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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS
HOMESTEAD SUBDIVISION
AUBURN, ALABAMA**

Adopted January 8, 2005

- Note 1-** Article III, #4. **TEMPORARY STRUCTURES** - *No area is identified for parking boat trailers and recreational vehicles on the recorded map for Homestead subdivision.*
- Note 2-** Article III, #15. **MAINTENANCE OF LAWNS AND PLANTINGS** - *This provision deals with the bufferyards which are shown on the recorded map of the Homestead subdivision along the subdivision boundaries and along Homewood Drive.*
- Note 3-** Article V, #9. **STORAGE OF BOATS AND TRAILERS** - *No area is identified on the recorded map for Homestead subdivision for the storage of the items listed in this covenant.*

The recorded map for the Homestead subdivision is available at the City of Auburn Development office.

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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS
HOMESTEAD SUBDIVISION
AUBURN, ALABAMA**

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, the lots ("Lots") situated in the City of Auburn, Lee County, Alabama, and further described upon the plat of survey of Homestead Subdivision which is recorded in the Probate Office of Lee County, Alabama, book 14, page 188, (the "Property") have been developed into a residential subdivision known as Homestead Subdivision subject to the restrictions, covenants, agreements, limitations, and easements set forth in the Declaration of Protective Covenants and Agreements for Homestead Subdivision (the "Declaration") dated January 22, 1991 and filed for record in Book 1559 at Page 047 in the Office of the Judge of Probate of Lee County, as same has been heretofore amended;

WHEREAS, the undersigned Owners confirm their intention to amend and restate the Declarations to include the complete text that appears herein, the same being the original restrictions, covenants, agreements, and limitations, as amended, and further amendments approved at the annual meeting of the Homestead Subdivision Homeowners' Association, Inc. held on January 8, 2005,

WHEREAS, said Property has been developed as a "performance subdivision", a type described in and restricted by the Zoning Ordinance of the City of Auburn, AL, as said ordinance may be amended from time to time, and which is binding on all parties having or acquiring any rights, title, or interest in the Property or any part thereof,

NOW, THEREFORE, upon recording hereof, the Declaration is amended and restated in its entirety as set forth herein, and the Property and each of the Lots included in the Subdivision of the Property remain subject to the restrictions, uses, limitations, and affirmative obligations set forth in this Declaration as amended and restated.

ARTICLE I

DEFINITIONS

"Articles" shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

"Association" shall mean and refer to Homestead Subdivision Homeowners Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

"Board" shall mean the Board of Directors of the Association.

"Bufferyard" shall mean a unit of yard together with the planting required thereon, as defined in the Zoning Ordinance of the City of Auburn, as said ordinance may be amended from time to time.

"By-Laws" shall mean the By-Laws of the Association, as such By-Laws may be amended from time to time.

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, as defined herein and shown upon the Subdivision Map.

"Architectural Design Review Committee" shall mean the Committee created pursuant to these covenants.

"Architectural Design Review Committee Rules" shall mean the rules, if any, adopted by the Architectural Design Review Committee.

“Improvements” shall mean the buildings, garages, carports, roads, driveways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind on a Lot.

“Open Space” shall mean that portion of the properties required by the Zoning Ordinance of the City of Auburn to remain as open space as defined therein.

“Owner” and “Owners” shall mean and refer to the Developer while an owner of a Lot, and the owner of record, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing shall not include persons or entities who hold an interest in any lot merely as security for the performance of an obligation.

“Single Family” shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than two (2) persons not all so related, who maintain a common household in a dwelling

“Single Family Residence” shall mean a dwelling constructed in accordance with the restrictions and conditions set forth herein for occupancy by a single family.

“Single Family Residential Use” shall mean the occupation or use of a Single Family Residence in conformity with these covenants

“Zoning Ordinance” shall mean the zoning ordinance of the City of Auburn, Alabama, as said ordinance may be amended from time to time.

ARTICLE II

LAND USE AND BUILDING TYPE:

The Property will be used for residential purposes only, and no trade or business purposes including all types of home industry will be permitted. No building or structure other than a single family dwelling house or clusters of not less than two and not more than four townhouse structures per cluster shall be erected within the Property except as otherwise permitted herein.

ARTICLE III

BUILDING REQUIREMENTS:

1. **MINIMUM STRUCTURE SIZE:** The main residential structure erected or placed on any Lot within the Property shall include not less than the minimum amount of living space set forth herein. Living space is defined as heated and finished area and does not include porches, garages, basements, carports or attics. The minimum living space for the main residential STRUCTURE on the Lots is as follows:
 - (A) 900 square feet for one story homes; 1200 total square feet for one and one-half story homes, with 900 square feet on the first floor, and 1400 total square feet for two story homes.
2. **SUBDIVISION CONCEPT AND ARCHITECTURAL DESIGN REVIEW CRITERIA:** The concept is to create a subdivision with special appeal for mature residents. It is contemplated that the dwelling units will be predominantly owner-occupied. The Association shall encourage the construction of dwelling units which are traditional, conservative or conventional in design and external appearance, to appeal to an older, mature and well established clientele. Contemporary or modernistic exterior designs are discouraged.

3. **EXTERIOR DESIGN CRITERIA:** The exterior design of the structure within the Property shall be in accordance with the following:
- (A) The exterior materials which are acceptable shall include brick, stone, painted wood, vinyl, or masonite siding without bead. All horizontal lapped siding shall have maximum of eight inches (8") per board exposed to weather. Masonite siding will be permitted only under the following conditions:
 - (1) in gables, if brick is used below gable level
 - (2) if used as a veneer other than in a gable, it must not exceed fifteen percent (15%) of the total coverage excluding gables.
 - (3) any house with all siding (no brick) is discouraged, and will not be approved except under special circumstances.
 - (B) Exterior painting will be in soft tones not to include high gloss finishes or pure red.
 - (C) No black mortar is permitted.
 - (D) All windows must be wood framed or encased. Aluminum windows will not be permitted.
 - (E) Roofs on all structures must have a minimum 5/12 pitch. No Gambrel or Mansard roofs will be permitted. Shingles must be of a natural color or slate. No white roofing materials of any kind will be permitted.
 - (F) All stack pipes, exhaust fans, and other roof projections shall be located on the rear or side of roofs, and painted to match the approved roofing color.
 - (G) Front steps shall be constructed of brick or stone.
 - (H) All shutters shall be wood paneled, vinyl, or typical wood louvered.
4. **TEMPORARY STRUCTURES:** No trailer, tent, shack, barn, servant house, garage, or other outbuilding shall be erected on any Lot within the Property prior to the completion of a dwelling house or at any time thereafter, except that boat trailers and recreational vehicles may be parked in the area identified for that purpose on the map and survey of Homestead Subdivision as recorded in the Probate Office of Lee County, Alabama. *Refer to Note 1 on coversheet.*
5. **BUILDING LOCATION:** The location of any structure, alteration, or addition in relation to the front and side boundaries of any Lot within the Property will be determined according to the requirements of the City of Auburn.
6. **GARAGES:** The objective of the Developer is to prevent the visibility of garage openings from the street and from neighboring yards to the extent practicable. Except as provided in seven (7) below, doors with automatic garage door closures are required for all garages and carports, and are required to be kept closed to the extent practicable. No garage shall be converted to living space.
-
7. **CARPORTS:** Partially enclosed garages, also called "carports", will be allowed when constructed of the same type of brick and trim used for the rest of the building structure. Partially enclosed garages are subject to the same requirements described in six (6) above. The owner of a Lot will not begin construction of such a garage or carport until he has obtained the prior written approval of the Architectural Design Review Committee.

8. FENCES AND HEDGES:

(A) Fences and or walls shall be constructed according to the following criteria:

1. No fences or walls may be built above the grade of the Lot in front of the front line of the main residential dwelling house, except any fence or wall that appears to be an integral part of the architecture.
2. On corner lots, no fence may be erected beyond the building line.
3. No chain link, wire, or metal fence of any kind may be constructed.
4. The owner of a Lot will not install fencing or walls anywhere on his property until he has obtained the written approval of the Architectural Design Review Committee.
5. All wood material used in the construction of fencing shall be of a minimum of 5/4's thickness and shall be weather and insect resistant material.

(B) No hedges may exceed three feet in height in front of the dwelling units.

9. UTILITIES, WIRING, AND ANTENNAS:

A) No facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Lot and no external or outside antenna including satellite dishes of any kind shall be maintained, except as such items are required to be allowed under the regulations of local, state, or federal government, including the Federal Communications Commission (FCC). An owner who intends to install a legally allowable antenna or satellite dish shall obtain the written approval of the Architectural Design Review Committee regarding a location that is as unobtrusive as practicable for the installation of such antenna or satellite dish.

B) The owner of a Lot will not erect or grant to any person, firm or corporation a right, license or privilege to erect or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on the Property (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area).

C) Utility service lines (including, but not limited to, gas, water, sewer, cable television, and electricity) will be connected at points designated by the Board of Directors and will be underground in all instances.

10. EASEMENTS:

A) Easements to each lot for installation and maintenance of utilities, drainage facilities and other purposes are reserved as shown on the recorded plat of Homestead Subdivision in the Probate Office of Lee County, Alabama.

B) An easement for ingress and egress over and across the driveways depicted upon said subdivision plat is hereby reserved for the benefit of all owners, their guests and lessees, and this easement shall constitute a covenant running with the land, which easement may not be revoked or terminated without written consent of every Owner. However, no Owner, his guests or lessees shall have the right to obstruct or block the driveways or the entrance to another Owner's garage.

11. MAILBOXES: The design of all mailboxes and posts must be approved by the Architectural Design Review Committee before such items are installed.

12. **LANDSCAPING:** Each lot must have at least 40% of its front lawn covered with sod or low ground cover, such as juniper, or be landscaped in accordance with a pre-approved plan. No seeding of lawns is permitted. Remaining areas may be left natural or sprigged.
13. **WALLS:** Crosstie walls are not permitted in front of building lines.
14. **DRIVEWAYS, PARKING SPACES, AND FRONT WALKWAYS:** Driveways and parking spaces shall be constructed from concrete or asphalt. Walkways leading from home entrances to Homewood Drive shall be constructed of concrete. Dirt, loose gravel, grass, etc, ARE NOT permitted for driveways, parking spaces, and front walkways.
15. **MAINTENANCE OF LAWNS AND PLANTINGS:** The Owner shall be responsible for maintenance of any area for which the Declarant or the Association has assumed the responsibility. The Owner shall not undertake any landscaping program or remove any trees or shrubs from the portion of the Lot within 15 feet of the rear boundary. *Refer to Note 2 on coversheet.*
16. **MAINTENANCE BY ASSOCIATION:** The Association may, at any time, as to any of the Common Area or roadways conveyed or transferred to it, or otherwise placed under its jurisdiction, at the discretion of the Board, without any approval of the Owners being required:
 - (A) Reconstruct, repair, or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);
 - (B) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, driveway, bridge, or parking area;
 - (C) Remove or replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
 - (D) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
 - (E) Do all such other acts which the Board deems necessary to preserve and protect the Properties and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all grounds and the improvements within the Common Area, including the common driveway system. The Association shall assume responsibility for maintaining any of the Common Area required by the Zoning Ordinance to be open space.

17. **GENERAL SERVICES:** The Board shall have the right to provide service, the cost of which shall be paid out of the charges provided in Article VI, and adopt rules, regulations, procedures, and policies with respect to:
 - (A) location and method of garbage and trash collection and removal
 - (B) motor vehicle operations;
 - (C) parking of motor vehicles on streets or roads in Common Areas;
 - (D) maintenance and furnishing of guard or security guard services;
 - (E) fire protection and fire prevention and extinguishment of fires;
 - (F) landscaping and the maintenance thereof;

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- (G) such other matters which involve use of Common Area, roads, and driveways.
- 17. **DAMAGE OR DESTRUCTION BY OWNERS:** In the event any common area or structures hereinabove mentioned are damaged, altered, or destroyed by an owner or any guest, tenants, licensees, agents or family members, such owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged areas in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said owner, upon demand by the Association, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in the Declaration for collection and enforcement of assessments.
- 18. **MAINTENANCE AND IMPROVEMENTS BY ASSOCIATION - LOTS FOR CLUSTER HOMES:** The Association shall enforce the requirement of owners to maintain all yards, exterior painted surfaces and roofs of all cluster buildings and will maintain yards at the election of individual owners. Owners of these lots shall be responsible for maintaining all other parts of their buildings, including but not limited to, glass, doors, doorways, gutters and downspouts, hardware, screened areas, patios, decks, plumbing, electrical and heating and air conditioning systems. Each Owner of a lot by acceptance of a deed for such lot is deemed to covenant and agree to pay to the Association (1) annual charges and, (2) special charges as herein provided.

ARTICLE IV

ARCHITECTURAL CONTROL

1. IMPROVEMENTS AND ALTERATIONS:

- (A) No improvements, alterations, repairs, excavation, or other work which in any way alters the exterior appearance of any Lot or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by Developer to an owner or predecessor shall be made or done without the prior approval of the Architectural Design Review Committee, except as otherwise expressly provided in this Declaration. Prior to making any improvement to any lot, except those improvements exempted in the Architectural Design Review Committee's rules, regulations, and procedures, the Owner shall submit to the Architectural Design Review Committee the plans and specifications of the improvements to be made, and landscaping of the Lot. No building, fence, wall, screen, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Design Review Committee or any committee established by the Architectural Design Review Committee for this purpose.
- (B) Pursuant to its rule-making power, the Architectural Design Review Committee shall establish reasonable procedures for the preparation, submission and determination of applications for any improvement or alteration. The Architectural Design Review Committee shall have the right to refuse to approve any plans or specifications or landscape plans, which are not reasonably suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and landscape plans, and without any limitation of the foregoing, it shall have the right to take into consideration:
 - (1) the suitability of the proposed building or other structure, and of the materials of which it is to be built,
 - (2) the site upon which it is proposed to erect the same,

- (3) the harmony thereof with the surroundings, and,
 - (4) the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property.
- C) All subsequent additions to or changes to alterations in any building fence, wall, structure, or landscaping shall be subject to the prior approval of the Architectural Design Review Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Design Review Committee.
- D) All decisions of the Architectural Design Review committee shall be final unless overridden by a vote of 3/4 of the members of the Board, and no Owner or other parties shall have recourse against the Architectural Design Review Committee or the Board for its refusal to approve any such plans and specifications or plot plan. In the event that the Architectural Design Review Committee shall fail either to approve or disapprove any plans or specifications within 30 days after submission to it, then such plans or specifications will be deemed to have been approved and the Owner may proceed with his proposed improvements, alterations, repairs, landscaping, excavation or other work.
2. **INSPECTION RIGHTS:** Any member of the Board of Directors or its agent may at any reasonable time or times enter upon and inspect any Lot and 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 of these Covenants; and neither the Board of Directors nor any agent thereof shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. The Developer's right of inspection is waived after December 31 of the year in which the Developer no longer owns any lots in the subdivision.
3. **WAIVER OF LIABILITY:** Neither the Developer nor the Board of Directors nor any architects nor agent thereof, nor any partner, agent, or employee of any of the foregoing, shall be responsible in any way for any failure of structures or improvements to comply with requirements of this Declaration, any defect in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications 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 3 for any cause arising out of the matters referred to in this Section 3 and further agree to and do hereby release said entities and persons for any and every such cause.

ARTICLE V

USE OF THE PROPERTY:

1. **TREES:** No tree shall be removed from any Lot within the Property ~~except those deemed essential for construction of improvements and~~ carrying out the provisions of this section. The Board of Directors and its agents may come upon any part of the Property during reasonable hours for the purpose of inspecting trees or to enforce and administer the provisions hereof. Neither the Board of Directors nor its respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

2. **SIGNS:** No sign of any kind shall be displayed to the public view except signs of not more than five (5) square feet to advertise a home for sale or builder's signs during construction and prior to the sale of the home by the builder. There shall be no "For Rent" signs displayed to the public view.
3. **ANIMALS:** No animals, birds, livestock, or insects shall be kept or maintained on any of the Property except that each owner of a Lot may maintain not more than two dogs and two cats as domestic pets, provided that such domestic pets are confined to the Lot of the owner of such pets.
4. **GARBAGE AND REFUSE:** No lumber, metals, or bulk materials shall be kept, stored, or allowed to accumulate on any Lot within the Property, except building materials during the course of construction of any approved structure or improvement. No refuse or trash shall be kept, stored, or allowed to accumulate except between scheduled pick-ups and in accordance with the provisions hereof. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse will be placed in sanitary container. Such sanitary containers may be placed in the open on any day that a pick-up is to be made, at such place on the lot as to provide access to the persons making such pick-up. All other times such containers shall be stored in such manner so that they cannot be seen from adjacent, surrounding property.
5. **OUTSIDE BURNING:** Burning of trash, refuse or other materials on any Lot within the Property shall be prohibited.
6. **PIPES:** No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground of any Lot within the Property, except for hoses and movable irrigation pipes.
7. **OIL AND MINING:** No Lot within the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.
8. **NUISANCE:** No obnoxious, offensive, or illegal activity shall be carried on upon any Lot within the Property nor shall anything be done on any Lot within the Property which may become an annoyance or nuisance to owners or residents of other Lots with the property.
9. **STORAGE OF BOATS AND TRAILERS:** Storage of boats, boat trailers, house trailers, campers, recreational vehicles or similar equipment or vehicles in the open on any Lot shall be prohibited, except in the area identified for that purpose on the map and survey of Homestead Subdivision as recorded in the Probate Office of Lee County, Alabama. *Refer to Note 3 on the coversheet.*
10. **AIR CONDITIONER UNITS:** No window or thru-the-wall air conditioning units will be permitted.
11. **CLOTHES LINES:** No clothes lines of any kind will be permitted.

ARTICLE VI

COVENANTS FOR MAINTENANCE CHARGES INCLUDING TAXES AND ASSESSMENTS:

1. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF CHARGE.** Each Owner by acceptance of a deed for any of the Properties is deemed to covenant and agree to pay to the Association (1) annual charges, and (2) special charges as herein provided. The annual and special charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each said charge is made. Each such charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the charge became

- due. The personal obligation for delinquent charges shall not pass to the Owner's successors in title unless expressly assumed by them.
2. The charges levied by the Association shall be used for the payment of taxes, assessments or charges levied or assessed against or on the Common Area, and for the improvement and maintenance of the Common Area and for the provision of certain services or the procuring of certain services to the Association and Owners, including but not limited to services listed in Article III, Section 19, and similar services which may be approved by Members representing two-thirds (2/3) of the votes or otherwise provided for under this Declaration or any amendment thereto. Notwithstanding the above restriction on use of funds for improvement and maintenance of the Common Area, the said funds may, to the extent of the excess of accumulated surplus over the amount of regular charges for the preceding year, be used for capital expenditures to benefit the Common Area and fulfill the purposes of the Association.
 3. **MAXIMUM ANNUAL CHARGES:** The maximum annual charges shall be \$200.00 per Lot (not to include individual lot owner contract yard service) for the first year in which charges are made. The maximum annual charges may not be increased each subsequent year more than (3) percent above the maximum charges for the previous year without a vote of the membership. The maximum annual charges may be increased above three (3) percent by the vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors may fix the annual charges at an amount not in excess of the maximum.
 4. **SPECIAL CHARGES FOR CAPITAL IMPROVEMENTS:** In addition in the annual charges, the Association may levy, in any given year, a special charge applicable to that year only for the purpose of defraying, in whole or in part, the cost of any Construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of the Members (voting in person or by proxy) at a meeting duly called for this purpose.
 5. **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4:** Written notice of any meeting called for the purpose of taking any action authorized under Section 4, shall be sent to all Members not less than 30 days, nor more than 60 days in advance of the meeting. At the first such meeting, the presence of Members or of proxies entitled to cast sixty (60%) percent of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.
 6. **UNIFORM RATE OF CHARGES:** Both annual and special charges, including taxes, maintenance costs, and charges for other services as provided in these Article VI, must be fixed at a uniform rate with each Owner being required to pay a prorata part of such charges. Notwithstanding the foregoing, Owners of unimproved Lots shall not be required to pay any special charges levied so long as no violations of use of the property, specified in Article V are recorded.
 7. **DATE OF COMMENCEMENT OF ANNUAL CHARGES; DUE DATE:** The annual charges provided for herein shall commence as to all Lots on the first day of the month following the sale and conveyance of 10 Lots by the Developer or December 31, 1991, whichever date occurs first. The first annual charge shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual charges against each Lot at least thirty (30) days in advance of each annual charge period. Written notice of the annual charge shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer setting forth whether the charges on a specified Lot have been paid.

8. EFFECT OF NONPAYMENT OF CHARGES: REMEDIES OF THE ASSOCIATION: Each Owner is and shall be deemed to covenant and agree to pay to the Association the charges provided for herein, and agrees to the enforcement of the charges in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any charge, whether by suit or otherwise, or to enforce compliance with, or specific performance of, the term and conditions of this Declaration, or for any purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such charge when due, in which case the charge shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by either or both of the following procedures:

- (A) ENFORCEMENT BY SUIT. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such charge obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon, at the greater of the maximum legal rate per annum, or 15% per annum from the date of the delinquency, plus court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner.
 - (B) ENFORCEMENT BY LIEN. There is hereby created a claim of lien, with power of sale, on every Lot to secure payment to the Association of any and all charges levied against any and all Owners, together with interest thereon, at the greater of the maximum legal rate or 15% per annum, plus Court costs and reasonable attorneys fees. At any time after ninety days after the occurrence of any default in the payment of such charge, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the property of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:
 - (1) The name of the delinquent Owner,
 - (2) The legal description and street address of property against which claim of lien is made;
 - (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
-
- (4) That the claim of lien is made by the Association pursuant to this Declaration;
 - (5) That a lien is claimed against said property in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien and mailing by certified restricted delivery with return receipt a copy thereof to said Owner, the lien claimed therein will immediately attach and become effective in favor of the Association as a lien upon the property against which such was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any property, charges an any property in favor of any municipal or other

governmental assessing unit, and the liens which are specifically described in Section 8 hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Alabama, as they may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any property. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitation applicable to the bringing of any suit or action thereon.

- 9. **SUBORDINATION OF LIEN TO MORTGAGES.** The lien of any assessment or charge authorized herein with respect to an Owner's Lot is hereby made subordinate to the lien of any bona fide mortgage on such Owner's Lot, if all assessment and charges levied against such Owner's Lot falling due on or prior to the date such mortgage is recorded have been paid. The sale or transfer of any owner's Lot pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Owner's Lot pursuant to a sale under power contained in a mortgage on the Lot shall extinguish the lien for assessments falling due prior to the date of such sale, transfer, or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve an Owner whose Lot has been mortgaged, of the Owner's personal obligation to pay all assessments and charges falling while he is the Owner of the Lot.

ARTICLE VII

ARCHITECTURAL DESIGN REVIEW COMMITTEE:

- 1. **ORGANIZATION, POWER OF APPOINTMENT AND REMOVAL:** There is hereby established an Architectural Design Review Committee (the "Committee"):
 - (A) **COMMITTEE COMPOSITION.** After December 31 of the year in which the Developer no longer owns any lots in the subdivision, all three members of the committee shall be elected by the Owners on the basis of one vote per Owner per committee member. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association.
 - (B) **TERMS OF OFFICE:** At the annual meeting, the Owners shall elect three members to serve in rotating three-year terms which, during the first such election, shall be staggered into a one-year, a two-year, and a three-year term. Thereafter, each Committee member shall be elected to a three-year term when a Committee member's term expires. Terms ~~expire at the time of the annual meeting and election to the Committee shall occur at the~~ annual meeting. Any Committee member elected or appointed to replace a Committee member who has resigned or been removed shall serve such member's unexpired term, pursuant to election requirements for appointed members as provided in Section C below. Committee members who have resigned, been removed, or whose terms have expired may be re-elected.
 - (C) **APPOINTMENT AND REMOVAL:** The Board shall have the right to appoint members to the Architectural Design Review Committee to serve any vacated, unexpired terms until the next annual meeting, at which time the Owners shall elect Committee members to serve the unexpired terms. The right to remove members of the Architectural Design

Review Committee shall be and is hereby vested solely in the Board, provided however, that no member may be removed from the Architectural Design Review Committee by the Board except by a the vote or written consent of three-fourths (3/4) of all of the members of the Board.

- (D) RESIGNATIONS. Any member of the Architectural Design Review Committee may at any time resign from the Committee by giving written notice thereof to the Board.
 - (E) VACANCIES: Vacancies on the Architectural Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Architectural Design Review Committee shall be deemed to exist in case of death, resignation or removal of any member.
2. DUTIES: It shall be the duty of the Architectural Design Review Committee to review all proposals or plans submitted to it pursuant to the terms of this Declaration and determine whether same conform to the provisions of this Declaration, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. Any requests for a waiver of this Declaration and any matters that involve a violation or breach of this Declaration shall be considered by the Board of Directors, which has the sole authority to approve or refuse approval of such matters.
 3. MEETINGS AND COMPENSATION: The Architectural Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. All members of the Committee shall be notified in advance of the date and time of every meeting of the Committee. The Committee shall meet at least once annually and shall elect a Chairman, who shall be one of the three Committee members. After such election, the Committee shall communicate the name of the Committee Chairman to the Board of Directors of the Association in writing signed by all three Committee members. The vote or written consent of any two members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. A copy of this written record of all Committee meetings and actions shall be submitted by the Committee to the Board of Directors within one week (seven days) of any such meeting or action. No member of the Architectural Design Review Committee who is a Member of the Association shall receive from the Association any compensation for services. The Board may pay reasonable compensation to any member of the Architectural Design Review Committee who is not a Member of the Association, so long as written approval of the expenses is obtained from the Board prior to the incurrence of the expenses. All Committee members shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Architectural Design Review Committee functions.
 4. ARCHITECTURAL DESIGN REVIEW COMMITTEE RULES: The Architectural Design Review Committee may, but shall not be required to, adopt, amend and repeal rules and regulations, to be known as "Architectural Design Review Committee Rules." Any rules so adopted shall be in effect after approval by a vote of 51% of the entire membership. Pursuant to Article IV, Section 1. B., the Architectural Design Review Committee may adopt reasonable procedures for the preparation, submission and determination of applications for any improvement or alteration, and is not required to have such procedures approved by the membership.
 5. WAIVER: The approval by the Architectural Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Design Review Committee, shall not be deemed to constitute

a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

- 6. **LIABILITY:** Neither the Architectural Design Review Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, or (c) the development of any property. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Design Review Committee, or any member thereof, may, but is not required to, consult with or hear the view of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Design Review Committee.

ARTICLE VIII

GENERAL

1. OBLIGATION OF OWNER TO BUILD:

- (A) Any owner who commences construction of a residential dwelling house in the Subdivision shall complete construction of such residential dwelling house on or before the expiration of one year from the commencement of said construction.
- (B) In the event a residential dwelling house on any Lot within the Property is damaged or destroyed in whole or in part, the owner shall be obligated to repair or replace said structure within one year from date of such damage or destruction and such repair and replacements of said structure shall be in accordance with the covenants and restrictions set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot and improvement thereon restored to a slightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

- 7. **GRANTEE'S ACCEPTANCE:** The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or by the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, shall accept such deed or contract subject to each and all of these restrictions herein contained.

- 8. **INDEMNITY FOR DAMAGES:** Each Lot owner and future Lot owner, in accepting a deed or contract for any Lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such owner, contractor, agent, or employees of such owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage, storm sewer or sanitary sewer lines owned by Developer or for which Developer has responsibility at the time of such damage.

- 9. **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 from every combination of the provisions and restrictions. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

- 10. **CAPTIONS:** The captions preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

11. **EFFECT 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; provided however, that any mortgagees (lenders) in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other owner of any portion of the Property.
12. **NO REVERTER:** No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.
13. **DURATION AND AMENDMENT:** The restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by the Architectural Design Review Committee, the Board of Directors, and the owner of any Lot included in the Property, their respective legal representatives, heirs, successors, and assigns until the 31st day of December in the year 2020, after which time said restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect except by the execution of an instrument signed by not less than 51% of the Lot owners, which instrument shall be filed for recording at the Probate Office of Lee County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2020, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 51% 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 appropriate at the time of the execution of such instrument.
14. **ENFORCEMENT:** In the event of a violation or breach of any of these restrictions or any amendments thereto, by any owner of a Lot, or employee, agent, or lessee of such owner, the owner(s) of Lot(s), Developer, their successors and assigns, or any party to whose benefit these restriction 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 or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party or assert any right available to him upon the recurrence of continuation of said violation or the occurrence of a different violation. 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 a proceeding who succeeds in enforcing a restriction or enjoining the violation or a restriction against a Lot owner may be awarded a reasonable attorney's fee against such Lot owner.
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 a 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.

**AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS
HOMESTEAD SUBDIVISION
AUBURN, ALABAMA**

KNOW ALL MEN BY THESE PRESENTS, THAT

The undersigned, being more than Fifty One (51%) Percent of the Owners of lots in Homestead Subdivision, located in Auburn, Lee County, Alabama, confirm our intention to amend the Homestead Subdivision Protective Covenants and Agreements as recorded in the Office of the Judge of Probate of Lee County, Alabama on January 22, 1991, as amended on August 24, 1999 recorded in the Judge of Probate of Lee County in Book 1263 at Page 265, as follows:

• Article V, Section 3, Animals, reads:

No animals, birds, livestock, or insects shall be kept or maintained on any of the Property except that each owner of a Lot may maintain not more than two dogs and two cats as domestic pets, provided that such domestic pets are confined to the Lot of the owner of such pets.

This language shall be deleted in its entirety and replaced with the following:

Article V, Section 3, Pets and Animals:

No animal shall be kept, raised, or bred by any Owner or Occupant upon any portion of the property; however, dogs and cats may be kept as domestic pets and be maintained in the home so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of a lot. Dogs shall not be allowed to roam unattended, but shall be kept and maintained primarily within the home or otherwise under leash. Underground fencing shall not be permitted. Each owner shall be liable to the Homeowners Association for the costs of repairing any damage to the Common areas caused by the animals of such Owner or Occupant. The board shall have the right from time to time to promulgate rules and regulations governing the keeping of animals within the Property, including the right to assess fines for violations of such rules and regulations.

The above-referenced Amendment has been approved by a majority of the Members of the Homestead Subdivision Homeowners' Association as evidenced by their signatures attached hereto.

This Amendment may be executed in counterparts, each of which shall constitute an original, and all of which, together, shall constitute one document.

**OWNERS' SIGNATURES APPEAR ON THE FOLLOWING PAGES
ATTACHED HERETO**