

STATE OF ALABAMA)

COUNTY OF LEE)

R-FINAL

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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

Recording Fee 116.00
TOTAL 116.00

**DECLARATION OF RESTRICTIVE COVENANTS FOR
HIGHLANDS SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS: That:

WHEREAS, HIGHLAND LLC (herein the "Developer") has heretofore acquired title to certain real property situated in Lee County, Alabama and has subdivided a portion such property into Fifty Six (56) tracts (herein "Lots") as described in map survey of Highlands Subdivision Sector One, as recorded in Map Book 27, Page 17 in the Probate Office of Lee County, Alabama (the "First Sector Subdivision"); and,

WHEREAS, The Developer intends to subject in the future Highlands Subdivision Sector Two (the "Second Sector Subdivision") and Highlands Subdivision Sector Three (the "Sector Three Subdivision") to this Declaration; and,

WHEREAS, collectively herein, the Sector One Subdivision, the Sector Two Subdivision and the Sector Three Subdivision shall be referred to as the "Property" or the "Survey"; and,

WHEREAS, the Developer desires to develop the Property into residential subdivisions to be collectively known as Highlands Subdivision, subject to the restrictions and covenants set forth in this Declaration of Restrictive Covenants for Highlands Subdivision (herein "the Declaration"); and

WHEREAS, the Developer desires to subject each Owner as herein defined to membership in The Highlands Homeowners Association, Inc. (the "Association"). The Developer has created the Association as a non-profit corporation to which it has delegated the responsibility for the management and regulation of the Common Facilities (as hereinafter defined) and has assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against the Property and of levying assessments against the Owners of Lots within the Property to enable the Association to perform such obligations.

NOW, THEREFORE, the Developer does, upon recording hereof, declare and make the

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Property and each of the Lots included in the Subdivision of the Property subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, and on the Survey all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall be for the benefit of each such owner of property or interest therein, and shall inure to the benefit of and be binding of and be binding upon each successor in interest to the owners thereof.

ARTICLE I

Definitions

1. **Additional Property.** The term "Additional Property" shall mean Highlands Subdivision Sector Two and Highlands Subdivision Sector Three being portions of the real property acquired by Developer in Deed Book 2256, Page 420, Probate Office of Lee County, Alabama
2. **Articles of Incorporation.** The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.
3. **Assessment.** The term "Assessment" shall mean the Assessments to be assessed against the Owners of Lots, pursuant to the authority vested in the Association under Article VIII hereof.
4. **Architectural Review Committee.** (The ARC) is the committee established under Article IV of this Declaration.
5. **Association.** The term "Association" shall mean The Highlands Homeowners Association, Inc., an Alabama non-profit corporation.
6. **Board.** The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.
7. **Bylaws.** The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.
8. **Common Facilities.** The term "Common Facilities", "Common Facilities Property" or "Common Areas" shall mean and refer to all real and personal property now or

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hereafter owned or otherwise acquired by lease, easement or otherwise, by the Developer or the Association for the common use and enjoyment of the Owners, whether located within the Property, adjacent to the Property or in close proximity to the Property. The Common Areas shall include (a) the "Undisturbed Natural Areas" (as shown and as to be shown on the Surveys), (b) all signage, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, guardhouses, improvements, landscaping and landscaped or other areas, including all medians within any public or private roadways (other than any such areas located solely within the boundary lines of any Lot), (c) all watershed protection or retention ponds, basins or other areas and facilities located within the Property (which are located in a Common Area owned by the Association), (e) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas and not maintained by a Governmental Authority, and, (f) all parks, nature trails, recreational facilities and areas, and any other areas or Improvements which are designated as Common Areas by Developer or the Association from time to time in accordance with this Declaration. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof, and the use and management of such Common Areas shall be exclusively governed by the terms and conditions of this Declaration.

9. Common Assessment. The Common Assessment or Assessment shall mean and refer to any and all assessments imposed by the Association to pay Common Expenses in accordance with the provisions of Article VIII of this Declaration.

10. Common Expenses. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association in connection with the maintenance, repair, improvement, alteration and management of the Common Areas, including, without limitation, those expenses described in Article VIII, 3(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

11. Dwelling. A single family residential Structure located on a Lot within the Property.

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12. Exempt Builder. Exempt Builder shall mean a builder who is not a Preferred Builder who has purchased Lot(s) for the purpose of constructing Dwelling(s) on such Lot(s) for sale to others and who has commenced construction of such Dwelling(s) on such Lot(s) within six (6) months of the acquisition of such Lot(s).

13. Governmental Authority. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property.

14. Immediate Family. The term "Immediate Family" shall include the lineal descendants of the applicable person and his or her spouse who are then residents of the applicable Dwelling.

15. Improvement. The term "Improvement", with an initial capital letter shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, Parkways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling. "Improvements" shall also mean any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

16. Lot. A subdivided parcel of land as shown on the subdivision record maps for the Property.

17. Mortgage. The term "Mortgage" with an initial capital letter shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office of Lee County, Alabama.

18. Mortgagee. The term "Mortgagee" with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

19. Occupant. The term "Occupant" shall mean and include any Owner or Tenant (including any member of their respective immediate Families) and guests, agents, servants,

employees or invitees of any Owner or Tenant and any other person who occupies or uses any Dwelling within the Property. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot.

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

21. Preferred Builder. The term "Preferred Builder" shall mean collectively, Jones & Minear Homebuilders, LLC, and any related entity, R.L. Stahl, Inc., and any related entity and Trinity Development, LLC, and any related entity or their affiliates.

22. Structure. For the purpose of this Declaration, the term "Structure" shall have the meaning as the term "Improvement".

23. Subdivision. The term "Subdivision" means either the First Sector Subdivision, the Second sector Subdivision or the Third Sector subdivision.

24. Tenant. The term "Tenant" shall mean and refer to any person who is residing in a Dwelling under a lease with the Owner of the Dwelling pursuant to which the Owner has agreed to provide such person the exclusive right to use the Dwelling as a residence for a period of not less than six months.

ARTICLE II

Land Use

The Property will be used for residential purposes only and not for any business or trade. Home offices are allowed, however, such allowance is intended only to allow individual work at a residence located on a Lot, but not the conduct of business with the presence of the general public at the Property.

ARTICLE III

Building Requirements

1. Minimum Structure Size of Primary Dwelling. No Lot shall contain more than one primary dwelling (the "Dwelling") and no primary dwelling shall be erected on any Lot if such Dwelling contains less than 1700 square feet of Living Space which is defined as heated and finished areas and does not include porches, garages, basements, carports or attics. One story Dwellings shall contain 1700 square feet of Living Space on one level. One and one-half story Dwellings will have minimum Living Space on the first floor of 1540 square feet.

2. Exterior Materials and Finishes.

(a) The preferred exterior building material finishes for any Dwelling shall include brick, stone and stucco. Wood siding or other types of siding including Hardi Plank may be approved in combination with the preferred exterior finishes by the ARC (as hereinafter defined) and the Association. The use of siding in combination with brick, stone or stucco shall not be utilized on the front of any Dwelling and shall otherwise be limited to the greatest extent possible. All wood surfaces utilized on the exterior of any Dwelling shall be painted; stained wood shall not be authorized; provided, however, that the foregoing shall not be deemed to require decks on the rear of a Dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors. Prohibited exterior finish materials shall include particle board, plywood or any other type of pressed, laminated or fabricated siding, vertical siding, and any other materials as the ARC and the Association may from time to time determine. Vinyl soffit may be used with the approval of the ARC.

(b) All brick, stonework and mortar, as to type, size, color and application, must be approved by the ARC and the Association. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors and shutters shall be subject to approval of the ARC and the Association.

(c) No wooden steps, stoops or porches shall be allowed on the front or sides of any Dwellings. Concrete steps, stoops or porches must be finished in tile, brick or stone.

(d) No concrete, concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a Dwelling or

for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (e.g., brick, stone, stucco, etc).

(e) Metal flashing, valleys, vents and gutters installed on a Dwelling shall be either copper or painted to blend with the color of the exterior materials to which it is adhered or installed.

(f) The exterior of all chimneys shall be constructed of either brick, Stone, Stucco or siding. No cantilevered chimneys shall be permitted. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

3. Driveways and Sidewalks. All driveways and sidewalks for each Lot or Dwelling shall be constructed of such hard surfaced material as may be specified by the ARC. All driveways and sidewalks shall be paved in such hard surfaced materials. Chert, gravel and loose stone driveways and sidewalks are prohibited.

4. Building Location. No Structure shall be located outside of the set back lines as shown on the Surveys. Notwithstanding the foregoing, the front setback shall be a minimum of thirty (30) feet unless otherwise approved by the ARC.

5. Fences. No fence or fencing type barrier of any kind shall be permitted from the front Lot line to the rear corner of any Dwelling. All fences for any Dwelling shall be as follows: From the back corners of the Dwelling to the side Lot lines, the fence shall be either black wrought iron or black aluminum simulated wrought iron. From the side Lot line at the back corners to the back Lot line and along the back Lot line, the fence shall be black vinyl coated chain link, black wrought iron or black aluminum simulated wrought iron. Under no circumstances shall any fence be higher than 5 feet. No wood fences of any kind shall be permitted.

6. Temporary Structures. No mobile homes or temporary dwellings shall be built and used for residential purposes. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors and assigns, shall have the right and option to maintain such facilities and to carry on such activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots or the Property of Lots,

and the Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and for any related activities.

7. Design Criteria. The objective of the Architectural Review Committee hereinafter established is to provide for the quality Property of all of the Lots within the Subdivision.

8. Windows. No aluminum or metal windows shall be utilized on the front or sides of any Dwelling. Cantilevered bay windows shall be approved by the ARC (which may require additional landscaping in front of such bay windows). Burglar bars or doors shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling.

9. The Roof. Pitch on any residence shall not be less than 6 in 12 unless first approved in writing by the Architectural Review Committee. Authorized materials shall be asphalt/fiberglass shingle architectural grade with color and design to be approved by the ARC.

10. Style. The style of all Dwellings and Structures shall be subject to the approval of the Architectural Review Committee.

11. Bay Windows on the front or side of the Dwelling must have a bottom return.

12. Garages. In cases where a front facing garage is required on a Lot, the garage interior shall be of sheetrock and painted unless located on the side or rear of the house. There shall be no carports.

13. Construction of Improvements. When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and must be completed within 12 months.

14. Metal flashing, valleys, vents and gutters Installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

15. All mailboxes and supports and all trash enclosures shall be constructed according to the standard as prescribed by the ARC.

16. Intentionally Deleted

17. Compliance Agreement and Indemnity for Damages. All Owners must comply with Alabama Department of Environmental Management (ADEM) rules, regulations and permits prior to, during and after construction. By accepting delivery of a deed to a Lot, the new Owner of the Lot assumes responsibility for all drainage and storm water run-off from the Lot, as well as responsibility to perform all requirements for silt fencing or protection of adjoining Developer (and Developer's engineers, agents and representatives) from any and all liability, damages, fines, or loss resulting from the failure of the Lot Owner, or the Lot Owner's representative, strictly to adhere to or comply with ADEM's rules, regulations and permits. Owners further agree to indemnify and hold the Developer (and the Developer's engineers, agents and representatives) harmless for any damage caused by Owner to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing, or to water, drainage or storm sewer lines or sanitary sewer lines.

18. Swimming Pools . Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools and lap pools may be constructed, installed and maintained on any Lot or Dwelling subject to the prior written approval of the plans for the same by the ARC and the restrictions contained herein. No above ground swimming pools shall be allowed. The Association shall have the right to adopt further rules and. regulations governing the construction of swimming pools and other outdoor water features or amenities within the Property.

19. Satellite Dishes and Antennae. All satellite dishes serving a Lot or Dwelling shall be located at the rear of the Dwelling and not visible from any public street. The size will be the small satellite dish as used by DirecTV. No antennae will be allowed.

20. Landscaping.

(a) The landscaping plan for each Lot or Dwelling in the Property shall be submitted to the ARC for approval. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, Including natural drainage channels, which exist on such Lot.

(b) All front and side yards of each Lot shall, unless approved by the ARC or otherwise required as a natural area or unless the same is landscaped with shrubbery and other

approved plant life, be sodded with grass.

(c) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC before the issuance of a certificate of occupancy for the Dwelling situated thereon.

(d) No hedge or shrubbery planting which obstructs sight-lines of the Road shall be placed or permitted to remain on any Lot or Dwelling where such shrubbery interferes with traffic sight-lines for the Road within the Property. The determination of whether any such obstruction exists shall be made by the Association, whose determination shall be final, conclusive and binding on all Owners.

(e) No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front of side yards of any Lot unless specifically approved by the ARC or the Association.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from the Road.

(g) The ARC and/or the Association may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot.

(h) No Owner shall allow the grass on his Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(i) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling as soon as such holiday passes.

(j) **THE ASSOCIATION WILL REQUIRE LOT OWNERS TO USE A**

**LAWN MAINTENANCE COMPANY WHICH IS UNDER A
COMPREHENSIVE AGREEMENT FOR THE ENTIRE PROPERTY THAT
WILL BE FUNDED BY THE ASSOCIATION.**

21. Exterior Lighting. All exterior lighting for any Dwelling or Lot, including, without limitation, freestanding lighting and utility (e.g. flood) lights attached to a Dwelling must be approved by the ARC or the Association.

ARTICLE IV

ARCHITECTURAL REVIEW COMMITTEE

1. Approval of Architectural Review Committee. No Structure, Dwelling, or fence shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing structures upon any Lot within the Property be altered in any way which materially changes the exterior appearance thereof until same is submitted to and approved by the Architectural Review Committee (herein "the ARC"). The ARC will be provided with such plans and specifications which will be in a form and shall contain such information, as may be required by the Architectural Review Committee and shall include but no necessarily be limited to:

- a. a site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot; paint colors preferable should be earth tone. Bright colors are discouraged and will be denied;
- b. A grading, and drainage plan for the Lot; and
- c. Any remodeling, reconstruction, alterations or additions to an existing residence shall require the written approval of the Architectural Review Committee.

2. Composition of the Committee. The Architectural Review Committee (the "Committee"), until termination or modified pursuant to Article IV, Paragraph 10 as hereinafter set out or as hereafter set out in this paragraph 2. shall be Randall H. Goggans until such time as the Developer has sold all of the Lots within the Property. The Developer may elect to appoint any number of Owners to the Committee prior to selling all the Lots. There may be separate Committees for the First Sector Subdivision, the Second Sector Subdivision and the Third Sector Subdivision. R.L. Stahl, Inc. (Stahl) and Jones & Minear Homebuilders, LLC (J&M) have, at the time of

recordation of this Declaration, contract rights to purchase all Lots within the First, Second and Third Sector Subdivisions. Ronnie Stahl (Ronnie) is the principle of Stahl and W. Randall Jones (Randy) is the principle of J&M. Pursuant to separate agreement between the Developer, Stahl and J&M, the Committee will be comprised of Randall H. Goggans, Ronnie and Randy with respect to any Subdivision within the Property which has been acquired by Stahl and J&M. At such time as the Developer has sold all of the Lots within the Property, the Committee with respect to any Subdivision within the Property which have been acquired by Stahl and J&M, shall be comprised of Randy, Ronnie and one (1) individual who is an Owner who is elected by a majority of the fee simple Owners of the Lots within the applicable Subdivision and at such time, the affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit and authorization set forth herein. After the resignation of Randy and Ronnie from any Subdivision Committee, or as to any Subdivision within the Property in which the contract rights of Stahl and J&M have terminated and Developer has sold all Lots within such subdivision(s), the Committee shall be comprised of three (3) individuals who are Owners who are elected by a majority of the fee simple Owners of the Lots within the Property and at such time, the affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit and authorization set forth herein.

3. Evidence of Approval. The approval of the ARC shall be evidenced by written permit executed by one or more of the members of the ARC and counter-signed by the applicant therefore. The written permit shall be executed in duplicate with one copy to be retained by the applicant.

4. Basis for Disapproval of Plans:

a. The scope of review by the Committee shall be limited to appearance and Improvement location only. The purpose of the Committee is to promote quality Property on the Lots and not necessarily to impose requirements concerning the type of structure or the design of such structures in such Lots. **THE ARC DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS, INCLUDING, WITHOUT LIMITATION, DRAINAGE.**

b. The ARC Committee shall have the right to disapprove any plans and specifications

submitted for approval for any of the following reasons: failure of such plans and specifications to comply with the covenants and restrictions herein set forth; failure to include information in such plans and specifications as may have been reasonably requested by the ARC; reasonable objection to the exterior design, appearance or materials proposed to be used in any proposed structure; incompatibility of use of any proposed structure or improvement with existing structures or uses upon other Lots in the Property; objection to the site plan, clearing plan, drainage plan for any special parcel; failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environs of the Lot; and any other matter which, in the judgment of the Committee, would render the proposed structure, improvement, or uses inharmonious with the general plan of improvement of the Property or with structures, improvements, or uses located upon Lots in the Property.

c. In any case where the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, the disapproval shall be accompanied by a statement of the grounds upon which such actions were based. If no response is made by the ARC within a thirty (30) day period after submission of such plans and specifications, it shall be deemed that such plans and specifications are approved. In any such case the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

5. Retention of Copy of Plans. Upon approval by the ARC of any plans and specifications, as approved, shall be deposited for permanent record with the ARC, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

6. Failure to Obtain Approval. If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new structure or improvement commenced on any Lot other than in accordance with plans and specifications approved by the ARC pursuant to the provisions of this Article IV, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this covenant, and without the approval required herein, upon written notice from the ARC or the Association, any such structure or improvement as altered, erected, placed or maintained shall be corrected as to extinguish such violation. If fifteen (15) days after the notice of such violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps

toward the removal or correction of the same, the Committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish the violation and the cost thereof shall be a binding, personal obligation of such owner as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this paragraph shall not be valid as against a bona fide purchaser (or bona fide mortgage) of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Lee County prior to the recordation among the Land Records of Lee County of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

7. Certificate of Compliance. Upon completion of the construction or alteration of any structure or improvement in accordance with the plans and specifications approved by the ARC, the ARC shall, upon written request of the Lot Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement as placed, and stating that the plans and specifications, the location of such structure or improvement and the use or uses to be conducted thereon have been approved and that such structure or improvement complies with the requirements of the ARC. Preparation and recording of such certificate shall be at the expense of such Lot Owner. Any certificate of compliance issued in accordance with the provisions of this Article IV, Paragraph 7, shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures or improvements on the Lot and the use or uses described therein comply with all the requirements of this Article IV, and with all other requirements of this Article IV, and with all other requirements of the Declaration as to which the Committee exercises any discretionary or interpretive powers.

8. Inspection Rights. Any agent of the Developer or the ARC may at any reasonable time or times enter upon and inspect any Lot or any Improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures and Improvements thereon are in compliance with the provisions hereof; and neither Developer nor the ARC nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

9. Waiver of Liability. Neither the ARC nor any architect nor agent thereof, nor the Developer, nor any member, agent, or employee of any of the foregoing, shall be responsible in any

way for (i) any failure of Structures or Improvements to comply with requirements of this Declaration; although a certificate of compliance has been issued; (ii) any defect in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions; or (iii) any structural or other defects in any work done according to such plans and specifications, and all persons submitting any such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this Section 9 for any cause arising out of the matters referred to in this Section 9 and further agree to and do hereby release said entities and persons for any and every cause whatsoever.

10. Duration.

a. The rights of the Developer as to the Architectural Review Committee shall terminate upon the earlier of: (i) the date that the Developer has sold the last Lot it owns within the Subdivision and Property; and (ii) the resignation or inability of Randall H. Goggans to perform on the ARC.

b. After the Developer's involvement with the ARC has ended, the Committee shall be comprised of at least three (3) people who are Owners and are designated by a majority vote of the Owners.

c. Inactivity of the ARC shall not be deemed a waiver of the rights of the ARC.

ARTICLE V

CONVEYANCE OF COMMON FACILITIES

The Developer, for good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, grants, bargains, sells and conveys:

1. in fee simple, subject to all easements, restrictions and rights of way of record and subject to this Declaration and all easements shown in the Surveys, all real property within the Property which is not included within any Lot (the Common Facilities Property) to the Association. The Common Facilities Property shall only be used for orchards, entrance ways, gates, guard house, storm detention ponds, the maintenance thereof and utilities and for such uses as authorized by the Association from time to time and shall be subject to the easements as set out herein after in this Article V, paragraphs 2 and 3; and

2. a perpetual easement, running with the land, for vehicular and pedestrian ingress, egress and

utilities over, under (as necessary) and across the Common Facilities Property as specified on the Surveys to the Lots and the Owners; and

3. a perpetual easement over any necessary part of the Common Facilities Property to Service Providers who are defined as and include, but are not limited to, law enforcement officials, fire departments, utility services, emergency medical services, postal services and all Service Providers for the purpose of protecting, defending, and serving the Lots and Owners.

TO HAVE AND TO HOLD, unto the Association, the Lots, the Owners and the Service Providers, forever.

1. **Reservation by the Developer.** Notwithstanding the foregoing grants and conveyances, Developer retains unto itself and its successors and assigns, the right to grant easements for the use of the Common Facilities Property so long as the grantee(s) of any such rights become bound to pay an appropriate portion of Assessments applicable to any such use(s).
2. **Use of Easements shown on Surveys.** All easements shown on the Surveys are expressly useful as reasonably necessary by all utility companies and the Association for the maintenance and installation of utility services serving the Lots and the maintenance of the storm detention ponds located within the Common Area.

ARTICLE VI

Undisturbed Natural Areas

1. **Natural Areas.** The Undisturbed Natural Areas (the "Natural Areas") as shown on the Survey, are for the non exclusive use of the Owners and the future Owners of the Additional Property..

2. **Maintenance.** The Natural Areas shall be maintained by the Association, with no responsibility to any Governmental Authority, including without limitation, the City of Auburn, Alabama. An affirmative vote of at least a majority of the members of the Association shall be necessary to effectuate any improvement, repair or maintenance of the Natural Areas unless such repairs are required by any Governmental Authority having jurisdiction, in which case such repairs or maintenance required by such authority shall be binding on all of the Owners.

3. Each Owner shall indemnify and hold harmless the other Owners from and against any cause of action, claim or demand caused by any such Owner's (their contractors, agents, invitees, occupants, Tenants or guests) damage to the Undisturbed Natural Areas.

ARTICLE VII

Association

1. **Membership.** The Owner of each Lot shall be a member (Member) of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot owned by Developer in the Property, (b) in the event any Lot 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 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 is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (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 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. 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.

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 within the Property. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 2.

3. Voting Rights. The designated Owner of each Lot 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 owned. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for anyone Lot or Dwelling. Fractional voting shall not be permitted. Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots owned by Developer.

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 from time to time 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, 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. 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.

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 Property. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be affiliates of the

Developer, such duties of the Association as may be determined by the Board. 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 Property, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

6. Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings, Improvements and Common Areas so long as the same do not conflict with, contradict or attempt to supersede any of the terms and provisions of this Declaration.

7. 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 of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the Board of the Association). The officers, agents, representatives and members of the Board of 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 ARC or 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, to the extent financially feasible, officers and directors liability insurance in order to fulfill its obligations under this Declaration and the costs of such insurance shall constitute a Common Expense.

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BELL ENGLISH, PROBATE JUDGE, LEE COUNTY

ARTICLE VIII

Assessments

1. **Assessments and Creation of Lien.** Each Owner of a Lot (except the Developer, the Preferred Builder or an Exempt Builder), 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; (i) annual Assessments, as established and to be collected as provided in Section 3 below, (ii) special Assessments, to be established and collected as provided in Section 5 below, and (iii) individual Assessments against any particular Lot 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 in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided herein, 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 for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in this Declaration. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefore, 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 defined 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, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. All other 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 of

eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature.

2. Uniform Rate of Assessments. Both annual and special Assessments, as described in Sections 3 and 5 below, shall be assessed against each Lot in the Property at a uniform rate, with the Owner of each Lot 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 Lots owned by such Owner and the denominator of which shall be the total number of Lots in the Property at the time such annual or special Assessment is levied. Subject to the prior approval of the ARC and/or the Association, if an Owner owns more than one Lot, all such Lots are contiguous, such Owner (at such Owner's sole cost and expense) obtains a resurvey of the Lots which resurvey has been specifically approved by the Appropriate Governmental Authority and recorded with the Office of the Judge of Probate, Lee County, Alabama, such resurveyed Lots shall become one Lot for all purposes relating to this Declaration, the Association and for the purposes of Assessments. As a result of any such resurvey, the number of Lots within the Property shall be reduced accordingly. No such resurveyed Lot shall contain more than one Dwelling. In the event the Additional Property is, in the future, subdivided into additional Lot(s), the number of such Lot(s) shall become part of the Lots in order to determine the proration of assessments. In the event the Additional Property is developed in the future in a manner wherein the Additional Property is not within the Subdivision, the Additional Property shall share in Assessments to the extent the Additional Property uses and/or is benefiting by the Common Facilities and any improvements located thereon.

3. Computation of Annual Assessments.

(a) The Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property 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 prorata share of the same as provided in Section 2 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner.

(b) 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 5 below. If the actual amount of annual Assessments collected in anyone 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.

(c) The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

(A) 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;

(B) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;

(C) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, trash collection and security services;

(D) 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;

(E) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Property which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair;

(F) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(G) 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

(II) 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.

(I) Lawn Maintenance of all Lots within the development.

4. Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer, the Preferred Builder or an Exempt Builder and shall be 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 according to the number of months then remaining in the then fiscal year of the Association and the number of days remaining in the month in which such Lot is conveyed. **Notwithstanding anything provided herein to the contrary, neither Developer, the Preferred Builder nor an Exempt Builder shall be responsible for the payment of annual or special Assessments on any Lots it or its affiliates own in the Property. Furthermore, Developer shall fund any deficits which may exist between the total amount of annual Assessments assessed and the actual costs incurred by the Association for Common Expenses for the Property until the time all Lots are owned by Owner's other than the Preferred Builder. No assessments, whether annual or special shall be payable by the Developer, the Preferred Builder or an Exempt Builder. The Exempt Builders and the Preferred Builder shall maintain such vacant Lots in a neat condition so as to not impair the marketability of other Lots within the Property.**

5. Special Assessments. In addition to the annual Assessments authorized above and the special Assessments authorized below, 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 as levied below) 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. 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 above. Special Assessments shall not be payable by the Developer, the Preferred Builder or an Exempt Builder.

6. Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lot(s). The individual Assessments provided for in this Paragraph 6 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 6 shall apply, without limitation, to any individual Assessments as levied.

7. Notice of Meetings and Quorum. With respect to any meeting of the Members of the Association, including, without limitation, any meetings which are called for the purpose of approving special Assessments pursuant to Section 5 above, (a) written notice of such meeting shall be sent to all Owners not less than ten (10) days and not more than fifty (50) in advance of such meeting and (b) the presence in person or by proxy of Owners entitled to cast at least fifty (50 %) of all of 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-third (1/3) of the total votes of the Association. At such time as a quorum is obtained, the vote of (i) a majority of the Owners who are voting in person or by proxy and (ii) Developer, to the extent developer owns any Lot in the Property shall be required to approve any matter submitted to the Members of the Association for approval.

8. Effect of Non-Payment: Remedies of the Association.

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association, all annual and special Assessments provided for herein and any individual Assessments

levied or assessed pursuant to the terms of this Declaration. In the event any Assessments or any portions thereof are not paid when due, the same shall be subject to a late charge in an amount determined from time to time and uniformly applied by the Board in the case of annual Assessments, special Assessments and/or individual Assessments and the Owner(s) of such Lot(s) 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 the same, then the unpaid portion of the Assessments 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 for Assessments, shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

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

(A) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified herein, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(B) The Association may enforce the lien created hereinabove in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all other Assessments levied against or upon such Lot, all late charges and interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of the Assessments remain unpaid for more than sixty (60) days, then the Association, through its

Board or any officer or authorized representative" thereof, as the case may be, 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 and perfect its lien against the Lot 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:

- (A) The name of the delinquent Owner;
- (B) The legal description and street address of the Lot upon which the lien claim is made;
- (C) 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
- (D) A statement that the claim of lien is made the Association, pursuant to this Declaration and is claimed against such Lot in an amount equal to that stated therein. The lien provided for herein shall be in favor of the Association, and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Association, and/or their respective 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 respective 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.

9. Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien

for Assessments authorized herein with respect to any Lot in the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Lee County, Alabama prior to the filing of a claim of lien by the Association. When a 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 Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Lee County, Alabama prior to the filing of a claim of lien by the Association, as authorized herein, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments 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 Mortgagee on such Owner's Lot.

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.

11. Conflict. In the event of conflict between the provisions of this Article VIII of this Declaration and the Bylaws, the provisions of the Bylaws shall control.

ARTICLE IX

Miscellaneous

1. Pets and Animals. No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or Dwelling or other portion of the Property; provided, however, that a reasonable number of the usual household pets may be kept and maintained on a Lot (but not

exceeding two dogs and three cats) so long as they are not kept for breeding or commercial purposes and so long as they are kept within a fence or walled area on the Lot (including, without limitation, invisible fences) approved by the ARC and the Association, they are kept on a leash when outside such fenced or walled area, and they are kenneled inside the Dwelling each day between the hours of 9:00 p.m. and 7:00 am local time. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Structures or areas for the care, housing or confinement of any pet shall be constructed or maintained only at the rear of a Dwelling, shall not be visible from any street and shall be constructed of materials and of a size approved by the ARC and the Association. Dogs and cats shall not be allowed to roam unattended within the Property. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within the Road or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Association shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Property, including the right to assess fines for violations of such rules and regulations.

2.

(a). No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property. Without limiting the generality of the foregoing, it is the intent of the Developer and this Declaration to restrict the use of the Property and any Lot therein which will detract from a high quality residential subdivision. Accordingly, no commercial vehicle or any inoperable motor vehicle shall be allowed on the Property. No Lot shall be used as a dumping ground for rubbish, trash, garbage or other waste and such shall not be kept except in sanitary containers. Each Lot shall be maintained in a neat and orderly fashion. No large satellite, microwave dishes or television or radio antennas shall be placed on any Lot unless approved in writing by the ARC. No Lot shall be cultivated for crops of any sort, except for gardens of reasonable size, which is to be located in the rear of the Dwelling.

(b) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion

thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Dwellings within the Property. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkempt conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Dwelling or other part of the Property.

(c) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from the Road and adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC and the Association; provided, however, that trash cans and containers can be moved to the side yard of any Dwelling on trash collection days for such Lot or Dwelling.

(d) Except during construction and with the permission of the ARC, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot, Dwelling, or other portion of the Property.

3. Signage. All signs, billboards or advertising Structures of any kind are prohibited except for signage structures of an Owner's real estate broker and to an Owner for the purpose of advertising a Lot or Dwelling for sale and for signage structures of a builder for the purpose of advertising the construction of the Dwelling. All signage and signage structures shall be subject to the prior approval of the ARC and/or the Association. The ARC and the Association shall have the right to enter any of the Property for the purpose of removing and destroying any unauthorized signs without recourse from any Owner or builder. All builder or contractor signs shall be promptly removed after completion of construction. So long as it owns any Lots within the Property, the Developer shall have the right to place any type of signs on or about the Property for the purpose of advertising the Property and/or the Property and promoting the sale of Lots.

4. During all construction, all vehicles, including those delivering supplies, must enter the building Lot on the Parkway way only as approved by the ARC so as not to unnecessarily damage any Common Facility Property. Any damage not repaired by the contractor will be repaired by the ARC (after ten (10) days written notice) and will be charged to the Owner at a reasonable charge for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. During construction, all Builders must keep the homes, garages, and building site clean. All building debris, stumps, trees, etc., must be removed from each building Lot by the Builder as often as necessary to keep the Lot attractive. Such debris will not be dumped in any area of the Property unless authorized by the Developer. During construction, all builders, contractors and subcontractors shall abide by all rules and regulations promulgated by the Inspections Services Department of the City of Auburn or any other applicable Governmental Authority including the Alabama Department of Environmental Management.

5. No Lot shall be sold or used for the purpose of extending any public or private road, street, or alley, for the purpose of opening any road, street, or alley, except by the prior written consent of the ARC.

6. **Indemnity for Damages.** Each and every Owner and future Owner, in accepting a deed or contract for any Lot subject to the Declaration, agrees to indemnify the Developer and the Association for any reasonable direct damage caused by such Owner, or the contractor, agent, or employees of such Owner, to the Common Facilities Property.

7. **Severability.** Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions.

8. **Effects of Violation on Mortgage Lien.** No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, and Lot therein; provided, however, that any mortgagee in actual possession, or any purchaser at any foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property, any Lot therein.

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

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BILL ENGLISH, PROBATE JUDGE, LEE COUNTY

10. Responsibilities of Owners. The maintenance and repair of all Lots, Dwellings, all other Improvements situated hereon or therein and all lawns, landscaping and grounds on or within a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his or its Lot or Dwelling, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finished on all Dwellings and other Structures and re-roofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling (including, without limitation, painting or finishing) without first obtaining the prior written approval of the same from the ARC and the Association.

11. Duration and Amendment. The restrictions contained in this Declaration shall run with and bind the Property and, shall inure to the benefit of and shall be enforceable by Developer, the ARC, and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December, 2053, after which time said restrictions shall be automatically extended for successive periods for ten (10) years. This Declaration may not be amended in any respect except by the execution of an instrument by 2/3 of the Lot Owners which instrument shall be filed for recording among the Land Records of Lee County, Alabama, or in such other place of recording as may be appropriated at the time of the execution of such instrument.

After December 31, 2053, this Declaration may be amended and or terminated in its entirety by an instrument signed by not less than a majority of the Lot Owners, which instrument shall be filed for recording among the Land Records of Lee County, Alabama, or in such other places of recording as may be appropriate at the time of the execution of such instrument.

12. Outdoor Furniture, Recreational Facilities and Clotheslines.

(a) No indoor furniture shall be placed, kept, installed, maintained or located in or on front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any roadways.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots

and Dwellings.

(c) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any roadways.

(d) Free-standing playhouses and tree houses shall be permitted but only after ARC and Association approval of the same.

(e) Basketball backboards shall be located so as not to be visible from the streets and shall otherwise be located on such Lot or Dwelling in a location approved by the ARC and the Association. Basketball goal backboards should be of clear plexiglas or acrylic.

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from any roadways.

(h) Bird feeders, wood carvings, plaques and other types of home crafts shall not be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of home crafts shall be located at the rear of a Dwelling, shall not be visible from any roadways.

13. Recreational Vehicles and Machinery and Equipment.

(a) Motorhomes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized cars and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted to be stored or allowed to remain on any Lot unless the same is placed, stored and maintained within a wholly-enclosed Structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ARC and the Association. Neither the Common Areas or any roadways shall, unless expressly permitted by the Association, be utilized for the parking or storage of any of

the foregoing vehicles, recreational vehicles, machinery or equipment

(b) Each Lot or Dwelling shall provide for adequate off street parking (i.e., parking areas located solely within the property lines of such Lot. Vehicles shall be parked only in driveways or in garages. Vehicles shall not be parked on any landscaped or natural areas of a Lot.

(c) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.

(d) The Association shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of, tractors, equipment, machinery, trailers (with or without wheels), motorhomes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

14. Enforcement. In the event of a violation or breach of any of these restrictions or any amendments thereto by any Owner, or employee, agent, or lessee of such Owner, the Owner(s) of Lot(s), Developer or the Association, their successors and assigns, or any party to whose benefit these restrictions 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 for any amounts required to be paid hereunder, or take all such courses of action at the same time, or such legal remedy deemed appropriate. No delay or failure on the part of an aggrieved party to initiate and available remedy set forth herein shall be held to be a waiver of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of different violations. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity. Any party to the proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a Owner may be awarded a reasonable attorney's fee against such Owner, and shall have the right to place recorded lien on any

Lot for purpose of securing the payment of any amounts owing by a Owner under this Declaration and such lien may be enforced in the same manner as foreclosure of a mortgage.

15. No Waiver. The failure of any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article IV shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

16. Amendment by Developer. For so long as there is any Lot without a Dwelling constructed thereon with the Property, 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 (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 materially and adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent of the Owners affected thereby (including Developer who shall have the voting rights attributable to any Lots 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 Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. Any amendment made pursuant to this paragraph 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 and each Mortgagee by acceptance of a Mortgage on any Lot agrees to be bound by all amendments permitted by this paragraph 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 Property 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, (iii) required by any Mortgagee in order to enable such Mortgagee to make a mortgage loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lot within the Property.

17. Future disposition of the Additional Property. Prior to submitting the Additional Property for the use of a Lot or Lots, or as developed property not to be within the Subdivision, the Developer or the successors or assigns of Developer's rights in the Additional Property shall first have obtained all necessary consents and approvals from the appropriate Governmental Authority(s). No consent shall be required from the Association or any Owner or Mortgagee of a Lot with respect to the future Property of Additional Property. Submission of the Additional Property to this Declaration shall be accomplished by filing for record with the Judge of Probate of Lee County, Alabama an instrument submitting the Additional Property to this Declaration.

18. Lots are Sold AS/IS WHERE/IS. Any Owner, by accepting a deed to a Lot, and any mortgagee by accepting a Mortgage to a Lot expressly acknowledge that all Lots, the Common Facilities and any Improvements constructed thereon by the Developer are accepted in there AS/IS WHERE/IS condition. The Developer makes no warranty whatsoever, express or implied as to the condition of any Lot, Common Facilities or Improvements constructed by the Developer thereon including, without limitation, the condition of the Undisturbed Natural Areas, the soils of the Property or the proper function of detention ponds, storm water systems or other drainage devices located on or in the Property. The Property may be located in an area which includes, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of Plans and Specifications by the ARC and the Association for any Dwelling or other Improvements on a Lot shall not be construed in any respect as a representation or warranty by the ARC, the Association or Developer to the Owner submitting such Plans and Specifications or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the improvements contemplated by such Plans and Specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated improvements thereon. Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director of any at them, shall have any liability of any nature whatsoever for any damage, loss or

prejudice suffered, claimed, paid or Incurred by any Owner on account of (a) any defects in any Plans and Specifications submitted, reviewed or approved, (b) any defects, Structural or otherwise, in any work done according to such Plans and Specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injures (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, Invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property at any Owner, Occupant or the respective family members, guests; employees, servants, agents, Invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, Structural or otherwise, in any Dwellings or Improvements or the Plans and specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (Including, without limitation, sinkholes and water channels and limestone formations on or under any Lot or Dwelling) and any other loss, claim, damage, liability or expense, Including court costs and attorneys fees, suffered, paid or Incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or Dwelling or any Improvements situated thereon.

19. **John C. Hearn**, mortgagee of the Developer has executed this Declaration in order to indicate its consent to the provisions of this Declaration and the subordination of the mortgage that it holds on the Property to the provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned, as the owner of the Property, has caused this Declaration to be executed as of the 5th day of October, 2004.

Highland, LLC

By: Randall H. Goggans

Randall H. Goggans

Its: Sole Member

John C. Hearn
John C. Hearn

for Assessments authorized herein with respect to any Lot in the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office of Lee County, Alabama prior to the filing of a claim of lien by the Association. When a 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 Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office of Lee County, Alabama prior to the filing of a claim of lien by the Association, as authorized herein, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments 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 Mortgagee on such Owner's Lot.

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.

11. Conflict. In the event of conflict between the provisions of this Article VIII of this Declaration and the Bylaws, the provisions of the Bylaws shall control.

ARTICLE IX

Miscellaneous

1. Pets and Animals. No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or Dwelling or other portion of the Property; provided, however, that a reasonable number of the usual household pets may be kept and maintained on a Lot (but not

exceeding two dogs and three cats) so long as they are not kept for breeding or commercial purposes and so long as they are kept within a fence or walled area on the Lot (including, without limitation, invisible fences) approved by the ARC and the Association, they are kept on a leash when outside such fenced or walled area, and they are kenneled inside the Dwelling each day between the hours of 9:00 p.m. and 7:00 am local time. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Structures or areas for the care, housing or confinement of any pet shall be constructed or maintained only at the rear of a Dwelling, shall not be visible from any street and shall be constructed of materials and of a size approved by the ARC and the Association. Dogs and cats shall not be allowed to roam unattended within the Property. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within the Road or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Association shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Property, including the right to assess fines for violations of such rules and regulations.

2.

(a). No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property. Without limiting the generality of the foregoing, it is the intent of the Developer and this Declaration to restrict the use of the Property and any Lot therein which will detract from a high quality residential subdivision. Accordingly, no commercial vehicle or any inoperable motor vehicle shall be allowed on the Property. No Lot shall be used as a dumping ground for rubbish, trash, garbage or other waste and such shall not be kept except in sanitary containers. Each Lot shall be maintained in a neat and orderly fashion. No large satellite, microwave dishes or television or radio antennas shall be placed on any Lot unless approved in writing by the ARC. No Lot shall be cultivated for crops of any sort, except for gardens of reasonable size, which is to be located in the rear of the Dwelling.

(b) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion