

STATE OF ALABAMA )  
COUNTY OF \_\_\_\_\_ )

This instrument was prepared by:

Adam Middleton  
SMB Land, LLC.  
13 N 8th St.  
Opelika, AL 36801

2609 401  
Recorded in the Above  
DEEDS Book & Page  
09-25-2020 08:42:27 AM  
Bill English - Probate Judge  
Lee County, AL  
Book/Pg: 2609/401  
Term/Cashier: CHPJDSK02 / CO  
Tran: 23768.348896.465501  
Recorded: 09-25-2020 08:42:45  
REC Recording Fee  
Total Fees: \$ 80.00 80.00

**DECLARATION OF PROTECTIVE COVENANTS FOR  
Northbrook Subdivision**

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, SMB Land, LLC (together with its successors and assigns, the “Developer”) has heretofore acquired fee simple title of certain real property (the “Property”) situated in Lee County, Alabama (the “County”), as more particularly described in the map and survey of the Property recorded in Map Book 43, Page 87, in the Probate Office of Lee County, Alabama (the “Subdivision Plat”), which Property is commonly known as Northbrook (the “Subdivision”) and which Property has been, or hereinafter will be, subdivided into residential lots as more specifically described on **Exhibit “A”** attached hereto (each a “Lot” and, collectively, the “Lots”); and

WHEREAS, Developer desires to develop the Property into a residential subdivision and to subject the Property and each of the Lots to the protective agreements, conditions, covenants, limitations, restrictions, terms, uses, and other affirmative obligations (collectively, the “Restrictions”) set forth in this Declaration of Protective Covenants (the “Declaration”).

NOW, THEREFORE, Developer hereby does declare and make the Property and each of the Lots included in the subdivision of the Property subject to the Restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement and maintenance of the Property in a desirable and uniform manner suitable in architectural design, 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, any Lot, or any part thereof, and shall be for the benefit of each Owner (as defined below) and shall inure to the benefit of and be binding upon each successor in interest to such Owners thereof.

**ARTICLE I  
CERTAIN REFERENCES**

1. The Subdivision shall be governed and controlled by the NORTHBROOK Homeowners Association, Inc. (the “Association”). The Subdivision and each Lot contained therein shall be subject to the terms and provisions of this Declaration and the Association’s

Articles of Incorporation (the "Articles"), Bylaws (the "Bylaws"), and the ARC Guidelines (as defined herein), as each of the same may be amended or modified from time to time. The Articles, Bylaws, and ARC Guidelines are each hereby incorporated by reference, and copies of the foregoing shall be maintained by Developer and made available to each Owner upon reasonable request.

2. Capitalized terms not otherwise defined in this Declaration shall have the meanings ascribed thereto in the Bylaws. For the avoidance of doubt: (a) this Declaration constitutes the "Declaration" as such term is defined and used in the Bylaws; and (b) each Owner of a Lot shall be a Member of the Association, and each such Owner shall have the rights and obligations of a Member under the Articles, Bylaws, and the ARC Guidelines, as applicable. As used herein, the term "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot or other portion of the Property, but shall not include those having such interest merely as security for the performance of an obligation (*e.g.* a mortgagee).

## **ARTICLE II**

### **TERM AND MODIFICATION**

1. These Restrictions shall run with and bind the Property, including without limitation each Lot contained therein, and shall insure to the benefit of and shall be enforceable by the Developer and each Owner of any Lot included in the Property, their respective legal representatives, heirs, successors, and assigns, and each other intended beneficiary hereof that is expressly identified as such herein, for an initial period of twenty (20) years beginning on the date this Declaration is recorded (the "Initial Term"), after which time said restrictions shall automatically be extended for successive periods of ten (10) years each unless and until these Restrictions are terminated in accordance herewith.

2. From the date hereof until the end of the Initial Term, this Declaration and the Restrictions may only be changed, modified, amended, altered, or terminated by a duly recorded written instrument, executed by Developer or Developer's successors and assigns.

3. Following expiration of the Initial Term, this Declaration and the Restrictions set forth herein may be modified, amended or terminated, in whole or in part, by a written instrument that has been: (a) signed and acknowledged by (i) Developer or (ii) the Owners of at least two-thirds (2/3) of the Lots within the Subdivision; and (b) recorded in the Probate Office of the County.

## **ARTICLE III**

### **ARCHITECTURAL REVIEW COMMITTEE MATTERS**

1. **Generally.** The architecture of any dwelling or improvement to be erected on any Lot shall be generally in substantial harmony and conformity with the general prevailing filing type of architecture in the vicinity, with all construction and architectural plans being subject to prior review and approval of the Architectural Review Committee (the "ARC"), as established by the Association's Board of Directors (the "Board"). The ARC will initially consist of three (3) representatives, which representatives shall be chosen by, and shall serve at the pleasure of, Developer until the date that earliest of the following (the "Transition Date"): (a) twenty (20) years

after the date of recording of this Declaration; (b) the date Developer no longer owns any real property within, or contiguous to, the Subdivision (including, without limitation, its common areas); or (c) the date on which Developer, in its sole discretion, may elect in writing to relinquish its right and privilege to change, alter, modify or amend any of the Restrictions, terms, covenants and provisions of this Declaration. After the Transition Date, the members of the ARC shall be designated by the Board. Except as otherwise expressly provided herein or in the ARC Guidelines, the affirmative vote of a majority of the members of the ARC shall be required for, and shall constitute the approval of, any action by the ARC (including, without limitation, the approval or disapproval of any Submission).

2. **Design Guidelines.** Unless and except as otherwise prohibited by this Declaration, the Articles, the Bylaws, or applicable law, the ARC: (a) shall establish its own requirements, procedures, policies, time frames, site standards, building design standards, materials standards, building construction standards, and any other standards that it deems necessary or appropriate (collectively, the “ARC Guidelines”), a copy of which ARC Guidelines shall be made available to the Owners and their representatives upon written request; and (b) may alter or amend such ARC Guidelines as determined necessary or appropriate in the sole discretion of the ARC; *provided, however,* that in no event shall the ARC Guidelines be less restrictive than the other covenants and Restrictions set forth herein. Without limiting the foregoing, the primary purpose of the ARC is to further a proper blending of home and property designs and aesthetics throughout the Subdivision, as determined in the ARC’s sole discretion, and any the ARC is hereby authorized to take any action, and to refuse to take any action, that a majority of the ARC determines in good faith to be in furtherance of such purpose.

3. **ARC Approval Required.** Prior to beginning any construction (including, without limitation, any staking, clearing, excavation, grading, planting or removal of plants, trees, or shrubs) or other site work within the Subdivision (collectively, “Construction”), the Owner of each Lot on which such Construction is to be performed shall submit to the ARC two (2) complete hardcopy sets or one (1) digital copy of all relevant building plans, designs, and other specifications applicable to such Construction (“Plans and Specifications”). Such Plans and Specifications shall be in such form, and shall contain such information, as may be required by the ARC. No Construction is permitted within Subdivision unless: (a) the applicable Plans and Specifications have been approved in writing by the ARC, which approval shall not be valid unless it is signed and dated by a current member of the ARC at the time of such approval; and (b) such Construction is performed and completed in strict compliance with (i) the Plans and Specifications as approved in writing by the ARC, (ii) the ARC Guidelines, and (iii) this Declaration.

4. **Submission Fees.** Subject to the Board’s written approval, the ARC shall have the right, but not the obligation, to assess application fees for each application or other submission made to the ARC (including, without limitation, any Plans and Specification submitted for approval) (each a “Submission”), which fees may be fixed based on the length or complexity of such Submission, or on any other criteria approved by the Board. In the event that any fees are assessed pursuant to this paragraph, no approval of the ARC will be valid unless and until such fees are paid in full.

5. **Review Period.** The ARC shall have thirty-one (31) days to review and respond to each Submission, such thirty-one (31) day period beginning on the date that the ARC provides

written confirmation that it has received the Submission. If the ARC does not respond within such thirty-one (31) day period, then the Submission shall be deemed approved. Unless approved by operation of time per the previous sentence, all approvals of Submissions by the ARC must be in writing and be signed and dated by an authorized member of the ARC. dated and signed by an authorized representative of the ARC. The period for the ARC's review of any Submission may extended for such additional length of time as the ARC deems necessary or appropriate by providing written notice of such extension to the submitting party prior to the expiration of the then-current review period.

6. **No Warranty or Liability from Approval.** The scope of the ARC's review of any Submission will be limited to appearance only, and neither the approval of, nor the setting of any requirement to obtain the approval of, any Submission shall constitute or be construed as constituting any representation or warranty of safety, legality, or architectural integrity by the ARC or any other governing body, each of which shall instead shall be the sole responsibility and liability of the Owner making such Submission. Neither the ARC nor any member thereof shall be liable to the Association or any Owner for any damage, loss of prejudice suffered or claimed on account of the:

- (a) approval or disapproval of any Submission, or any component thereof, whether or not defective or non-conforming;
- (b) construction or performance of any work, whether or not pursuant to any approved Submission; or
- (c) Subdivision of any property within the Subdivision, provided that the ARC has acted in good faith on the basis of the information known to the approving members of the ARC at the time any such Submission is approved.

7. **Selected Reasons for Non-Approval.** The ARC shall have the right to reject or refuse to approve any Submission for any of the following reasons:

- (a) failure of the Submission, or any action or inaction contemplated therein, to comply with this Declaration and the Restrictions herein;
- (b) failure to provide any information required by this Declaration, or otherwise reasonably requested by the ARC, in connection with such Submission;
- (c) discretionary objection to the (i) exterior design, appearance or materials of any proposed structure or improvement included within such Submission or (ii) color scheme, finish, proportions, style or architecture, height, bulk or appropriateness of any proposed structure or improvement contemplated by such Submission;
- (d) incompatibility of any proposed structure or improvement included within such Submission, or use thereof, with any other existing or approved structure or improvement within the Subdivision;

- (e) failure to comply with any other requirements of the ARC, the Subdivision, or any governmental authority or body; and
- (f) any other matter or reason that, in the good faith determination of a majority of the ARC, would render the Submission or any component thereof inharmonious with the general plan of improvement of the Subdivision or any Lot, or the uses thereof.

8. **Notification of Non-Approval.** If the ARC shall disapprove any Submission hereunder, or shall approve the same only as modified or upon the satisfaction of any one or more conditions specified by the ARC, such disapproval or qualified approval shall be accompanied or followed by a statement of the grounds upon which such decision was based. In any event, the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable Submission can be prepared and submitted for approval.

#### **ARTICLE IV**

#### **LAND USE; BUILDING CRITERIA; RESTRICTIONS AND COVENANTS**

1. **Land Use and Building Type.** Unless otherwise approved by Developer in a signed writing, the Property may only be used for residential and community purposes, and all other purposes and uses are hereby prohibited. Except as otherwise expressly stated in these Restrictions or as otherwise approved by Developer in a signed writing, no building or structure other than one (1) detached single-family dwelling per Lot (each a "Principle Residence"), erected and maintained in accordance with these Restrictions, may be erected within the Property or any portion thereof (including, without limitation, any Lot). For the avoidance of doubt, nothing in this paragraph shall preclude any use of the Property by Developer to the extent otherwise permitted in accordance with this Declaration or approved in writing by the ARC. Notwithstanding anything to the contrary herein, the use of any structure approved by the ARC for any purpose other than the purpose for which it was originally designed and approved shall be a violation of this Declaration.

2. **Building Criteria.**

- (a) **Height Restrictions.** No building shall be erected, altered, placed, or permitted to remain on the Property other than one (1) Principle Residence, which Principle Residence shall not exceed two (2) stories in height in addition to a below-ground basement.
- (b) **Zoning.** All zoning rules, requirements, and other zoning criteria (collectively, the "Zoning Criteria") shall be governed by the county planning commission or equivalent body (the "Planning Commission") for the County in which the Property is located; *provided, however*, that no requests for changes to, or variances from, any Zoning Criteria shall be made without first obtaining the approval of the ARC (as defined herein).
- (c) **Building Setback Requirements.** All setback lines shall be governed by the Planning Commission and the Zoning Criteria in effect at the time of construction of the applicable improvement(s) on the Property, which

Zoning Criteria shall be determinative for all applicable purposes. Any request for variance from Zoning Criteria must be approved in writing by both (i) the ARC and (ii) the Planning Commission or equivalent body possessing authority to grant any such variance. Neither the approval of any setback lines, nor the fact that any setback lines are otherwise consistent with the Zoning Criteria, shall be construed to permit the construction of improvements so as to encroach upon any easement or other Lot. For purposes of this paragraph, any eaves, steps, open porches and ornamental planting boxes shall not be considered part of the improvement subject to these requirements; *provided, however*, that no improvement, portion of any improvement, nor any eave, step, open porch, or ornamental planting box is permitted to encroach upon any easement, other Lot, or other portion of the Property except for necessary roof and cave overhangs on Lots with zero lot lines.

- (d) **Common Areas**. Any common area landscaping and any other architectural or landscaping features that have been, or may hereafter be, constructed by the Developer for the general benefit of the Subdivision as a whole (the "Common Areas") will be owned by, and maintained at the sole cost and expense of, the Association. No changes or modifications to any Common Areas are permitted unless approved in writing by the ARC. Each Owner and its permitted guests and invitees shall have the right to use the Common Areas under the direction of such Owner, subject to any applicable rules or regulations adopted by the Association with respect to such Common Areas and/or the use thereof, and further subject to the provisions of the Articles and Bylaws. Any parking area included within the Common Areas is intended to be used by the Owners and their permitted guests and invitees only while they are present and actively utilizing the corresponding Common Areas. Unless agreed to in writing by the Board, overnight parking is prohibited in all Common Areas. Developer shall have the right, but not the obligation, to tow any vehicle parked in the Common Areas in violation of these Restrictions at the vehicle owner's sole cost and expense. The Developer also has a reasonable right of entry to each Lot for necessary inspection, repairs, and maintenance associated with the proper operation of any Common Area.
- (e) **Garages**. All garage doors and doors to outbuildings must remain closed except for when vehicles are actively entering and/or exiting the garage or for reasonable amounts of time to provide for necessary or customary chores while such chores are being actively performed. No garage may be (i) enclosed, (ii) converted to living area, or (iii) otherwise converted or utilized in any manner that prevents such garage from providing off-street parking for a minimum of two (2) motor vehicles.
- (f) **Exterior Surfaces**. All visible exterior wall surfaces, including any portion of the exterior wall surfaces which are above lower roof levels, shall be cement board lap siding, brick, stucco, or natural stone. Vinyl shutters and

soffits are also permitted.

- (g) **Color.** Exterior painting shall only be permitted using colors approved in writing by the ARC.
- (h) **Roof Structures.** All major roof structures must have a minimum 7/12 pitch, unless otherwise approved in writing by the ARC. Shingles must architectural and must be of a natural color, slate, or cedar shakes, in each case as approved in writing by the ARC. Unless otherwise approved by the ARC in writing, metal or standing seam roofs are prohibited.
- (i) **Stacks and Vents.** Unless otherwise approved in writing by the ARC, all plumbing stacks or vents shall be connected in the attic space in a manner providing roof penetration of no more than ten (10) inches, and no such plumbing stacks or vents are permitted to protrude through the roof area facing the street.
- (j) **Windows.** All windows must be wood framed, vinyl, or vinyl clad.

3. **Re-subdivision or Partitioning of Lots.** No portion of any Lot, Lot line, building line, or other portion of the Property may be subdivided, re-subdivided, partitioned, or otherwise further modified without the prior written approval of: (a) all applicable government authorities, if any; (b) the ARC; and (c) either (i) the Developer or (ii) the Owner(s) of more than fifty percent (50%) of the Lots.

4. **Outbuildings; Repairs and Subsequent Improvements.** Except for those erected or placed by or at the direction of Developer at the time of, or otherwise in connection with the construction of, the Principle Residence on a Lot, no temporary, moveable, or other non-permanent structure (including, without limitation, any trailer, tent, shack, shed, barn, pole-barn, house, out-house, storage unit or pod, residence, carport, or garage) may be erected or otherwise placed on any Lot or any other portion of the Property at any time unless approved in writing by the ARC. Any additional or subsequent improvements or repairs to the Principle Residence or any improvement of any Lot must use materials, textures, colors, and design elements in keeping with the original design and construction of the Principle Residence and the general design of the Subdivision and shall require written approval by the ARC.

5. **Antennas, Satellite Dishes, Solar Collectors, other Transmission Equipment.** No ham radios or radio transmission equipment which is visible from any street or adjoining Lot is permitted on any Lot. Unless otherwise required by applicable federal law, no communications equipment or satellite dish greater than twenty-two (22) inches in height is permitted on any Lot, and no such equipment or satellite dish (regardless of height) may be installed in any location that is visible from any street or adjoining Lot. All utility meters, measuring devices and similar devices required by utility providers must be located so as to not be visible from any street or adjoining Lot. All utility lines must be underground. No Owner shall erect or use, or grant to any person or entity the right, license or privilege to erect or use, any overhead wires, poles, antennas, satellite dishes, or other overhead facilities of any kind for electrical, telephone, internet, radio transmission, or cable television service on any Lot (except such poles and overhead facilities as

may be required at those places where distribution facilities enter and leave that particular area, and except for items permitted in accordance with the preceding sentence of this paragraph). Nothing herein shall be construed to prohibit overhead street lighting fixtures or ornamental yard lighting which is serviced by underground wires or cables. Only solar collectors approved by the ARC may be installed on any Lot, any such solar collectors may be installed so that they shall not be visible from any street. Notwithstanding the foregoing or anything to the contrary herein, the location of any equipment permitted by this paragraph shall be determined at the sole discretion of the ARC.

6. **Wall and Window Air Conditioning Units Prohibited.** No wall and/or window air conditioning units are permitted within any Principle Residence or elsewhere on any Lot unless approved in writing by the ARC.

7. **Privacy Fencing.** Privacy fences must be approved in writing by the ARC and will be subject to the following requirements: (a) all fences must be made exclusively of wood material and shall be properly maintained; (b) all fences must be constructed at a height of six (6) feet; (c) all fence posts must be placed on the interior of the fence, and no fence posts may be placed in any location or manner in which such fence posts are visible from ground-level outside of the fence; and (d) all fences must be stained using "Stone Martin Canyon Brown" colored stain or, in the event such color is discontinued, a substantially identical dark brown color of stain. No standard chain link, wire, vinyl, or other metal fencing of any kind may be constructed anywhere on the Property.

8. **Mailboxes.** Subject to compliance the requirements of the United States Postal Service and other applicable law: (a) each Principle Residence shall have one (1) mailbox; (b) all mailboxes shall be of a common design selected for the Subdivision and approved by the ARC; and (c) each mailbox, and the original design and color thereof, shall be maintained by each Owner in appropriate condition and repair. Without limiting the foregoing, the ARC may establish a required location for all mailboxes and mailbox posts, so long as these specifications comply with the requirements of the United States Postal Service. If mailboxes are required to be purchased by the Association or Developer, any damage or destruction to mailboxes which cannot be adequately repaired will result in the Owner(s) of such Lot being required to purchase a replacement mailbox from the Association or Developer. Each Owner shall cause a mailbox compliant with these Restrictions to be installed on its Lot at the completion of landscaping. Each Owner shall be responsible for all costs pertaining to any mailbox on its Lot.

9. **Signage.** No sign or other advertising devices of any nature (including, without limitation, "for sale" signs, garage sale signs, "no trespassing" signs, or "beware of animal" signs) are permitted on any part of the Property without the prior written approval of the ARC as to color, location, nature, size (which size shall not exceed six (6) square feet), and other characteristics of such signs or devices. Notwithstanding the foregoing or anything to the contrary herein, Developer specifically reserves the right for itself, its successors, agents, representatives, nominees, and assigns, to place and maintain signs (including, without limitation, identifying, informational, and directional signs) in connection with construction, marketing, sale, and rental of Lots, residences, and other portions of the Property and any improvements thereon, anywhere within the Property. The Developer, the Association, and the ARC shall have a license and the self-help right to enter into and upon any part of the Property for the purpose of installing or removing any signage in

accordance herewith, in each case without prior notice to the Owner of such portion of the Property.

10. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or other portion of the Property, except that dogs, cats, and other customary household pets may be kept provided that such pets are at all times: (a) limited to no more than four (4) pets per Principle Residence; (b) kept under reasonable conditions so as not to create a nuisance or otherwise unreasonably disturb others in the Subdivision; (c) kept in a safe and sanitary manner and in compliance with all applicable laws, regulations, ordinances, and other applicable rules pertaining thereto; (d) kept under strict verbal control and on appropriate leashes or within fully-fenced areas at all times while outside of any Principle Residence; (e) used for personal, non-commercial purposes, and are at no time used for breeding or sale; and (f) are kept in a manner that does not endanger or unreasonably threaten the welfare or safety of such pet, or any person, property, or other pet within the Subdivision. Notwithstanding the foregoing, the Restrictions set forth in this paragraph shall not prohibit the keeping of any service animal that a provider of housing is required to permit under applicable law; provided, however, that the keeper of any such service animal shall use its reasonable efforts to comply with the Restrictions of this paragraph to the extent not inconsistent with, or otherwise prohibited by, applicable law.

11. **Windows.** Window treatments shall be limited to blinds or curtains, and in no event may any window be covered or obscured aluminum foil or any other metal or reflective material.

12. **Garbage and Refuse; Oil and Gas Tanks; Swimming Pool Equipment.** No lumber, metal or bulk materials may be kept, accumulated, or otherwise stored on any portion of the Property, except for building materials of a type and quantity needed for the construction or maintenance of any approved structure or improvement on the Property during the reasonable course of such construction or maintenance. No refuse or trash may be kept, accumulated, or otherwise stored except in designated sanitary containers specifically designed for the storage and disposal thereof between scheduled pick-ups. Such sanitary containers may be placed in the open on any day that a pick-up is scheduled to be made, at such place on the Lot as to provide reasonable access to the party making such scheduled pick-up. At all other times, such sanitary containers shall be stored in such manner so as to not be visible from any street adjacent Lot. All oil tanks, bottled gas tanks, and swimming pool equipment must be underground or placed in enclosed or landscaped areas so as to not be visible from any street or adjacent Lot. Notwithstanding the foregoing, the ARC may, to the extent permitted or authorized by the Bylaws or by the Board, adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of any storage or refuse containers permitted within any outdoor portion of the Subdivision and the manner of storage of the same. Furthermore, the Association, at its sole discretion, may require any Owner to provide dumpsters during any construction activities, which dumpsters shall be regularly emptied and promptly removed from the Property following completion of the applicable construction.

13. **Outdoor Burning.** The burning of trash, refuse, or any other material on any Lot is prohibited.

14. **Nuisance; Yard Sales.** No obnoxious, illegal, or offensive activity is permitted on any Lot, nor shall anything be done on any Lot that may be reasonably expected to become an

annoyance or nuisance to the Owners of other Lots. Individual yard sales are prohibited. Neighborhood yard sales are permitted but shall be limited to no more than two (2) per calendar year.

15. **Boats; Trailers; Recreational Vehicles.** No boat, boat trailer, house trailer, horse trailer, trailer, camper, motor home, motorcycle, motor bike, or any similar recreational item shall be stored on any Lot for a period in excess of twenty-four (24) hours unless parked in a garage behind closed garage doors, or elsewhere on a Lot so as to not be visible from any street or adjacent Lot. No recreational vehicles or related items may be parked on any street within the Property at any time.

16. **Vehicular Parking.** Vehicular parking on streets in front of residences shall be limited to temporary parking. Parking in the street by any single vehicle for more than six (6) hours in any twenty-four (24) hour period is prohibited. The intent is for all vehicles to be parked in garages and driveways at all times. Each Principle Residence shall have minimum off-street, paved parking for not less than two (2) vehicles. Parking of vehicles in unpaved areas is prohibited at all times.

17. **Commercial Vehicles.** No commercial vehicle or commercial equipment may be parked or otherwise stored on any Lot or street within the Subdivision. The foregoing shall not prohibit the temporary parking commercial vehicles and related commercial equipment during the active conduct of any commercial activity permitted within the Subdivision (including, without limitation, the pick-up or drop-off of commercial deliveries, trash collection, and construction); provided, however, that no commercial vehicle or commercial equipment may be present on any Lot or street within the Subdivision overnight.

18. **Remedies for Commercial and Recreational Vehicle Violations.** Any commercial vehicle, commercial equipment, or recreational vehicle or equipment parked or otherwise stored in violation of the Restrictions contained herein, or any other rules or regulations hereafter adopted by the Association, for more than twenty-four (24) hours may be towed at the sole expense of the owner of such vehicle or equipment, or the at the sole expense of the Owner of the Lot upon which such vehicle or equipment is parked or otherwise stored. The enforcer of the Restrictions set forth in this paragraph (including, without limitation, with respect to any enforcement by Developer, the Association, or the ARC) shall not be liable to the owner of such vehicle or equipment, nor to the respective Lot Owners, for trespass, conversion or otherwise, nor shall the enforcer of these Restrictions be guilty of any criminal or quasi-criminal act by reason of such towing, and neither the removal nor the failure to remove any such vehicle or equipment, nor the failure of the owner of such vehicle or equipment to receive any notice of said violation, shall be grounds for relief of any type. The foregoing remedy is in addition to any other remedy which may exist whether at law or in equity.

19. **Vehicle Maintenance and Repair.** No maintenance or repairs shall be performed on any vehicle on any Lot or street within the Subdivision except in an emergency situation. Notwithstanding the foregoing, all repairs to any disabled vehicle within the Subdivision must be completed, or the vehicle must otherwise be removed from the Subdivision, within four (4) hours from the time of its immobilization. All vehicles within the Subdivision must have a current and valid tag. Notwithstanding the foregoing or anything to the contrary herein, the Developer, the

Association, and the ARC are each hereby expressly permitted to maintain and store any maintenance vehicles or other vehicles owned or utilized thereby at such locations within the Property as such party determines to be reasonable, necessary, or convenient for the general maintenance and upkeep of the Subdivision or the performance of its duties and obligations under this Declaration, the Articles, the Bylaws, applicable law, or otherwise.

20. **Clotheslines; Pipes.** No clothing or any other household fabrics are permitted to be hung or otherwise stored, and no water pipes, gas pipes, sewer pipes, drainage pipes or clotheslines may be installed or maintained, on any Lot so as to be visible from any street or adjacent Lot, except for hoses and movable pipes used for temporary irrigation purposes which shall be maintained and stored in a neat and orderly manner at all times while not in use.

21. **Mining.** The mining, quarrying, drilling, exploration, Subdivision, and/or refinement of or for any oil or other minerals, and all other similar or related activities or operations of any kind, whether occurring above-ground or below-ground, are prohibited throughout the Property.

22. **Maintenance of Improvements; Landscaping.** Unless expressly stated herein as being the responsibility of the Association, each Lot and any improvements thereon (including, without limitation, each Principle Residence), and the internal and external condition and appearance thereof, shall be maintained by the Lot Owner in a manner that is clean, neat, sanitary, and consistent with the aesthetics of the Subdivision. Each Owner's maintenance obligations shall include, without limitation, maintaining a grass height of no more than five (5) inches, pruning bushes and plants, removing weeds, not allowing bare spots to exist in areas that were previously covered with grass, mulch, pine straw, or other landscaping materials, maintaining appropriate paint and stain finishes on each Principle Residence and any other improvements on each Lot, and maintaining, repairing, and replacing the roof and each other component the Principle Residence, and each component thereof, in a prudent manner. Each Owner shall be permitted, upon reasonable notice, to enter the portions of the Property adjacent to such Owner's Lot for the purpose of, but only to the extent necessary in connection with, the maintenance or improvement of such Owner's Lot or improvements thereon. Without limiting the foregoing, each Owner shall be permitted to enter adjacent portions of the Property to the extent necessary for the installation and/or maintenance of any fences, landscaping, and any other improvements or uses to such Owner's Lot as are permitted or required hereunder. The Association shall have the right, but not the obligation, to enter upon any Lot to address any of the aforementioned issues or other issues which violate the general maintenance requirements of the Subdivision, at the sole cost and expense of the applicable Owner; *provided, however*, that the Association shall give the applicable written notice of the action to be taken by, or on behalf of, the Association not less than twenty-four (24) hours' prior to the taking of such action. The costs of any action taken pursuant to the preceding sentence shall be immediately due and payable by the applicable Owner, and each Owner hereby agrees to reimburse and indemnify the Association for (a) one hundred percent (100%) any such out-of-pocket costs or expenses incurred on behalf of such Owner and (b) an additional fifty-percent (50%) of such out-of-pocket costs or expenses incurred on behalf of such Owner in compensation of the Association's labor and general overhead expenses.

23. **Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat and/or on all subsequent

subdivision plat(s) that may be recorded for the Subdivision. Such easements include, without limitation, the right of ingress and egress by authorized representatives of the utility providers for which such easements are reserved in connection with the maintenance of the portion of the Property included within such easement. Except for those improvements for which a public authority or utility provider is responsible, if any, the portions of the Property included within any such easements shall be maintained continuously by the Owners of the respective Lots burdened by such easements. Developer further reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, the ARC and the Association, and each of its and their respective designees (including, without limitation, any utility provider or governmental or quasi-governmental entity), representatives, contractors, agents, successors and assigns, to enter upon, across, over, the entirety of the Subdivision and all Property contained therein (including, without limitation, each Lot and Common Area), but specifically excluding the interior portions of any Principle Residence, for each of the following purposes:

- (a) controlling soil erosion, including the grading of and/or the planting of vegetation upon, any Lot or other areas of the Property that may be subject to soil erosion;
- (b) controlling drainage of natural or man-made flow of water, water courses, or waterways, or other water areas within or adjacent to the Subdivision using commercially reasonable means which shall include, without limitation, by changing, modifying, dredging, enlarging, reducing, or otherwise altering the foregoing in any way; and
- (c) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage, and/or waterway maintenance of the Subdivision.

24. **Release of Easements.** Developer reserves the right, in its sole discretion and at any time, to release all or any portion of the Property from the burden, effect, and encumbrance of, or to otherwise define the limits of, any easement granted or reserved under this Declaration.

25. **Outdoor Uses.** No decorative or landscaping rocks, rock gardens, bird baths, ponds, lawn sculptures or ornaments, artificial plantings, children's play equipment, basketball goals, lawn furnishings, or the like, are permitted on any Lot without the written approval of the ARC. No vegetable, herb, or similar gardens are permitted be planted or maintained on any Lot in a manner that is visible from any street or adjacent Lot. Notwithstanding the foregoing: (a) portable basketball goals are permitted but must be stored in a manner so as to not be visible from any street or adjacent Lot at all times while not in active use; and (b) children's play equipment and swimming pools are permitted, but only if placed in the backyard of a Lot which is fully enclosed by a fence, and only if such equipment or pool is not visible from any street or adjacent Lot.

26. **Lighting.** All standards and fixtures must be in conformance with the general appearance of the Subdivision and approved by the ARC (including, without limitation, with respect to the placement, direction, appearance, and coverage area thereof). No security lighting, pool lighting, or any other lighting is permitted to be positioned at a height, or in any other manner,

that would cause the light emitted therefrom to be directed toward any other Lot or that would cause such light to bleed over property lines into adjoining or adjacent Lots.

27. **Business Activities.** No profession or home industry or other commercial venture (including, without limitation, the operation of any school, childcare center, kindergarten, learning center, musical instrument or voice training center, or other educational, vocational, or training facility, in each case without regard to whether such use is for-profit, non-profit, charitable, or institutional) shall be conducted in or on any part of the Property or in any improvements thereon. Notwithstanding the foregoing or anything to the contrary herein: (a) Developer, directly and/or indirectly through one (1) or more of Developer's successors, agents, representatives, nominees, and assigns, shall be permitted at all times to engage in the construction, marketing, sale, and rental of Lots, residences, and other portions of the Property and any improvements thereon, and to engage in any other related activity, whether or not commercial, anywhere within the Property; and (b) the Board, in its sole discretion, may permit the conduct of a profession, home industry, or other commercial venture within a residence located on the Property; *provided, however*, that in each case the Board shall take into consideration the effect upon nearby areas of the Property and the Owners thereof prior to permitting any such profession, home industry, or other commercial venture within the Subdivision. Without limiting the foregoing, in determining such to permit any such uses, the Board shall take into the consideration whether the proposed activity (i) is compatible with a high-quality residential neighborhood, and (ii) will unreasonably and materially interfere with the normal residential use of, or is likely to materially and adversely impact the value of, nearby areas of the Property and the Owners thereof. The Board may withdraw or rescind any approval of any such activity at any time and for any reason, as determined in the Board's sole discretion. Nothing in this paragraph, nor the approval of any activity by the Board, shall be interpreted to authorize or permit any commercial activity which is in violation of any applicable law or regulation (including, without limitation, local ordinances and zoning rules), and the Owner engaging in the applicable activity shall have the sole responsibility for ensuring compliance with, and shall be solely liable for any consequences resulting from any violation, of such law or regulation.

28. **Real Estate or Subdivision Office.** The Developer may, in Developer's sole discretion, use or permit the use of any Lot for the construction of and/or use of a building constructed thereon, as an office, real estate office, and/or model home for the Subdivision, and as such the same shall not be subject to the terms, provisions and requirements of these covenants until such time Developer no longer owns any other Lots, after which time said Lot and any improvement(s) constructed thereon shall be brought into compliance with these Restrictions within a commercially reasonable period of time.

29. **Machinery.** No machinery shall be placed on or operated upon any portion of the Property except such machinery as is normal and usual in the maintenance of a private residence, or except such as is necessary during the original construction of a Principle Residence or a major renovation or improvement thereto, or to any Lot, that is permitted under this Declaration.

30. **Authorized Use Exceptions.** Notwithstanding other provisions herein, each Principle Residence located on a Lot shall be used only as a single-family residence and shall be subject to all other requirements hereunder.

31. **Prohibited Uses.** No person shall, without the written approval of the ARC, do any of the following within the Property: (a) permit the running of animals except when on a leash or within a fully-enclosed backyard; (b) fell any trees or injure or damage any landscaping; (c) interfere with any drainage, utility, access, or other easement; (d) build or assemble any structures, recreational or common facilities, in violation of this Declaration; (e) discharge any liquid or other material other than natural water drainage into any lake, pond, or watercourse; (f) alter or obstruct any lake, pond, or watercourse; (g) interfere with any water control structures or apparatus; (h) swim, fish, or use any boat on any lake, pond, stream, or watercourse; (i) light any fires except in designated areas, if any, designated by permanent signage permitting the same; or (j) swim in any body of water other than a swimming pool.

32. **Notification to Utility Providers.** In order to beautify the Subdivision for the benefit of all Lot Owners and to permit utility providers to install underground utility services to each Principle Residence within the Subdivision, no Owner of any Lot is permitted to commence construction of any Principle Residence or other improvement on any Lot until such Owner: (a) notifies each provider of utilities to the Subdivision that such construction is proposed; (b) grants in writing to said utility providers such rights and easements as are reasonably requested in connection with their construction, operation, maintenance, and removal of the underground service lateral on each Lot; and (c) provides, at such Owner's sole cost and expense and in accordance with all specification furnished by such utility providers, all excavating, trenching, and backfilling which said utility providers request in connection with the installation of the underground service or service laterals on such Lot. To the extent of the interest of the Owner of each Lot, such Owner agrees to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Developer.

33. **Developer's Rights.** This Declaration, and each Restriction contained herein, touches and benefits each of the Lots within the Subdivision and shall run with the land and shall be binding upon each Lot, the Owners and grantees of each Lot, all of the utilities and utility providers referenced herein (whether specifically or generally), and the respective heirs, successors, and assigns of each the foregoing. The Developer expressly reserves the sole and exclusive right and privilege, both for itself and its successors and assigns, to change, alter, modify, or amend any of the terms, covenants and provisions of this Restriction, and to grant a variance or waiver to or from any of the terms, covenants and provisions of this Declaration, without the consent or approval of the other Owners until the earlier of the following events: (a) expiration of the Initial Term; (b) the date Owner no longer owns a Lot or any other portion of the Property; and (c) the date on which Owner, in its sole discretion, may elect in writing to relinquish its right and privilege to change, alter, modify or amend any of the terms, covenants and provisions of this Declaration.

34. **ARC Exceptions.** Notwithstanding anything to the contrary herein, the ARC may, in its sole any final discretion, authorize any one or more of the following (each an "Exception"): (a) the temporary use of any Principle Residence for more than one family; (b) the temporary placement a sign on the Property other than as expressly permitted herein; (c) the placement of temporary structures or improvements on the Property; and (d) any other exception, variance, or other deviation from the restrictions contained in this Declaration (including, without limitation, the Restrictions) or the ARC Guidelines. Any Exception granted hereunder shall be made by the ARC in writing and, unless otherwise excused by the ARC, no Exception will be granted, nor will

any fines or other assessments hereunder be waived, with respect to any action or non-conforming use occurring prior to the granting of the applicable Exception. Any request for an Exception shall be made in a written Submission to the ARC, which request may be approved or denied by the ARC in its unrestricted discretion. The approval or denial of any request for an Exception shall not in any way require or prohibit the ARC from granting any other or subsequent Exception to any person, nor shall the granting of any Exception hereunder be deemed a waiver of any subsequent failure to comply with these Restrictions. Any action or inaction that exceeds the scope of, or is otherwise inconsistent with, any Exception granted by the ARC shall be a violation of these Restrictions.

## **ARTICLE V** **ENFORCEMENT**

1. In the event of a violation or a breach of this Declaration or any of the Restrictions set forth herein by any Owner or its family members, or any of its or their respective tenants, guests, agents, invitees, or representatives, then each other Owner and each other person or entity to whom the benefit of this Declaration inures, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to sue for and recover damages, and to undertake any and all such other action as may be available under this Declaration or applicable law. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising under or in connection with this Declaration shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

2. Each current and future Owner, in accepting a deed or entering into any contract for the purchase of any Lot or other portion of the Property, agrees to be bound by and adhere to this Declaration and the Restrictions contained herein. Any party prevailing against an Owner in any action or proceeding pertaining to, or arising under or in connection with, this Declaration and the Restrictions contained herein, shall be entitled to recover its reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith.

## **ARTICLE VI** **GRANTEE'S ACCEPTANCE AND INDEMNIFICATION AGREEMENT**

1. Each current and future Owner and grantee of any Lot, in accepting any deed or becoming party to any agreement for the purchase of or instrument intended to convey any interest in, any Lot or portion thereof, whether from Developer or any subsequent Owner of any Lot, agrees to:

- (a) accept the same upon and subject each of the provisions of this Declaration (including, without limitation, all of the Restrictions contained herein);

- (b) indemnify, defend, protect, release, and hold harmless Developer and the Association, and its and their respective successors, assigns, and each of their respective agents, directors and employees, from and against any and all damage caused by such Owner, or by such Owner's employees, agents, guests, invitees, licensees, contractors and employees or the contractor, agent or employees, to any roads, streets, gutters, walkways or other aspects of public ways within the Property, including all surfacing thereon, or to any water, drainage or storm sewer line or sanitary sewer lines owned by Developer, the Association, the city or the County, or for which any of the foregoing has responsibility, at the time of such damage;
- (c) indemnify, defend, protect, release, and hold harmless Developer and the Association, and its and their respective successors, assigns, and each of their respective agents, directors and employees, from and against any and all claims and demands by such Owner, any member such Owner's family members, or its or their employees, agents, guests, invitees, licensees, contractors and employees, for damages to property or injury or death, including but not limited to those caused by Developer's or the Association's contributory negligence, which may arise out of or be caused directly or indirectly by such Owner's Lot(s) and/or the use of or construction on said Lot(s) by said Owner, any member of said Owner's family, or any of its or their guests, agents, invitees, licensees, contractors or employees or subcontractors of such contractors, or by any other person whomsoever, or with respect to any lien on such Owners' lot or the foreclosure of such lien by the Association, including with respect to all reasonable costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees); and
- (d) exercise due care in connection with the construction of any improvements on such Lot(s), and to assure that any contractors of such Owner, and any contractors, employees, or subcontractors of such contractors, exercise due care and comply with any and all governmental rules, regulations, codes and ordinances relating to safety, so as to protect the safety and health of the public, and the safety and health of all persons and property.

**ARTICLE VII**  
**ASSOCIATION MATTERS; INSURANCE**

1. **Security.** To the extent permitted by applicable law, the Association may, but shall not be required to, own and/or provide for the construction and maintenance of an entrance gatehouse, gates, or other security measure for the Subdivision and, if any such gatehouse or other security measure is to be manned, provide the salary for the same. Nothing herein shall constitute or be deemed to constitute a representation, warranty, assurance or promise that the Association, the ARC or Developer will either now or in the future provide any security force or device to provide protection for any Owner or any other person or Property located within the Subdivision. In no event shall the Association, the ARC or the Developer be obligated to provide, or responsible for providing or failing to provide, any security measure or service, nor shall the provision of any

security measure or services for the Subdivision give rise to any obligation to provide, or to continue to provide, the same or any similar security measures or services in the future. Notwithstanding anything to the contrary, in no event shall the Association, the ARC or Developer be responsible or have any liability for any damage, injury or loss caused by or as the result of the provision, or failure to provide, any security measure or service within the Subdivision, regardless of whether such damage, injury or loss was foreseeable or may have been avoided by providing, or providing superior, security measures or services. In no event shall the provision of any security measure or services for the Subdivision give rise to any obligation to provide, or to continue to provide, the same or any similar security measures or services in the future.

2. **Membership, Liability for Assessments and Developer Deficit Funding.**

- (a) Each Owner shall automatically become a Member of the Association, subject to and in accordance with the Articles and Bylaws, and shall be fully and completely bound by all of the terms and conditions of the Articles and the Bylaws as the same may be modified and amended from time to time. Without limiting the foregoing, each Owner shall be obligated to pay any and all applicable Assessments (as defined in the Bylaws) levied from time to time on such Owner's Lot(s), and each Owner shall be subject to the rights of the Association to enforce payment of the Assessment as provided in the Bylaws; *provided, however*, that notwithstanding the foregoing, the Developer shall not be required to pay any Assessments for Lots which Developer owns and which are unoccupied ("Excluded Lots"). All of the terms and provisions of the Articles and the Bylaws applicable with respect to each such Lot and to each Owner thereof, by virtue of being a Member of the Association, are incorporated herein by reference as if set forth herein in their entirety. Each Lot is a "Single Family Residential Lot" as such term is used in the Bylaws. Assessments on individual Lots shall be determined and made on a yearly basis, by (i) compiling the total amount of yearly Association and Subdivision expenses *plus* savings accruals for the Subdivision as determined by the Association and (ii) *dividing* such number by the total number of Lots, excluding any Excluded Lots, within the Subdivision.
- (b) For a period of time commencing on the sale of the first Lot to a homeowner and continuing thereafter for a period of one (1) year thereafter (the "Deficit Period"), Developer shall fund any deficit of the Association. A "deficit" as used in this subparagraph shall be the difference between (i) the sum of all Assessments and other amounts collected by the Association on all Lots during the Deficit Period *less* (ii) the amount of all actual expenditures incurred by the Association and Subdivision during the Deficit Period, in each instance as computed on a cash basis of accounting. During the Deficit Period, Developer may satisfy such deficit obligation through "in-kind" contribution of services, materials, or a combination of services and materials. Developer's satisfaction of its obligations pursuant to this subparagraph shall be at the sole cost and expense of Developer, and Developer shall not be entitled to reimbursement for the satisfaction of such

obligations.

- (c) Upon the expiration of the Deficit Period, Developer shall have the right, but not the obligation, to fund any deficit of the Association as a loan to the Association, and any payment made by the Developer to the Association after the Deficit Period shall automatically be deemed to constitute a loan to the Association. Unless otherwise agreed in a writing signed on behalf the Association and Developer, each such loan shall have a three (3) year term, bear interest at the rate of three percent (3%) per year (compounded daily), and shall require monthly payments of principal and interest necessary to amortize such loan in full at the expiration of the three (3) year term. As soon as practical following the making of any such loan to the Association, the Association shall cause a promissory note evidencing such loan to be executed and delivered to Developer. Each loan and promissory note made pursuant to this subparagraph shall be secured by the Association's right, title, and interest in and to any Property within the Subdivision.

3. **Certain Rights and Remedies.** The provisions of this Declaration, the ARC Guidelines, the Bylaws, the Articles, and any other rule, restriction or regulation applicable to the Property and/or any Owner thereof may be enforced by the Developer, the Board, and/or the ARC through any one (1) or more of the following methods and remedies; *provided, however*, that unless otherwise expressly permitted by this Declaration, the Articles or the Bylaws, the Association shall first provide an Owner with notice of the alleged violation and an opportunity for a hearing regarding the same, each to be provided in accordance with the Bylaws, prior to utilizing or imposing the following methods and remedies against such Owner:

- (a) imposing monetary fines as authorized and approved hereby (including, without limitation, the non-exclusive schedule of monetary fines set forth on **Exhibit "B"** attached hereto) or in writing by the Board, which fines shall be specially assessed against, and shall constitute a lien upon, each Lot owned by the Owner that is responsible for such the violation or breach;
- (b) suspending the responsible Owner's right, if any, to vote as a Member of the Association;
- (c) suspending the right of the responsible Owner to use and/or to permit any other person to use, any the Common Areas or recreational facilities therein; *provided, however*, that in no event shall any such suspension interfere with such Owner's right to access, or quietly enjoy, such Owner's Lot in accordance with the other provisions of this Declaration;
- (d) suspending some or all of the services, if any, provided by or on behalf of the Association to the responsible Owner;
- (e) to the extent permitted by applicable law, exercising any or all self-help rights available to the enforcing party, the cost and expense of which shall

be specially assessed against, and shall constitute a lien upon, each Lot owned by the responsible Owner; and

- (f) filing a suit or alternative legal proceeding, at law or in equity, for any such legal, equitable or other relief (including, without limitation, monetary damages or injunctive relief) that is or may be available to the enforcing party, the costs and expenses of which shall be specially assessed against, and shall constitute a lien upon, each Lot owned by the responsible Owner(s).

4. **Transfer Fees.** In order to further fund the Association, any sale or transfer of any Lot by an Owner to a subsequent purchaser shall be subject to a transfer fee (a “Transfer Fee”), which Transfer Fee shall be no greater than one percent of the “gross selling price” of such Lot (including any improvements thereon) and the Association shall have sole discretion to adjust the amount of each such Transfer Fee within the preceding constraints. For purposes of this Section, “gross selling price” shall mean the total cost to the purchaser of any Lot, excluding any transfer taxes, recording fees, and title fees imposed by any governmental authority with respect to such sale. In the event that any non-cash consideration is provided in connection with any transfer of a Lot, the Association shall have sole discretion to determine the fair market value of such non-cash consideration for purposes of computing the gross selling price. The Transfer Fee shall be due and payable directly to the Association at the closing of such sale. The Transfer Fee shall be treated as an “Assessment” for all purposes of this Declaration and the Bylaws, and the Association shall have the same rights with respect to such Transfer Fee as the Association has with respect to any other Assessment (including, without limitation, the Association’s lien rights under the immediately following Section of this Declaration). Notwithstanding the foregoing or anything to the contrary herein, the Association may, in its sole discretion, elect to waive the imposition of the Transfer Fee with respect to any Lot sold by or to the Declarant or the Association.

5. **Liens for Association Assessments.** Each Owner hereby grants the Association a lien upon each Lot and its appurtenances and each Member’s interest in the Association to secure the payment to the Association of any and all Assessments assessed and levied against the Lot and/or the Owner thereof, together with any and all charges, including interest and all reasonable attorneys’ fees, including appellate attorneys’ fees, court costs and other expenses, incurred by the Association in collecting or attempting to collect such Assessments. If any portion of an Assessment or charge remains unpaid for a period of sixty (60) days after the date such amounts were due, then the Association may, by written notice of default sent to the Owner(s) of the Lot, demand payment of all delinquent amounts and charges. If the all amounts due are not paid within ten (10) days after receipt of such notice of default, the Association may file a notice of lien against the Lot in the Office of the Judge of Probate of the County. Each Owner hereby expressly grants to the Association a power of sale for such Lot along with its lien hereunder. The lien provided for herein 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, exchange, hold, lease, mortgage, convey and sell any such Lot so acquired. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot is and shall be subordinate to: (1) all liens for taxes, bonds, prior assessments, and other levies are superior to such lien pursuant to applicable

law and (2) the lien or charge of any first mortgage of record made to a commercial lender in good faith and for value. No Owner of any Lot may escape or avoid responsibility for Assessments by waiver of the use of or enjoyment of any of the Association Property or by the abandonment or non-use of such Owner's Lot(s), or by any other means.

6. **Indemnification.** The Association has agreed to indemnify and hold harmless each and every officer, director and committee or sub-committee member of the Association, including, without limitation, each members of the Board and each member of the ARC (each of the foregoing an "Indemnified Person"), from and against any and all costs and expenses, including attorney's fees and costs, reasonably incurred by or imposed upon any such Indemnified Person in connection with any action, suit or other proceedings to which he or she may be a party, by reason of being or having been an officer, director or committee member of the Association, the Board or the ARC. No Indemnified Person shall be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, willful misconduct or bad faith, with regard to the business of the Association, the Board and/or the ARC. Without limiting the foregoing, no Indemnified Person shall have any personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, except to the extent that they may be a Member of the Association, and the Association shall indemnify and forever indemnify, defend and hold harmless each such Indemnified Person from and against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any such Indemnified Person may be entitled. The Association may, but shall not be required by operation of this Declaration to, maintain insurance coverages of such types and in such amounts as the Board may deem necessary or appropriate in connection with the obligation of the Association to the Indemnified Persons hereunder, and such insurance coverages shall be paid for at the sole cost and expense of the Association.

7. **Individual Insurance.** By virtue of taking title to a Lot subject to these Covenants and Restrictions, each Owner acknowledges that the Association has no obligation to provide any insurance for all, or any portion, of any Lot or other portion of the Property. Each Owner covenants and agrees to obtain and keep in full force in effect for so long as such Owner owns a Lot, the following insurance coverages, each at such Owner's sole cost and expense: (a) a liability insurance policy having a minimum per occurrence limit of \$300,000, which insurance policy shall cover such Owner's Lot and all structures on such Lot at all times; and (b) a property insurance policy in an amount adequate to cover the full replacement cost of Owner's Principle Residence, and all other improvements and other property contained on or within such Owner's Lot. These policies will be solely at the Owner's expense. The Association shall have the right, but not obligation, to acquire the above coverages on behalf of any Owner who does not maintain, or fails to provide written evidence within ten (10) days following written request by the Association for evidence of, the insurance coverages required pursuant to this paragraph, the costs and expenses of which shall be specially assessed against the Lot(s) to which such coverages pertain.

8. **Remedies Cumulative.** All right and remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. If it prevails in any action or remedy taken to enforce the provisions of this Declaration, the Association, the ARC and/or the Declarant, as applicable, shall be entitled to recover from the party against whom enforcement was sought all costs, including, without limitation, attorney's fees and court costs, reasonably incurred

in connection therewith.

9. **No Obligation to Enforce.** Notwithstanding anything to the contrary herein, in no event shall the Association, the ARC or the Developer have any obligation to take action to enforce any provision of this Declaration if the Board determines in good faith that (a) the enforcement or taking of any action seeking the enforcement hereof is likely to be, or be construed as inconsistent with applicable law, (b) that the enforcing party's position is not certain enough to justify taking any enforcement action, or (c) that the risks and costs of seeking enforcement are likely to outweigh the benefits of obtaining enforcement. Any such determination shall not be construed a waiver of the right of the Association, the ARC or the Developer to subsequently enforce, or take action to enforce, the same or any other provision under any circumstances, or preclude the Association from enforcing any other covenant, Restriction or rule hereunder.

### **ARTICLE VIII** **MISCELLANEOUS**

1. **Amendment; Termination.** The Developer expressly reserves the sole and exclusive right and privilege, both for itself and its successors and assigns, to change, alter, modify, amend or terminate, in whole or in part, this Declaration and/or any of the Restrictions, terms, covenants and other provisions hereof, or to grant a variance to or from any of the foregoing, in each case without the consent or approval of any Owner or the Board until the Transition Date. Following the Transition Date, this Declaration and/or any of the Restrictions, terms, covenants and other provisions hereof, may only be changed, altered, modified, amended or terminated, in whole or in part, by a written instrument that has been (a) signed and acknowledged by the Owners of not less than two-thirds (2/3) of the Lots, (b) signed and acknowledged by the Association, and (c) recorded in the Office of the Judge of Probate of the County.

2. **Addition of Property.** At any time prior to the Transition Date, the Developer shall have the right but not the obligation, in its sole discretion without the consent of any Owner the Association, the ARC, or the Board, to add any such additional property to the Subdivision as Developer may determine necessary or desirable, and to subject any such additional property so added to the Subdivision, and the owners thereof, to the terms and conditions of this Declaration, the Articles and the Bylaws, as applicable. Without limiting the foregoing, Developer shall add such additional property to the Subdivision by recording a written instrument declaring that such property is subject to this Declaration, together with any other filings as may be required by applicable law to effect the same.

3. **Property Transfers to Association.** The Developer may, but shall not be required to, transfer or convey to the Association any improved or unimproved real property, any personal property, and/or any leasehold, easement, or other property interest which is or may be subject to the Declaration. The Association shall accept such conveyance, and any such property or property interest so conveyed shall thereafter be common property to be owned and maintained by the Association. The Developer shall not be required to make any improvements or repairs whatsoever to any property conveyed and accepted pursuant to the paragraph. Once a transfer or conveyance of property is made, the Association shall hold indemnity, defend, and hold harmless the Developer and the Board from and against any and all future liabilities associated with Association and such property or property rights so conveyed.

4. **Absence of Common Scheme.** Notwithstanding anything to the contrary provided herein, it is understood and agreed that this Declaration and the Restrictions set forth herein shall not be deemed to create a common scheme or to restrict any other property now or heretofore or hereafter owned by Developer other than the Lots within the Subdivision which are made subject to this Declaration by the execution, acknowledgment and recordation of this Declaration. For the avoidance of doubt, the foregoing sentence shall not in any way increase Developer's obligations, or impair Developer's rights, under this Declaration.

5. **Constructive Notice and Acceptance.** Every person, entity, trust, estate, association or other holder or acquirer of any right, title and/or interest in or to any Lot, whether or not such interest is reflected in the Office of the Judge of Probate of the County, shall by virtue thereof be conclusively deemed to have constructive notice of this Declaration and to have consented to and agreed to be bound by this Declaration, the Articles, the Bylaws, and each and every covenant, condition, obligation, Restriction, reservation and easement contained or referenced herein or therein, in each case without regard to whether any reference to any of the foregoing is contained in any document or instrument of transfer, if any, pursuant to which such right, title and/or interest in or to such Lot was obtained.

6. **Severability.** Each of the Restrictions is hereby declared to be independent of, and severable from, each and every other of the Restrictions contained herein, and of and from each and every combination of such other Restrictions. Invalidation by any court of any Restriction in this instrument shall in no way affect any of the other Restrictions contained herein or the validity thereof, which other Restrictions shall thereafter remain in full force and effect.

7. **Captions.** The captions identifying the articles, sections, subsections, paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. 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 make or apply to the feminine or the neuter.

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IN WITNESS WHEREOF, the Developer has caused this instrument to be duly executed on this the 24 day of September, 2020

**DEVELOPER:**

SMB Land, LLC

By: *Nick Howard*

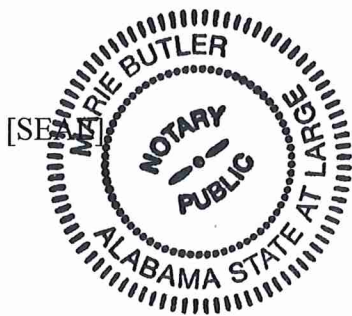
Name: Nick Howard

Its: CFO

STATE OF ALABAMA )  
 )  
COUNTY OF LEE )

I, the undersigned authority, a Notary Public in and for State and County, hereby certify that Nick Howard, whose name as CFO of SMB Land, LLC is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they as such \_\_\_\_\_ and with full authority, executed the same for and on behalf of SMB Land, LLC.

Given under my hand and official seal, this 24 day of September, 2020



*Marie Butler*  
NOTARY PUBLIC  
My Commission Expires: 8/21/2020

2609 424  
DEEDS Book & Page

**EXHIBIT A**

**SCHEDULE OF LOTS**

Lot 79A, Camelot Northbrook Subdivision, Phase 2, according to and as shown by that certain plat or record in Plat Book 43, at Page 87 in the Office of the Judge of Probate of Lee County, Alabama.

**EXHIBIT B**  
**SCHEDULE OF FINES**

Any violation that occurs may result in a fine of up to twenty-five dollars (\$25.00) per occurrence. Any violation that occurs may result in a fine of up to twenty-five dollars (\$25.00) per day for each additional day a violation is not appropriately remedied.

Notes:

- This Exhibit B may be modified or amended at any time by the Board.
- Fines increase by 100% per repeat violation occurring within 1 year of prior violation.
- The Board may increase or impose additional fines, as determined in its sole discretion.
- The Board may waive or decrease any fine, as determined in its sole discretion.
- The imposition or waiver of any fine shall not otherwise limit, impair, or constitute a waiver of any other right or remedy that may be available to the Association.