans for decking shall be submitted for the ACC's approval before construction begins.

SECTION 2.5.17 All landscaping must include the following:

- (i) The front and back of each Dwelling will be required to be landscaped with plants. All sides must have appropriate pine straw or mulch.
- (ii) Each Lot shall have grass coverage thirty (30) feet from the rear of the house or concrete patio.
- (iii) A pre-emergent application to kill and control weeds in both the complete yard and plant beds shall be required for each Dwelling before laying of sod or any planting may occur.
- (iv) All Dwelling's yards, trees, and beds shall be properly maintained, mulched, and kept free of weeds at all times. Dead or decaying plants shall be removed and replaced promptly so as to not cause an unsightly view.
- (v) Landscaping shall include and incorporate plantings in order to block the view of air conditioning units, and all other electrical boxes that may be visible from any street.
- (vi) All grading and landscaping shall require prior approval of the ACC to avoid clear cutting of Lots.

SECTION 2.5.18 There shall be no signs nailed to trees at any time. All builders' and contractors' signs are to be removed from the Lot after the building is completed.

SECTION 2.5.19 Drainage of surface water, storm water, and/or foundation drains may not be connected to sanitary sewers or drain into the lake.

SECTION 2.5.20 No outside clothes lines shall be permitted.

SECTION 2.5.21 No exterior, above-ground liquified fuel storage containers in excess of ten (10) gallons of any kind shall be permitted. Any containers of this nature must be on the rear of the house behind fences so they cannot be seen from the side or front of the house.

SECTION 2.5.22 No Lot corner stakes may be removed and in the event that such are removed or destroyed either during construction of a Dwelling or at any other time, it shall be the responsibility of the owner of the Lot to have such restored by a licensed surveyor at the lot owner's expense. The failure of a Lot owner to restore or replace such lot stakes in accordance with the final subdivision plat, shall authorize the Owners to have such work performed and to charge the expense thereof to the owner.

SECTION 2.5.23 Proper erosion control plans shall be submitted to the ACC for approval prior to the construction phase beginning. These plans should set out in detail the planned utilized and any builder or subcontractor that will be responsible for the implementation of the plan.

SECTION 2.5.24 The ACC requires the prior approval of all builders and subcontractors that will work on any structure or improvement on the Lots in The Preserve Subdivision. A list of said builders and subcontractors shall be submitted for approval either with the initial plan or prior to the beginning of any construction or site preparation.

The ACC reserves the right to add to the above regulations from time to time at its discretion, so long as these additions do not lower or minimize any of the requirements or standards set out herein.

SECTION 2.5.25 All proposed exterior redecorating, including painting, must be pre-approved by the Committee or its successors or assigns.

SECTION 2.5.26 The Committee reserves the right to make exceptions to architectural guidelines in the event solar heating is to be used, such exceptions, to be made on a case by case basis, considering the design's compatibility with the neighborhood.

SECTION 2.6 Neither the Committee nor any architect nor agent thereof nor the Owner shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. Further, the Committee shall not be liable to a Lot Owner for any decisions made in an effort to enforce these Restrictions equally against all Lots in The Preserve Subdivision.

ARTICLE III

EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

SECTION 3.1 All Lots in the subdivision shall be known and described as residential Lots and shall be used for single family residential purposes exclusively and no Lot shall be subdivided without the consent of the ACC and the governing body of the City of Auburn.

SECTION 3.2 No structure, except as otherwise provided, shall be erected, altered, placed or permitted to remain on any residential building Lot other than one detached single family residence not to exceed two and one-half (2 ½) stories, not including the basement if applicable.

SECTION 3.3 Except as otherwise provided, every Dwelling on any Lot, exclusive of one story open porches, garages, bonus rooms located over garages and finished basements, shall each have not less than required square footage listed below of heated and cooled, floor space on the main floor, or total of all floors if two story house or split level, with a ceiling height of not less than 8 feet in all enclosed, heated, habitable areas. There shall be not less than 2,400 square feet of heated floor

space for Lots 1-16, 19-109, 169-183, 216-231, 238-243; 1600 square feet of minimum heated floor space shall be required for Lots 110,111, 125-138, 154-168, 184-215; and 1550 square feet of minimum heated floor space shall be required for Lots 142,143,144,145, 295-380, 398-404, unless more stringent requirements are adopted. The Developer specifically reserves the right to change the minimum square footage of heated floor space for lots 169-183. The Developer reserves the right to determine square footage requirements for future phases of the Development.

SECTION 3.4 No more than a single family unit and one unrelated person shall occupy any Dwelling.

ARTICLE IV GENERAL PROHIBITIONS AND REQUIREMENTS

SECTION 4.1 It shall be the responsibility of each Lot owner to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such Lot which shall tend to decrease the beauty of the specific area or of the neighborhood as a whole.

SECTION 4.2 All Lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all time be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such Lot or the accumulation of rubbish or debris thereon or on or near the lake. In order to implement effective control of this item, the Owner reserves for himself and his agents and the Committee, the right, after ten (10) days notice to any Lot owner, to enter upon any residential Lot with such equipment and devices as may be necessary for the purpose of mowing, removing, clearing or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Owner or the Committee detracts from the overall appearance and safety of the Subdivision. Such entrance upon such property for such purposes shall be only between the hours of 7a.m. and 6 p.m. on any day except Sunday and shall not be a trespass. The Owner or the Committee may charge the Lot owner a reasonable cost for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. The provisions of this paragraph shall not be construed as an obligation on the part of the Owner or the Committee to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

SECTION 4.3 No animals, livestock or poultry or any kind or description, except the usual household pets, shall be kept on any Lot, provided that no household pet may be kept on any Lot for breeding or commercial purposes. All pets must be kept behind a closed fence or walked on a leash and cannot cause disturbance to any adjoining neighbor with continuous barking or other noise, smells, etc.

SECTION 4.4 No noxious, offensive or illegal activities shall be carried on upon any Lot nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to the Development.

SECTION 4.5 No oil, natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and natural gas shall be erected, maintained or permitted on any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No water pipe shall be installed or maintained on any Lot above the surface of the ground except hoses and movable pipes used for irrigation purposes.

SECTION 4.6 No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot or on or near the lake. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in clean and sanitary condition and shall be so placed, buried or screened by shrubbery or other appropriate material approved in writing by the Committee so as not to be visible from any street within sight distance of the Lot at any time except during periods of refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted except during construction phase without prior approval of the ACC and the City of Auburn. Violation of this subsection of these covenants shall subject the owner of the Lot to the penalty of a stipulated liquidated damage sum of \$50.00 for each day during which such violation continues. The recovery of such damages shall be available to the Owner or to any owner of other Lots subject to these covenants except that the violator shall not be required to pay damages to more than one person or entity for such violation. Garbage containers can be placed outside for pick up the day before garbage pick up and must be removed to the rear of the property at the end of the day after garbage is picked up.

SECTION 4.7 All signs, billboards or advertising structures of any kind are prohibited except builder and subcontractor signs during construction periods as authorized in Section 2.5.16 above and except one professional sign of not more than two (2) square feet to advertise the property for sale. No sign shall be permitted to be nailed or attached to trees. No signs shall be allowed that advertise the property for rent.

SECTION 4.8 No structure of a temporary character, mobile home, recreational vehicle, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. There shall be no occupancy of any Dwelling until the interior and exterior of the Dwelling are completed and a certificate, or other satisfactory evidence of completion is received by the Owner or contractor from the Building Official of the municipality where the property is located.

SECTION 4.9 Any Dwelling or other structure on any Lot in the Subdivision which may be destroyed in whole or in part for any reason must be rebuilt in one (1) year. All debris must be removed and the Lot restored to a sightly condition with reasonable promptness, provided that in no event shall such debris remain on any Lot longer than sixty (60) days.

SECTION 4.10 No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above any roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. Except as herein provided, no trees shall be permitted to remain within such distance of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sight-lines. Any such tree of a rare or unusual species may be permitted to remain in place upon application to and written permission from the Committee and approved by the appropriate city official or department.

SECTION 4.11 No boat, boat trailer, house trailer, mobile home, camper, motor home, recreational vehicle or similar equipment or vehicle shall be parked or stored on any road, street, driveway, yard or Lot located in the Subdivision for any period of time in excess of forty-eight (48) hours except in enclosed garages. No commercial or business trucks larger than three-quarter (3/4) ton GVW and no tractors or other excavating machinery shall be parked or stored on any road, street, driveway, yard or Lot located in the subdivision for any period of time in excess of twenty-four (24) hours except during the period of construction on Lot. No cars shall remain on the street overnight.

SECTION 4.12 No professional, business, home industry, religion, school, kindergarten or educational enterprises shall be conducted on any Lot. No owner or occupant of any Dwelling erected on any Lot shall ever rent or lease rooms, but such shall not be construed to prevent the rental of an entire residence to a family unit nor the employment of live-in-domestic servants.

SECTION 4.13 Prior to occupancy of any residence constructed on any Lot, all yard areas which are visible from any street or adjoining Lot must be planted with grass or have other suitable ground cover, and driveways must be paved or otherwise approved by the Committee.

SECTION 4.14 No building shall be located nearer to the street line than as indicated by the building set-back lines shown on the recorded subdivision plat. Where these set-back lines are less than those required by the zoning ordinance of the municipality where the Lot is located, the higher requirement shall control. For the purposes of this paragraph, eaves, steps and open porches not covered by a roof structure shall not be considered as a part of building, provided however, that

this shall not be construed to permit any portion of the building or construction on any Lot to encroach upon another Lot or upon easements reserved herein, if any.

SECTION 4.15 No structure or other permanent fixture, excluding landscaping planting meetings the requirements of Section 2.5.17 and/or 4.10 hereof, and mail boxes meeting the requirements of Section 2.5.12 hereof, shall be erected, placed or altered on any Lot between the street and the building set-back line unless the same be a retaining wall of masonry construction which does not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced or stabilized. The exposed part of such retaining walls shall be made of brick, natural stone or concrete block veneered with brick, natural stone or other material approved by the Committee.

ARTICLE V EASEMENTS

SECTION 5.1 The Preserve, LLC reserves for itself, its successors and assigns the right to use, dedicate and/or convey to the State of Alabama, to Lee County, City of Auburn, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use utilities, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in and over strips of land ten (10) feet in width along the rear property line of each Lot and ten (10) feet in width along each side line of each Lot; with a further easement reserved to cut or fill a three to one slope along the boundaries of all public or private streets built in the subdivision.

ARTICLE VI CONSIDERATION

SECTION 6.1 The grantee(s) of any Lot subject to the coverage of these Restrictions and the owner(s) of such Lot from time to time, by the acceptance of the conveyance or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Owner or a subsequent owner of such Lot, shall accept such deed or other contract subject to each and all of these restrictions and the agreements herein continued, whether or not such restrictions are recited in the instrument of conveyance.

ARTICLE VII ASSOCIATION

SECTION 7.1 Membership. The owner of each Lot or Dwelling shall be a member of The Preserve Homeowner's Association, Inc., a non-profit corporation that has been created to facilitate the running of the subdivision. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the owner of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such owner, and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

SECTION 7.2 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the owner of any Lot or Dwelling within the Development, except a Dwelling used as a personal residence. Each owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 7.2

SECTION 7.3 Voting Rights. Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws (which, among other things, provide that only Developer, for so long as Developer owns any Lot or Dwelling in the Development, shall be exclusively entitled to take various actions and vote on all matters to be voted on by the members of the Association) and the rights of the Association to suspend any owner's voting rights or privileges in the Association pursuant to Section 7.4 below, the owner of each Lot or Dwelling shall be entitled to one (1) vote

in any matters submitted to the members of the Association for approval. No owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the re-subdivision of any Lot by Developer pursuant to Section 1.4 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 7.3, Developer shall be deemed to be the owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

SECTION 7.4 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity, or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same, (ii) subject to the provisions of this Section 7.4, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining, or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 7.4, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, of the Developer, the ACC, the Association, and all owners and occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided herein in this Declaration the dedication or transfer of title to any of the Common Areas must be approved by a majority of those

Owners present in person or by proxy at a duly held meeting of the Association called for such purposes, and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell, or otherwise convey an interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

SECTION 7.5 Agreements. Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all owners, their heirs, executors, personal representatives, administrators, successors, and assigns, and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part hereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, except any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation, or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

SECTION 7.6 Management by Developer or its affiliates. Developer or any affiliate thereof may be employed by the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Development, at such compensation on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size,

quality, and nature of the Development. Each owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section 7.6 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

SECTION 7.7 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings, and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board and such other matters. Copies of such rules and regulations shall be binding upon all owners and occupants until and unless such rule or regulation is specifically overruled, canceled, or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled, or modified unless such action is also approved by Developer for as long as Developer owns any Lot or Dwelling in the Development.

SECTION 7.8 Indemnification. The Association shall and does hereby indemnify, defend, and agree to hold each and every officer, agent, representative, and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit, or other proceedings (including the settlement or any suit or proceedings if approved by the Board) to which such person may be made a part by reason of being or having been an officer, agent, representative, or member of the Board of the Association. The officers, agents, representatives, and members of the Board of the Association shall not be liable for any mistake in judgment, negligence, or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives, and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall and does hereby indemnify, defend, and agree to forever hold each such officer, agent, representative, and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative, or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 7.8 and the costs of such insurance shall constitute a Common Expense.

ARTICLE VIII COMMON AREA ASSESSMENTS

SECTION 8.1 Assessments and Creation of Lien. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in section 8.4 below, (b) special Assessments, to be established and collected as provided in Section 8.5 below, and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 8.8.1 below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.8.3 below. Each owner shall be personally liable for the payment of all Assessments coming due while he is the owner of a Lot or Dwelling and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.8.1 below, court costs, and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution, or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right to eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Areas, or any other portion of the Development of any other cause or reason of any nature.

SECTION 8.2 Purpose of Assessments. The annual and special Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit, and enjoyment of the owners and occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas, and any Improvements thereto, all as may be more specifically authorized from time to time by the Board of the Association.

SECTION 8.3 Uniform Rate of Assessments.

SECTION 8.3.1 Both annual and special Assessments, as described in Section 8.4 and 8.5 below, when applicable to a Lot or Dwelling shall be assessed against each Lot or Dwelling in the Development at a uniform rate, with the owner of each Lot or Dwelling being required to pay his prorata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total of Lots or Dwellings owned by such owner and the denominator of which shall be the total Lots or Dwellings in the Development at the time such annual or special Assessments is levied. Each Lot and Dwelling shall be subject to equal annual and special Assessments.

SECTION 8.3.2 Notwithstanding anything provided in Section 8.3.1 above to the contrary, in the event any Additional Property is added to the Development, then the Lots and /or Dwellings within the Additional Property shall be subject to the same annual or special Assessments then being paid by the owners of all other Lots and Dwellings in the Development, subject to proration as provided in Section 8.7 below.

SECTION 8.4 Computation of Annual Assessments.

SECTION 8.4.1 Notwithstanding anything provided to the contrary in this Declaration, the annual Assessment for each Lot and Dwelling in the Development for the approximate one (1) year period commencing on July 1st, 2008 shall be Three Hundred and No/100's (\$ 300.00) Dollars per annum per Lot or Dwelling in the Development. The foregoing shall not limit or restrict any of the special Assessments levied pursuant to Section 8.5 below.

SECTION 8.4.2 The annual assessments shall commence with the purchase of a Lot from the builder/or Developer to an owner for residential occupancy. These fees shall be prorated at the time of closing to pay for the remainder of the year. In addition, an initial fee of \$150.00 shall be paid by any owner to the Association at the Closing on the Lot when said Lot is available and ready for occupancy as a personal residence. This initial fee shall only apply to Lots purchased after the recording of this Declaration. After the initial fee and prorated amount is paid, the annual assessments shall be paid annually thereafter. The Board shall have the authority to increase dues based on the annual expenses of the Association. The Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the upcoming year, such budget to include a capital contribution or reserve account if 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 pro rata share of the same as provided in Section 8.3 above. A copy of the budget setting forth the amount of annual

Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each owner.

SECTION 8.4.3 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 of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.5 below. If the amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

SECTION 8.4.4 The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

- (i) Maintenance, Insurance, and Utilities related to the operation of a Pool and Pool house for all residents of The Preserve Subdivision. A pool and a pool house with common area space will be constructed at the expense of The Preserve, LLC for the residents of The Preserve Subdivision. The Preserve, LLC shall be allowed to maintain an office in the pool house facility until such time as The Preserve, LLC no longer owns any Lots in the Development. The HOA shall have the authority to assess additional annual fees in order to provide for the maintenance and support of the pool facilities. The HOA shall have the authority to charge a fee if a homeowner desires to reserve the pool house facility for any type of event or social function . The Preserve, LLC reserves the right to determine when the pool and facilities will be constructed and the location of such facilities; no pool will be constructed until such time as there are enough HOA members to support the pool operation by payment of their annual dues.
- (ii) Salaries, fringe benefits, and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board, and any third party contractors;
- (iii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;
- (iv) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Development, including, without limitation, trash collection and security services;

- (v) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance, and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents, or representatives of the Association or for any of the members of the ACC;
- (vi) The expenses of maintaining, operating, repairing, and replacing any portions of the Common Areas for which the Association is responsible, including, without limitation, Retention Pond Lots and roads comprising Common Areas within the Development, which maintenance and repair obligations shall include mowing, landscaping, seeding, cleaning, trash pick-up and removal, paving, repaving, striping, and patching all such Retention Pond Lots and roads comprising Common Areas;
- (vii) Expenses of maintaining, operating, and repairing any other amenities and facilities serving the Development which the Board determines from time to time would be in the best interest of the Association to so maintain, operate, and/or repair;
- (viii) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;
- (ix) The costs and expenses for conducting recreational, cultural, or other related programs for the benefit of the owners and occupants;
- (x) All other fees, costs, and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and
- (xi) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair, and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair, or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as

from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

SECTION 8.5 Special Assessments. In addition to the annual Assessments authorized in Section 8.4 above and any special Assessments authorized herein, including but not limited to special assessments for casualty (including but not limited to damage or destruction to Common Areas, Lots and/or Dwellings), condemnation, or insurance, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied for casualty, condemnation or insurance) shall be approved by a majority of the votes of the owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 8.9 below. 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 then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each owner in accordance with the provisions of Section 8.3 above.

SECTION 8.6 Notice of Meetings and Quorum.

SECTION 8.6.1 Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all owners not less than ten (10) days and not more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of owners entitled to cast over 30% of all the votes of the Association shall constitute a Quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of owners entitled to cast at least one-fourth (1/4) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the notations specified in Section 8.4.3 above.

SECTION 8.6.2 With respect to all other meetings of the members of the Association, including, specifically, meetings pursuant to which special Assessments are to be levied upon each Lot or Dwelling pursuant to Section 8.5 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

SECTION 8.7 Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot or Dwelling on the Day on which such Lot or Dwelling is conveyed to a person other than Developer/or Builder for occupancy as a residence and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding special Assessments shall be adjusted for each Lot and Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is conveyed. Annual and special assessments for Lots and Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the date on which such Lot or Dwelling is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or special assessments on any Lots or Dwellings which it owns in Development. Furthermore, for so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the option to either pay annual Assessments on Lots or Dwellings owned by Developer or fund any deficits which may exist between the total amount of annual Assessments assessed to all other owners and the actual costs incurred by the Association for Common Expenses for the Development. At such time as Developer no longer has any interest in any Lot or Dwelling within the Development, except for a Dwelling used for a personal residence, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the Common Areas.

SECTION 8.8 Effect of Non-payment; Remedies of the Association.

SECTION 8.8.1 Each owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the owner of such Lot or Dwelling shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any owner, such owner agrees to pay all attorneys' fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and

all attorneys' fees, court cost, and all other expenses paid or incurred by the Association in attempt to collect any unpaid Assessments.

SECTION 8.8.2 In the event any Assessments or other amounts due to the Association are not paid by any owner when the same comes due, then, in addition to all other rights and remedies provided at law or equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

- (i) The Association may commence and maintain a suit at law against an owner to enforce such charges and obligations for Assessments, and any such judgement rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.8.1 above, together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or
- (ii) The Association may enforce the lien created pursuant to Section 8.1 above in the manner hereinafter provided.

SECTION 8.8.3 There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.8.1 above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessment remains unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien against the Lot or Dwelling of such delinquent owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

- (i) The name of the delinquent owner,
- (ii) The legal description and street address of the Lot or Dwelling upon which the lien is made,

- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs, and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received, and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other owners (other than those owners in default), and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot or Dwelling. Each owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such owner personally for the collection of all amounts due from such owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

SECTION 8.9 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.8.3 above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other Charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.8.3 above, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the

right to pursue all rights and remedies against a defaulting owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such owner's Lot or Dwelling.

SECTION 8.10 Certificates. The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any owner a certificate in writing setting forth whether the Assessments for which such owner is responsible have been paid, and if not paid, the outstanding amount due and other costs and expenses due from such owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE IX ENFORCEMENT

SECTION 9.1 In the event of a violation or breach of any of these restrictions by any property owner, or family of owner(s) of Lot(s), The Preserve Subdivision, or any party to whose benefit these restrictions shall inure, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages, reasonable attorney's fees, cost of court, or other charges or to take all such courses of action at the same time, or such other legal remedy it may deem appropriate. Any delay or failure on the part of an aggrieved party to invoke an available remedy set forth herein shall not be held to be waiver of that party or an estoppel of that party or of any party to assert any right available to that party upon the recurrence or continuation of said violation or the occurrence of a different violation.

SECTION 9.2 In the event any owner or occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (a) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling and shall be a personal obligation of such owner which is guilty of such violation, (b) suspend an owner's right to vote in the Association, or (c) suspend an owner's or occupant's right (and the right of such owner's or occupant's family members, guests, and tenants) to use any of the recreational facilities located in or upon the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

SECTION 9.3 The Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights pursuant to Section 9.2 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner for such violation, which demand shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation; and
- (iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 9.2 above and shall not apply to the exercise of any of the rights and remedies specified in any other Section or provision of this Declaration.

SECTION 9.4 Each and every Lot owner and future Lot owners, in accepting a deed or contract for any Lot or Lots in The Preserve Subdivision agrees to adhere to these Protective Covenants governing The Preserve Subdivision. If said Lot owner(s) do not adhere to said covenants and legal action is taken against the party in violation of said covenants, then the Lot owner(s) in violation agrees to pay all attorney's fees and other associated costs incurred by other parties in pursuing legal action to remedy violation of these covenants.

ARTICLE X TERMS AND MODIFICATION

SECTION 10.1 These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 20 years from the date these covenants are recorded, after which time said covenants shall expire unless extended. One or more extensions of the term of these covenants may be made by recording, prior to the expiration of the original terms or any extension thereof, an instrument signed by the majority of the then owners of the Lots extending the term of said covenants. No extension shall be for a term longer than ten years.

SECTION 10.2 The Developer shall have the specific Developer Right to amend, alter, change, and modify any of the language contained herein for any reason whatsoever without the consent of the other Lot owners until December 31, 2010. For so long as Developer owns any Lot or Dwelling within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in section 10.4 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any owner's rights to the use and enjoyment of his Lot or Dwelling or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the owners (including Developer who shall

have the voting rights attributable to any Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section 10.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama. Each owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.2 and further agrees that, if requested to do so by Developer, such owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

SECTION 10.3 Amendments to this Declaration, other than those authorized by Section 10.2 above, shall be proposed and adopted by the Association in the following manner:

- (i) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any owners present in person at such meeting. Any such proposed amendment must be approved by the owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title, or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot or Dwelling in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 10.4 below, then the provisions of Section 10.4 below shall be applicable to such proposed Amendment.
- (ii) Any and all amendments which have been approved in accordance with the provisions of Section 10.3 (i) above shall be executed by all parties whose consent to the same is required, including the owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, sworn statement to the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of owners was lawfully

obtained may be attached to and incorporated into such amendment without joinder of any owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Lee County, Alabama.

SECTION 10.4 Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 1.3, 1.4, 7.2, 10.2, 10.3, 10.4, and 12.1 hereof or any other provisions of this Declaration which require Developer's consent or approval to be effective unless the same is consented within writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of the Developer, with or without any reason.

SECTION 10.5 Each and every Lot owner and future Lot owner, in accepting a deed or contract for any Lot or Lots in The Preserve Subdivision, whether from The Preserve, L.L.C., or a subsequent owner of such Lot, agrees to indemnify and reimburse The Preserve, L.L.C., or The Preserve Homeowners Association, Inc. for any damage caused by such Lot owner or the contractor, agent or employees of such Lot owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer line or sanitary sewer lines owned by The Preserve, L.L.C., the City of Auburn, or Lee County or for which either has the responsibility, at the time of such damage.

ARTICLE XI SEVERABILITY

SECTION 11.1 Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Invalidity by any Court of any restrictions in this instrument shall in no way affect any of the other restrictions which shall remain in full force and effect.

SECTION 11.2 The Owner may include in any contract or deed hereinafter made or entered into, such modifications and/or additions to these protective covenants and restrictions, which will by their nature raise the standards of the Subdivision.

ARTICLE XII MISCELLANEOUS PROVISIONS

SECTION 12.1 Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND

REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH ABOVE. Each owner, by acceptance of a deed or other conveyance of any interest in a Lot or Dwelling, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.1 At such time as Developer no longer owns any interest in any Lot or Dwelling within the Development, except a Dwelling used as a personal residence, 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, and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

SECTION 12.2 Legal Expenses. In addition to all other rights and remedies set forth herein, in the event either the ACC, its agents or representatives, or the Board, its agents and representatives, undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove, or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants, or conditions of this Declaration shall be paid for by the Owner against whom such action was initiated. The ACC, its agents and representatives, and the Board, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by either the ACC or the Association to cure such violation or breach.

SECTION 12.3 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

SECTION 12.4 Pronouns and Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neutral gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

SECTION 12.5 Binding Effects. The terms and provisions of this Declaration shall be binding upon each owner, occupant, and mortgagee and the respective heirs, executors, administrators, personal representatives, successors, and assigns of each owner, occupant, and mortgagee, and shall inure to the benefit of Developer, the ACC, the Association, all of the owners, and their respective mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

SECTION 12.6 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each owner and to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor of or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict herein.

SECTION 12.7 No Reverter. No restriction or provision hereof is intended to be or shall be constructed as a condition subsequent to or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

SECTION 12.8 Interpretation. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

SECTION 12.9 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Association, the owners, and their respective Mortgagees, and by such recording, no other adjoining property owner or third party shall have any rights, title, or interest whatsoever in the development of its operation and continuation, in the enforcement of any of the provisions of this Declaration, or the right to consent to or approve any amendment or modification to this Declaration.

SECTION 12.10 No Trespass. Whenever the Association, Developer, the ACC, and their respective agents, employees, representatives, successors, and assigns are permitted by this Declaration to enter upon or correct, repair, clean, maintain, or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

SECTION 12.11 No Partition. Each owner hereby waives any right to seek or obtain judicial partition of any portion of the Development.

SECTION 12.12 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance, or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed a transfer of any of the

rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

SECTION 12.13 Standards for Review. Whenever in this Declaration, Developer, the Association, or the ACC has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the Association, or the ACC, as the case may be.

SECTION 12.14 Oral Statements. Oral statements or representations by Developer, the Association, the ACC, or any of their respective employees, agents, representatives, successors, or assigns, shall not be binding on Developer, the Association, or the ACC.

SECTION 12.15 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such owner's respective Lot or Dwelling within the Development. All notices to the Association or to the ACC shall be delivered or sent in care of Developer at the following address:

**4355 Anderson Road
Opelika, Alabama 36801**

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

SECTION 12.16 Assignment. Subject to the provisions of Section 12.12 above, Developer and the ACC shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations, and duties as Developer and the ACC, respectively.

SECTION 12.17 Further Assurances. Each owner covenants and agrees to execute, sign, and deliver, or cause to be executed, signed, and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts, or things, supplemental, conformity, or otherwise, which may be reasonably requested by Developer, the Association, or the ACC for the purpose of or in connection with clarifying, amending, or otherwise consummating any of the transactions and matters herein.

SECTION 12.18 No Waiver. All rights, remedies, and privileges granted to Developer, the Association, and the ACC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such part at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.


SECTION 12.19 Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neutral.

IN WITNESS WHEREOF, The Preserve, L.L.C., has caused these Restrictions to be properly executed, by its Managing Members, Jerry Johnson and L. Harold Washington, they have executed these Restrictions on this the 31st day of July, 2008.

The Preserve L.L.C.



Jerry Johnson, Managing Member

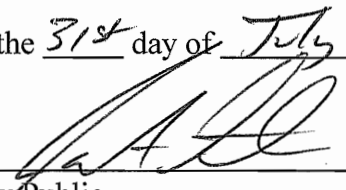


L. Harold Washington, Managing Member

STATE OF ALABAMA
LEE COUNTY

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **Jerry Johnson and L. Harold Washington**, whose names as **Managing Members of The Preserve, L.L.C.**, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 31st day of July, 2008.



Notary Public

My Commission Expires: 7/25/2010