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FRANK BARGER Probate Judge

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**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR  
CHIMNEY CREEK  
SUBDIVISION**

**Prepared by:**

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**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR  
CHIMNEY CREEK  
SUBDIVISION**

**THIS DECLARATION** is made on the date hereinafter set forth by JWE Properties, LLC, an Alabama limited liability company, (the "Declarant").

**BACKGROUND  
STATEMENT**

Declarant is the owner of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

The Declarant will heretofore cause the Association, as defined below, to be formed as an Alabama non-profit corporation for the purpose of making the Assessments, as defined below, and otherwise taking all action which the Association is authorized to take.

## **ARTICLE I**

### **Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall have the definition meaning set forth in Exhibit "A", attached hereto and by reference made a part hereof.

## **ARTICLE II**

### **Property Subject to This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

**Section 2. Other Property.** Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article X.

**Section 3. Mutuality of Benefit and Obligation.** The provisions of these Covenants are made (a) for the mutual and reciprocal benefit of each Lot and Common Area within the Community and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Community, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

## **ARTICLE III**

### **Association Membership and Voting Rights**

**Section 1. Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership. Those Owners of property, if any, which is exempt from assessments as provided in Article IV, Section 11, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

**Section 2. Voting.** The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot/Residence in which they hold the interest required for membership under Section 1; provided, however, there shall be only one vote per Lot. Notwithstanding the above, the Owner of two contiguous Lots, as shown on the final subdivision plat recorded in the Public Records, on which one residential dwelling is constructed which crosses the boundary line separating Lots, shall have only one vote for such Lots. All Class "A" votes shall be cast as provided below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Certificate, are specified in the relevant sections of this Declaration, the By-Laws and the Certificate. The Class "B" Member may appoint all or a Majority of the members of the Board of Directors, as determined in the By-Laws, during the Class "B" Control Period which shall continue until the first to occur of the following:

(i) when Declarant no longer owns a Lot in the Community and no more land is available for annexation;

(ii) ten years from the date of execution of this Declaration; or

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

After termination of the Class "B" Control Period, the Class "B" Member shall have a right to veto actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) once all Lots have obtained certificates of occupancy and no more land remains available for annexation;

(ii) five years after expiration of the Class "B" Control Period; or

(iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot/Residence which it owns.

The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article X, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

Any Owner of a Residence not occupied by the Owner may, in the lease or other written instrument, assign the Owner's voting right appurtenant to that Residence to the Occupant,

provided that a copy of such instrument is furnished to the Secretary within the time period prescribed by the Secretary. In the event of such assignment, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote.

An Owner's right to vote may be suspended as provided in Article XII, Section 2, of this Declaration.

#### **ARTICLE IV** **Assessments**

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Type of Assessments.** Each Owner of any Residence, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special Assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 5; and (c) Specific Assessments against any particular Residence and/or Lot which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Lots in the Community.

**Section 3. Creation of Lien and Personal Obligation for Assessments.** All assessments, together with late charges, interest at a rate equal to the lesser of fifteen (15%) percent or the maximum lawful rate, costs, and reasonable attorney's fees actually incurred shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Lot at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

**Section 4. Budget.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve.

The Board Shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each Lot Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof) and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Lot which is more than one hundred twenty (120%) percent of the General Assessment for the immediately preceding fiscal year. In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year. Notwithstanding the foregoing, the initial General Assessment for each Lot shall be \$300.00 per year and will continue until such time as they may be increased by the Board as set forth above.

**Section 5. Special Assessments.** In addition to the other assessments authorized herein, the Board may levy Special Assessments in any year. So long as the total amount of Special Assessments allocable to each Lot does not exceed the amount of the current General Assessment in any one (1) fiscal year, the Board may impose the Special Assessment. Any Special Assessment which would cause the amount of Special Assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

**Section 6. Lien for Assessments.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be delinquent. Any assessment delinquent shall incur a one-time late charge of fifty and no/100 (\$50.00) dollars, or such other amount as the Board may from time to time determine. If the Owner's payment of dues (along with the initial late fee and any attorneys' fees) is not received by the Association within 60 days from the due date, in addition to the initial late fee, the Owner shall be charged monthly for the collection fee which is then being charged by the Association

until all amounts are paid in full, including the late fees and collection fees. The amount of such collection fee may be changed from time to time by the Association without notice to any Owner. Such collection fee shall be due and payable immediately and shall be for the purpose of helping to pay the extra cost to the Association for handing and collecting delinquent payments. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all collection fees (which may also be referred to from time to time as "late charges") from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

**Section 8. Date of Commencement of Assessments.** As long as the Declarant is maintaining all common areas and paying all costs associated with the Association, then assessments provided for herein shall be abated until such time as the Declarant elects to turn over control of the Association to the Class A Members. In the event that the Declarant's rights are transferred, pursuant to Article III of this Declaration, then the assessments shall immediately commence as to each Lot subject to this Declaration previously conveyed and, as to all other lots, upon conveyance of the Lot by Declarant to an Owner who is not a Builder. An Assessment shall be adjusted according to the number of months remaining in the fiscal year during which the Lot became subject to assessment. At no time shall any Lot owned by the Declarant be subject to the payment of any assessments due hereunder until title to the subject Lot has been sold and conveyed to a third party and the requisite time period has passed. Furthermore, in the event that a Lot is sold to a Builder for the purpose of resale, the Lot will not be subject to general assessments until such time as it is sold as a residence or until three years has passed from the recording of the final plat in the Probate Records of Madison County, Alabama.

THE INITIAL GENERAL ASSESSMENT PER LOT SHALL BE THREE HUNDRED DOLLARS (\$300.00) PER YEAR. GENERAL ASSESSMENTS SHALL BE DUE JANUARY 1 OF EACH YEAR, WITH THE FIRST GENERAL ASSESSMENTS BEING DUE ON JANUARY 1, 2020, EXCEPT FOR PRORATED PAYMENTS, IF ANY, WHICH SHALL BE DUE AT THE TIME OF CLOSING, EXCEPT AS OTHERWISE PROVIDED HEREIN.

**Section 9. Exempt Property.** The following property shall be exempt from General Assessments and Special and Specific Assessments:

- (a) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, public parks, conservation areas, roads, rights-of-way, streets and easements; and
- (b) all property owned by non-profit organizations and restricted for use as private schools churches or conservation areas; provided, however, the availability of the exemption for such non-profit organizations is contingent upon prior approval by the Board.

## **ARTICLE V**

### **Maintenance: Conveyance of Common Property by Declarant to Association**

**Section 1. Association's Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property. In the event the Association ceases to exist, or otherwise fails to perform as specified herein, each Owner shall be liable for their pro rata share of said maintenance based upon the ratio of Lots they owned divided by all Lots in the Community. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: grass and other landscaping along dedicated rights-of-way; sedimentation ponds; Community entrance features; and lakes and dams.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into leases, easements and covenants and to share costs agreements regarding such property (and any other property) where the Board has determined that this would benefit Owners.

The foregoing maintenance costs shall be assessed as a part of the General Assessment or Specific Assessments, as determined by the Board in accordance with this Declaration.

**Section 2. Owner's Maintenance Responsibility.** Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include,



without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements.

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a Specific Assessment against the Owner and the property owned by the Owner.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard and shall conform to any applicable municipal ordinances and regulations.

### **Section 3. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. This shall not apply to fences constructed along a Lot boundary by a single owner unless the adjoining owner has made use of the fence to enclose all or a portion of his own property.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. Provided, however, that any painting or staining of a fence shall not be considered a maintenance item. The painting or staining (after the initial required stain/paint is applied) of a fence shall be the sole expense of the party wishing to stain or repaint).

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out

of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**Section 4. Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association. Declarant shall have the right, without limitation, to include Lakes and Dams in the property that may be conveyed by Declarant and which shall be accepted by the Association.

**Section 5. Additional Improvements.** Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake that may be conveyed.

**Section 6. Agreements.** Subject to the conditions, restrictions and other provisions of these Covenants, all agreements, actions and determinations lawfully authorized by the Board with respect to the Property shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Community. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association hereunder as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the property operation of any portion of the Community, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. During the term of any such management agreement entered into by the Association with a third party, such manager may if all of the duties of the Association hereunder, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by these Covenants, the Certificate of Formation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Community, or the enforcement of these Covenants, the Certificate of Formation, the Bylaws, or any rules and regulations of the Association.

**Section 7. Management by Declarant or its Affiliates.** In addition to the rights and authority granted to the Association in Section 6 of this Article, Declarant or one of its affiliates or members, may, but shall not be obligated to, be employed as the manager of the Association and the Community for so long as Declarant owns any Lot in the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, to relinquish such right, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Community. Each Owner, by acceptance of a deed to or other conveyance of a Lot shall be deemed to ratify the provisions of this Section 7 and specifically be deemed to have approved any management agreement entered into by the Association or Declarant.

**Section 8. Governmental Interests.** For so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may designate sites within the Community for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

**Section 9. Dedication of Common Area.** The Association may dedicate portions of the Common Area to the City of Huntsville, Alabama, or to any other local, state, or federal governmental or quasi-governmental entity.

## **ARTICLE VI**

### **Use Restrictions and Rules**

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XIII, Section 4 and in Article XV, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) vote, may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community and to set the maximum and minimum speeds of vehicles on private streets within the Community and to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. The Board may also restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant.

**Section 2. Residential Use.** All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. However, the Board may permit any Residence to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance. The Board may issue rules regarding permitted business activities.

**Section 3. Signs.** No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, and "For Sale" and "For Rent" signs consistent with the Community-Wide Standard may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof. Political signs may be displayed in such numbers and in such manner as may be determined by the Board from time to time.

**Section 4. Vehicles.** The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, dune buggies, ATVs, tractors, scooters, go-carts, trucks, campers, buses, vans, and automobiles and similar vehicles. Unless and except to the extent that the Occupants of a Residence shall have more vehicles than the number of parking areas serving their Residence, all vehicles shall be parked within such parking areas. Where the Residence contains a garage, "parking areas" shall refer to the number of garage parking spaces.

No motor homes, farm equipment, heavy machinery, boats, trailers, moving vans, recreational vehicles, towed vehicle, inoperable vehicles, campers, semi-tractor trucks, buses, taxicabs, or other commercial vehicle of any nature or the like shall be permitted to be kept in the Community except to the extent and circumstances permitted in this Section 4. Commercial vehicles shall be deemed to include cars, vans, SUVs and trucks in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding four square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No oversized/commercial vehicle (a vehicle wider than and or longer than a standard parking space, or any vehicle that has more than two axles) may park in the Community. Any such items, other than boats, motor homes and campers, may be temporarily allowed in the Community for reasonable periods of time in order to allow for typical construction/repair activities, servicing for a Residence, and the moving of furniture and appliances.

No vehicle may be left upon any portion of the Community (including public alleys and/or right-of-ways), except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community.

No inoperable vehicle, towed vehicle, boat, recreational vehicle, motor home, or mobile home may be stored in the Community or temporarily kept in the Community, unless it is kept in a garage or other area designated by the Board. If such vehicle(s) remains in the Community for a period longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Other than an Owner's standard means of transportation, e.g., car, truck, SUV, or van, no vehicle should be in view from the street (they should either be parked in a garage or in the rear yard in an ARC approved parking area and be screened by an ARC approved fence). An Owner with more vehicles than parking spaces in a garage may park the extra vehicles (or the vehicles of guests, children, domestic employees, etc.) in their driveway.

No parking whatsoever is permitted in the front yard.

Provided that specific Board approval is obtained, towed vehicles, *i.e.*, boats, trailers and campers and the like, may be permitted in the rear yard of a Residence, provided that it is located on a concrete paved area and such vehicle is screened so as to not be visible from ground level by an ARC approved fence.

**Section 5. Leasing.** Intentionally omitted.

**Section 6. Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

**Section 7. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets.

Pets shall be registered, licensed and inoculated as required by law. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Community, including the right to assess fines for violations of such rules and regulations.

**Section 8. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

**Section 9. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**Section 10. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee ("ARC") established by the Board. The initial ARC committee members shall be Jeff Enfinger, David Enfinger, and Mecca Musick. They shall serve until such time as new committee members are appointed by a majority vote of the Directors. The following items, without limitation, will be submitted to the Architectural Review Committee for new home construction: house plans, site plans, landscaping plans, and exterior color and material schedule. The Board may employ for the Architectural Review Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to pay any fees charged by such architects or other qualified persons.

In the event that the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been

fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XIII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**Section 11. Antennas.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Lot. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. The erection of small satellite dish may be permitted, however, the size and location must be approved by the Architectural Review Committee.

**Section 12. Tree Removal.** No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons; or (d) trees in the immediate location of building approved by the Architectural Review Committee.

**Section 13. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee or the Board. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 14. Site Distance at Intersections.** Intentionally omitted.

**Section 15. Clotheslines, Garbage Cans, Woodpiles, Etc.** All clotheslines shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris and other waste matter of any kind may not be burned within the Community, except when done during normal construction of a residence by Declarant.

**Section 16. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot owned by Declarant during the time in which declarant may annex property. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 17. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.

**Section 18. Fencing.** No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Architectural Review Committee or its designee. Fences will be compatible with home and have architectural interest. No chain link fence will be allowed within the subdivision. Fences, regardless of construction, will not be permitted any nearer to the front lot line than the mid line of the dwelling except in special circumstances.

**Section 19. Lakes.** Intentionally omitted.

**Section 20. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.



**Section 21. Air-Conditioning Units.** Except as may be permitted by the Board or its designee, no window air conditioning units may be installed.

**Section 22. Lighting.** Except for approved lighting as originally installed on a Residence, exterior lighting visible from the street shall not be permitted, except for (a) two (2) decorative post lights; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights at Christmas; or (d) front house illumination of model homes. Ground level landscape lighting may be permitted as approved by the Architectural Review Committee.

**Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Board or its designee.

**Section 24. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Board or its designee.

**Section 25. Above-Ground Swimming Pools.** Except as may be permitted by the Board or its designee, above ground swimming pools shall not be erected.

**Section 26. Driveways.** Except as may be permitted by the Board or its designee, driveways shall be constructed with concrete.

**Section 27. Exteriors.** Except as may be permitted by the Board or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. No Residence exterior shall be constructed of untreated wood. All such wood exteriors must be painted or specifically approved by the Architectural Review Committee.

**Section 28. Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any dwelling. No foil, mirrored or other reflective materials shall be installed on any windows or used for sun screens, blinds, shades or other purposes.

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any dwelling. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. The portion of all window coverings visible from the exterior of any Residence shall be white or off-white or neutral, unless otherwise approved.

(c) GBG (grid between glass) and/or SDL (single divided light) windows may be used on the side, back, or front of the dwellings, or a combination thereof may be used on a dwelling provided that the window type on each respective side of the dwelling is the same.

**Section 29. Chimneys.** Chimneys may have either an approved type of siding, stucco product, brick or stone.

**Section 30. Lake and Park Lot Restrictions.** Intentionally omitted.

**Section 31. Mailboxes.** Only approved mailboxes can be installed in the community. Each mailbox must be the designated model of the Board. Each mailbox shall have a black finish.

**Section 32. Landscaping.** Any landscape guidelines will be established and/or amended by the Architectural Review Committee as needed. However, the landscape guidelines shall not contain any sod requirement.

**Section 33. Screening of Heating and Cooling Units.** Screening of exterior heat and air conditioning compressors or air handlers is encouraged on all sides of the equipment, more particularly on the front and side of the equipment. Homeowners are encouraged to use either vegetation, brick or stone, or fencing as approved by the Architectural Review Committee.

**Section 34. Storage Tanks.** Any storage tank must be approved by the architectural control committee and, if approved, must be buried, or, if they are less than fifty-gallon capacity, may, with the architectural control committee's approval, be installed above ground, if properly screened.

**Section 35. Minimum Square Footage.** All dwellings constructed on said Lots 1-20 shall have at least two thousand two hundred fifty (2,250) square feet of heated living area, Lots 21 -37 shall have at least eighteen hundred (1,800) square feet of heated living area, and Lots 38-47 shall have at least fourteen hundred fifty (1,450) square feet of heated living area.

**Section 36. Basketball Goals.** No basketball goals may be erected, placed or constructed on the front of any Lot. Only Board approved basketball goals may be erected or constructed on the rear portion of any Lot. No basketball goal may be erected over a garage or attached to a dwelling.

**Section 37. Brick Requirements.** All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior of vinyl, wood, cement based siding, stone or brick construction. The Architectural Review Committee shall have the sole discretion for approval of other exterior finishes.

**Section 38. Roof Pitch.** All dwellings shall have a roof pitch of 8/12 or greater on the main roof.

**Section 39. Foundations.** Slab foundations are permitted. There will be no minimum slab height requirements for any dwellings with slab foundations except as may be imposed by all applicable City building codes, zoning ordinances, or other governmental guidelines.

**Section 40. Shingles.** Roofs of dwellings constructed on all of said lots shall be of regular, 3-tab, or architectural grade shingles.

**Section 41. Garages.** All Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Garages may face either the street or side yard.

**Section 42. Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances and exceptions with respect to the provisions of this Declaration with respect to any Lot. Any request for a variance or exception submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written document executed by either the chairman or vice chairman of the ARC. **No exception granted by the ARC shall constitute a waiver of the restriction in any manner unless the exception is explicitly made on a Community wide basis or made, by resolution, to affect one or more particular subdivision(s) within the Community.**

**Section 43. Involvement of Board.** The Board may, but shall not be required, to take any formal action to abate any nuisances or to take any action with regard to a violation of the restrictions, particularly when the violations are minor or involve pets. Nothing in this provision shall prohibit an Owner from either taking action or filing suit against another Owner in order to protect his/her/its rights under this Declaration.

## **ARTICLE VII**

### **Prohibition of Timesharing**

Timesharing shall be prohibited in the Community. The term "timesharing" shall include, without limitation, timeshare estate, timeshare use, and timeshare interval programs.

## **ARTICLE VIII**

### **Insurance**

The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in such amounts as they deem appropriate. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

## **Article IX**

### **Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners.

## **ARTICLE X**

### **Annexation of Additional Property**

**Section 1. Unilateral Annexation by Declarant.** As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof, (sometimes the "Additional Property") and as it may be amended from time to time, to the provisions of this Declaration and the jurisdiction of the Association by filing for record a Supplementary Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land or nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 2. Exhibit "C": Real Property Amendment.** Subject to the consent of the owner or owners thereof and, so long as the Declarant has the right to subject additional real property as described in Exhibit "C" (as it may be amended from time to time as herein provided) to this Declaration as provided above, with the consent of the Declarant, upon the affirmative vote of at least a majority of the Board of the Association, in person or by proxy, at a meeting duly called for such purpose, the Association may amend Exhibit "C" real property to include such additional real property as may meet the above described requirements by filing for record a Supplementary Declaration with respect to the property being annexed included by amendment to Exhibit "C" Real Property. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation amendment shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

**Section 3. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of the properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the

Community. Such amendment shall not require the consent of any Person other than the Owner of the Property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

## **ARTICLE XI**

### **Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and the By-Laws notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of eligible holders.

**Section 2. Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (A decision, including contracts, by the Board or provisions of any Supplementary Declaration regarding assessments for Parcels or other similar

areas shall not be subject to this provision where such decision or Supplementary Declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section 3. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 4. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 5. Amendment by Board.** Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause amendments to this Article to be recorded to reflect such changes.

**Section 6. Veterans Administration Approval.** Intentionally Omitted.

**Section 7. Applicability of Article XI.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

**Section 8. Failure of Mortgagee to Respond.** Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **ARTICLE XII**

### **Easements**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

**Section 2. Easements for Use and Enjoyment of Common Property.** Intentionally omitted.

**Section 3. Reserved Easements for the Provision of Services to the Community.** There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights-of-way, drainage facilities, floodway easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 4. Reservation of General Access Easement.** Declarant does hereby establish and reserve for itself, the ARC, and the Association, their respective agents, employees, representative, invitees, successors and assigns, a permanent and perpetual nonexclusive easement over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of these Covenants, and (b) the performance of the respective duties of Declarant, the ARC, and the Association hereunder, including, without limitation taking any action required or permitted to be taken by Declarant, the ARC or the Association pursuant to any of the terms or provisions of these Covenants; provided, however, that upon completion and occupancy of any Lot, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot directly affected thereby.

**Section 5. Easement for Lake Maintenance.** Intentionally omitted.

**Section 6. Easement for Property Maintenance Along Lake.** Intentionally omitted.

**Section 7. Reservation of Easements With Respect to Common Areas.**

(a) **Easement Upon Common Areas.** Declarant does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing, installing, repairing and replacing any Improvements to the Community or to the Common Areas, and (ii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that nothing in this sentence shall obligate Declarant to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Declarant continues to own any portion of the Property, Declarant hereby establishes and reserves for itself and its successor and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Declarant deems appropriate; provided, however, that Declarant should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) **Changes in Common Areas.** Declarant does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, any Lots, or other portions of the Community or of the Development owned by Declarant. Declarant further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Development, the Community, or any Improvements thereto to be utilized as Common Areas, as Declarant, in its sole discretion, may determine.

**Section 8. Reservation of Self Help Maintenance Easement.** Declarant does hereby establish and reserve for the Association, and each of their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for



the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Community; provided, however, that such easement shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions.

**Section 9. Landscaping by Owners on Easement Areas.** The Declarant, the Association, any Governmental Authority, any utility company, and each of their respective successors and assigns, shall not be liable to any Owner, Occupant or any other party for and on account of damage to any landscaping or plantings placed on any easement area or road right-of-way within the Community by any Owner, Occupant or any other party.

### **ARTICLE XIII General Provisions**

**Section 1. Enforcement.** Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions and with the design guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to his or her property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules and regulations, use restrictions, or design guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Furthermore, the Board shall be entitled to recover costs and reasonable attorney's fees from the Owner and/or Occupant upon being the substantially successful party in any litigation resulting from an Owner and/or Occupant failing to comply with this Declaration in any material respect. Failure by the Board or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Term.** The terms, covenants, conditions and restrictions set forth in these Covenants shall run with and bind all of the Community, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years

from and after the date hereof, after which time these Covenants shall be automatically renewed and extended for successive and continuous periods ten (10) years each, unless, at any time after twenty (20) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots within the Property agreeing to terminate or modify these Covenants has been recorded in the Probate Office of Madison County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article XII hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

Notwithstanding anything herein to the contrary, these covenants and restrictions must remain in force and effect so long as Common Property is owned by the Association.

**Section 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to the property of any Owner without the consent of the affected Owner or Occupant.

Furthermore, so long as Declarant owns any Lot within the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, **Declarant may amend these Covenants by a written instrument** filed and recorded in the Probate Office of Madison County, Alabama, **without obtaining the approval of any Owner or Mortgagee**; provided, however, (a) in the event any amendment proposed by Declarant materially and adversely alters or changes any Owner's rights to the use and enjoyment of his or her Lot or materially or adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by the affected Owner, or, alternatively, by fifty percent (50%) of all of the Owners (including Declarant who shall have the voting rights attributable to any Lots owned by Declarant), or (b) in the event any such proposed amendment by Declarant would materially and adversely affect the title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. Any amendment made pursuant to this Section shall be certified by Declarant and shall be effective upon recording of the same in the Probate Office of Madison County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section and further agrees that, if

requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of these Covenants or any other instruments relating to the Community or the Association if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provision of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot, (iii) required by any Mortgagee in order to enable such Mortgagee to make a Mortgage loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lot within the Community.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a two-thirds (2/3) vote of the total Association vote entitled to vote thereon or three-fourths (3/4) of the Board and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant. In the event of a conflict between the Board and the Association, the Boards decision controls. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or By-Laws.

Notwithstanding anything contained herein to the contrary, any amendment which affects the maintenance of the Common Property must be approved by the City of Huntsville, Alabama.

**Section 5. Partition.** The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within the Community, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant.

**Section 6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 7. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 8. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 9. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 10. Indemnification.** The Association shall indemnify every officer, director, ARC and other committee member, as well as former officers, directors, and ARC and other committee members, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer, director or ARC or other committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or ARC or other committee member. The officers, directors and ARC or other committee member shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors ARC or other committee member shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that they may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director and ARC or other committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, committee member, or former officer, director or committee member, may be entitled under the Certificate, By-Laws, contract, or otherwise. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 11. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Certificate of Formation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article X terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C", as it may be amended from time to time, to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on

sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parades of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Homes and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 12. Books and Records.** This Declaration, the By-Laws, the Certificate of Formation, copies of rules and regulations, use restrictions, design guidelines, membership register, and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents.

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 13. Audit.** An audit of the accounts of the Association may be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

**Section 14. Notice of Sale.** If an Owner sells his or her Lot, the Owner shall give to the Board, in writing, the name of the purchaser of the Lot and such other information as the Board may reasonably require.

**Section 15. Estoppel Certificate.** Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the

foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five (\$25.00) Dollars for the issuance of each such certificate.

**Section 16. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and other having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 17. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Certificate of Formation, any use restriction or rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 18. Deviations.** The Board or its designee or the Declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the rules and regulations, the use restrictions, and the design guidelines.

**Section 19. Use of Words “CHIMNEY CREEK” or “CHIMNEY CREEK SUBDIVISION”.** Intentionally omitted.

**Section 20. Counsel.** The drafter of this Declaration prepared said instruments on behalf of the Developer and not for the benefit of the Association, or future Owners.

#### **ARTICLE XIV SPECIFIC RIGHTS OF DECLARANT**

**Section 1. Right of Declarant to Modify Restrictions to Lots Owned by Declarant.** With respect to any Lot owned by Declarant, Declarant may, by deed, contract or other instruments filed for the record in the manner specified by law, modify the provisions of these Covenants as the same apply to any such Lot, including but not limited to, the withdrawal of any such Lot from the operation and effect of these Covenants.

**Section 2. Development of Property.** Subject to the approval of any Governmental Authority with appropriate jurisdiction, Declarant shall have the right, but not the obligation, for so long as Declarant owns any portion of the Community, or until such earlier date as Declarant elects in its sole discretion to relinquish such right, to make improvements and changes to all Common Areas and to all Lots owned by Declarant, including without limitation (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lot owned by Declarant or of the Common Areas, (iii) installation of any water, sewer and any other utility systems and facilities within the Common Areas, or (iv) any

other change or Improvement to any portion of the Common Areas or to the Lots owned by Declarant.

**Section 3. Subdivision Plat.** Declarant reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Community, including without limitation, the locations and dimensions of all Lots, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, setback line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Community indicated thereon as if such subdivision plat were specifically incorporated into these Covenants. Notwithstanding anything provided to the contrary in these Covenants, Declarant may at any time or from time to time divide and re-divide, combine and re-subdivide any Lots owned by Declarant and change any easement description or relocate any roads affected thereby, subject to approval of any Governmental Authority having jurisdiction thereof.

**Section 4. Board.** The Board of Directors shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Declarant hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board of Directors and any officer or officers of the Association until such time as Declarant no longer owns any Lot in the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, to relinquish such right, except as may be provided otherwise in the By-laws. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.

**Section 5. Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THESE COVENANTS, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE COMMUNITY, DECLARANT HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Declarant shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 5 and the provisions above. At such time as Declarant no longer owns any interest in any portion of the Community, or at such earlier date as Declarant elects, in Declarant's sole discretion, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver all books, accounts and records of the Association, if any, which Declarant has in its possession.

IN WITNESS WHEREOF, the undersigned, as Manager of JWE PROPERTIES, LLC, has caused this instrument to be executed on this the 5 day of February, 2019.

**JWE PROPERTIES, LLC,**  
an Alabama limited liability company

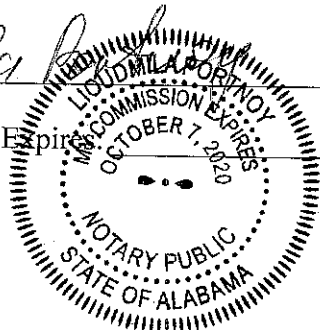
By: [Signature]  
Jeffrey W. Enfinger, Manager

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Jeffrey W. Enfinger, whose name as Manager of JWE Properties, LLC, an Alabama limited liability company, whose name 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, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 5 day of February, 2019.

[Signature]  
Notary Public  
My Commission Expires OCTOBER 7, 2020





RATIFIED BY MORTGAGEE:

BANK INDEPENDENT

Will Of  
By: Will Alexander  
Its: Vice President

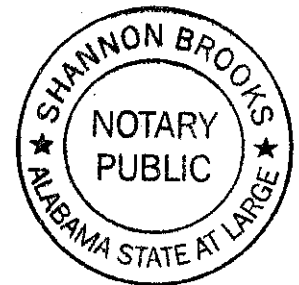
STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Will Alexander, whose name as Vice President of Bank Independent, whose name 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, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 5th day of February 2019.

Shannon Brooks  
Notary Public  
My Commission Expires: 10-13-19

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## EXHIBIT "A"

### **Definitions**

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

- (a) **"Certificate of Formation"** shall mean the Certificate of Formation of Chimney Creek Owners Association, as such document may be amended. Any references to "Articles of Incorporation" shall be deemed to refer to the Certificate of Formation.
- (b) **"Association"** shall mean and refer to Chimney Creek Owners Association, a nonprofit, nonstock, membership corporation incorporated under the laws of the State of Alabama, its successors and assigns, as may be established simultaneously herewith or with.
- (c) **"Association Expenses"** shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the By-Laws, and the Certificate of Formation.
- (d) **"Board of Directors" or "Board"** shall mean the governing body of the Association, and the Board shall have such duties as are provided in the Declaration, the By-Laws, the Certificate of Formation, and the Alabama Nonprofit Corporation Act.
- (e) **"Builder"** shall mean any Person who holds either a general contractor's license or a Homebuilder's license with the State of Alabama.
- (f) **"By-Laws" or "Bylaws"** shall refer to the Bylaws of Chimney Creek Owners Association, or such document, if any, as may be established and/or amended from time to time.
- (g) **"Certificate of Occupancy"** shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Lot.
- (h) **"Common Areas"** The term "Common Areas" and/or "Common Property" shall mean and refer to all real and personal property now or hereafter owned by the Association for the nonexclusive, common use and enjoyment of the Owners and Occupants. The Common Areas shall include (a) all signage, street lights, lighting, walkways, paths, bicycle and jogging paths or lanes, if any, improvements, landscaped or other areas of common use, (b) all storm drains and sewers, drainage and/or watershed protection areas located within the Community (other than such areas located solely within the boundary lines of any Lot), (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas on more than one Lot, and (d) all easements and easement areas within the Community (other than such areas located solely within the boundary lines of any Lot), and any other areas or Improvements on or within the Community which are designated as Common Areas by Declarant or the Board from time to time. The designation of any land and/or Improvements as Common Areas shall not mean or

imply that the public at large acquires any easement of use or enjoyment thereof or any other rights, licenses or benefits therein. The designation of any real estate on any recorded plat shall not be a dedication to the Association. Such dedication may only take place upon the execution and recording of a deed, or quit claim deed, from the Declarant to the Association.

(i) **“Community” and or “Property”** shall mean and refer to that certain real property and interests therein described in Exhibit “B”, attached hereto, and such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

(j) **“Community-Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(k) **“Declarant” and/or “Developer”** shall mean and refer to JWE PROPERTIES, LLC, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit “B”, attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grantor of such conveyance, which grantor shall be the “Declarant” hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the property described in Exhibit “B” attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Declarant” hereunder at any one point in time.

(l) **“Declaration” and or “Covenants”** shall mean the Declaration of Protective Covenants for CHIMNEY CREEK, as such document may be amended.

(m) **“General Assessments”** shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants.

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

(o) **“Improvements”** The term “Improvement” shall mean and refer to all dwellings, any building, structure, planting or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, roads, driveways, walkways,

paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural conditions of any Lot.

(p) **“Lot”** The term “Lot” shall mean and refer to any portion of the Community which will be owned in fee simple by an Owner. Upon the recordation of any subdivision plat for the Community, each lot indicated thereon shall be deemed a Lot for purposes of these Covenants.

(q) **“Majority”** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(r) **“Member”** shall mean a Person that is a member of the Association as provided in the Declaration.

(s) **“Mortgage”** means any first mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(t) **“Mortgagee”** shall mean the holder of a Mortgage.

(u) **“Occupant”** shall mean any Person occupying all or any portion of a Residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(v) **“Owner”** The term “Owner” shall mean and refer to the record owner, including Declarant, of fee simple title to any Lot and/or Residence, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

(w) **“Person”** means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(x) **“Residence”** shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. For example, each single family detached home shall constitute a Residence; each condominium unit in a condominium development shall constitute a Residence; each Apartment Unit in an Apartment Complex shall constitute a Residence; and each townhome or cluster home unit in an attached or semi-attached housing development shall constitute a Residence. The foregoing examples are set out by way of illustration and not in limitation of the term “Residence.” Residence shall include all portions of the land owned as well as any structure thereon, as described above. Except where it is clear that a different usage is intended, references to a **Lot** shall include the term **“Residence.”** A Residence shall come into existence for the purpose of assessments on the earliest date of the happening of any of the following events: (1) when a Certificate of Occupancy is issued by the

proper governing authority; (2) in the case of a Lot in a subdivision, the expiration of one year from the date the subdivision is accepted for maintenance by the proper governing authority, (unless made earlier or later by contract between Declarant and Owner).

(y) **“Residential Use”** The term “Residential Use” shall mean and refer to the occupancy of any Lot for single-family residential housing purposes.

(z) **“CHIMNEY CREEK”** and **“CHIMNEY CREEK SUBDIVISION”** shall mean all of the Property described in Exhibit “B” along with any and all future phases on property described in Exhibits “B” and “C” as may be subjected to this Declaration by a Supplementary Declaration.

(aa) **“Supplementary Declaration”** shall mean an amendment to the Declaration subjecting additional property to the Declaration.

EXHIBIT "B"

(Legal Description for Chimney Creek Subdivision Phase 1)

Lots 1 through 47, according to the Final Plat for Chimney Creek Subdivision Phase 1, being recorded as Instrument Number 2018-00079951 in the Office of the Judge of Probate of Madison, County, Alabama.

EXHIBIT "C"

All property described in the attached legal descriptions as well as all contiguous properties within a one mile radius of the properties described either in Exhibit "B" or any specific properties set out in this Exhibit "C" that are not described in Exhibit "B."

A PART OF SECTIONS 15, 22 AND 23, TOWNSHIP 4 SOUTH, RANGE 1 EAST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY ALABAMA, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE CENTER OF THE EAST BOUNDARY OF THE NORTHEAST QUARTER OF SAID SECTION 22. THEN SOUTH 45 DEGREES 43 MINUTES 14 SECONDS EAST, 329.31 FEET TO A POINT ON THE WESTERN MARGIN OF THE RIGHT OF WAY OF OLD BIG COVE ROAD, THE POINT OF BEGINNING.

THEN FROM THE POINT OF BEGINNING AND ALONG SAID MARGIN SOUTH 12 DEGREES 44 MINUTES 54 SECONDS WEST A DISTANCE OF 148.95 FEET TO A POINT;

THEN CONTINUE ALONG SAID MARGIN SOUTH 22 DEGREES 18 MINUTES 48 SECONDS WEST A DISTANCE OF 173.61 FEET TO A POINT;

THEN CONTINUE ALONG SAID MARGIN AND ALONG THE ARC OF A CURVE TO THE LEFT WHICH HAS A RADIUS OF 1269.13 FEET AND A DELTA ANGLE OF 09 DEGREES 21 MINUTES 28 SECONDS, A DISTANCE OF 207.26 FEET (A CHORD BEARING AND DISTANCE OF SOUTH 18 DEGREES 04 MINUTES 39 SECONDS WEST, 207.05 FEET) TO A POINT.

THEN CONTINUE ALONG SAID MARGIN SOUTH 10 DEGREES 41 MINUTES 20 SECONDS WEST A DISTANCE OF 257.04 FEET TO A POINT;

THEN LEAVING SAID MARGIN AND ALONG THE NORTHERN MARGIN OF THE RIGHT OF WAY OF PAUL DRIVE NORTH 88 DEGREES 57 MINUTES 18 SECONDS WEST A DISTANCE OF 1725.50 FEET TO A POINT;

THEN CONTINUE ALONG SAID MARGIN AND ALONG THE ARC OF A CURVE TO THE LEFT WHICH HAS A RADIUS OF 100.00 FEET AND A DELTA ANGLE OF 49 DEGREES 23 MINUTES 46 SECONDS, A DISTANCE OF 86.21 FEET (A CHORD BEARING AND DISTANCE OF SOUTH 53 DEGREES 59 MINUTES 29 SECONDS WEST, 83.57 FEET) TO A POINT.

THEN NORTH 88 DEGREES 02 MINUTES 26 SECONDS WEST A DISTANCE OF 382.64 FEET TO A POINT;

THEN SOUTH 01 DEGREES 34 MINUTES 57 SECONDS WEST A  
DISTANCE OF 311.21 FEET TO A POINT;

THEN NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A  
DISTANCE OF 717.58 FEET TO A POINT;

THEN NORTH 00 DEGREES 50 MINUTES 52 SECONDS EAST A  
DISTANCE OF 2760.67 FEET TO A POINT;

THEN SOUTH 76 DEGREES 26 MINUTES 08 SECONDS EAST A  
DISTANCE OF 226.70 FEET TO A POINT;

THEN SOUTH 01 DEGREES 02 MINUTES 02 SECONDS WEST A  
DISTANCE OF 733.86 FEET TO A POINT;

THEN SOUTH 87 DEGREES 42 MINUTES 28 SECONDS EAST A  
DISTANCE OF 1318.84 FEET TO A POINT;

THEN SOUTH 01 DEGREES 06 MINUTES 51 SECONDS WEST A  
DISTANCE OF 541.60 FEET TO A POINT;

THEN SOUTH 88 DEGREES 01 MINUTES 13 SECONDS EAST A  
DISTANCE OF 345.80 FEET TO A POINT;

THEN SOUTH 68 DEGREES 47 MINUTES 32 SECONDS EAST A  
DISTANCE OF 897.95 FEET TO A POINT;

THEN NORTH 85 DEGREES 15 MINUTES 54 SECONDS EAST A  
DISTANCE OF 264.89 FEET TO A POINT;

THEN NORTH 86 DEGREES 15 MINUTES 54 SECONDS EAST A  
DISTANCE OF 110.33 FEET TO A POINT;

TO THE POINT OF BEGINNING AND CONTAINING 96.20 ACRES MORE  
OR LESS.

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Madison County, AL  
FRANK BARGER Probate Judge  
File **2019-00007088**